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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 630

Absence and Leave; Voluntary Leave Bank Program

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is establishing a 5-year voluntary leave bank program that permits employees in approved Executive agencies to contribute annual leave to leave banks for the use of leave bank members in medical or family medical emergency situations. This rule establishes procedures for contributing annual leave to a leave bank, withdrawing contributions of annual leave from a leave bank, and administering a leave bank. This program is authorized by Pub. L. 100–566, the "Federal Employees Leave Sharing Act of 1988," which requires OPM to establish leave bank programs in at least three Executive agencies by July 31, 1989.

In addition, OPM is amending the interim regulations governing the 5-year voluntary leave transfer program established under Pub. L. 100–566. The changes are primarily technical in nature and will serve to facilitate implementation of the program. (The original interim regulations were published in the **Federal Register** on January 31, 1989 (54 FR 4749).)

DATES: This interim rule becomes effective on April 28, 1989 and will expire on October 31, 1993; comments must be received on or before June 27, 1989.

ADDRESS: Comments may be sent or delivered to Barbara L. Fiss, Assistant Director for Pay and Performance Management, Personnel Systems and Oversight Group, U.S. Office of Personnel Management, Room 7H28, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: For information on the voluntary leave bank program, John Cahill, (202) 632–5056; for information on the voluntary leave transfer program, Martha Hoehn, (202) 632–5056.

SUPPLEMENTARY INFORMATION: Pub. L. 100–566, the "Federal Employees Leave Sharing Act of 1988," directs the Office of Personnel Management (OPM) to establish by regulation a 5-year experimental program under which the unused accrued annual leave of employees in approved Executive agencies may be contributed to leave banks for withdrawal and use by leave bank members who need such leave because of a medical emergency. This authority will terminate on October 31, 1993. In Executive agencies or their administrative subunits whose participation is approved by OPM, the program established by these regulations will replace the voluntary leave transfer program also established under Pub. L. 100–566.

Many statutory provisions of the voluntary leave bank program are identical to provisions of the voluntary leave transfer program. Therefore, this interim rule incorporates many provisions of the interim rule for the voluntary leave transfer program published in the **Federal Register** on January 31, 1989.

Affected Agencies. In a separate **Federal Register** notice, OPM will announce the specific Executive agencies or administrative subunits of Executive agencies approved to participate in the voluntary leave bank program. Although OPM will approve each agency's participation, it will not formally review or approve the agencies' policies or procedures.

Objectives. OPM's primary objectives in developing the interim rule were to (1) provide each agency with the flexibility to tailor its voluntary leave bank program to meet its particular needs and circumstances; (2) enable each leave bank board to maintain an adequate supply of annual leave in the leave bank to meet the needs of potential leave recipients to the greatest extent practicable; and (3) ensure that adequate information is available to permit OPM to evaluate the voluntary leave bank experiment.

The key features of the interim rule are:

Enrollment periods. The law directs OPM to establish by regulation an open enrollment period during which an employee may make application to contribute annual leave to the leave bank. An employee may become a leave bank member by contributing, during an open enrollment period established by the leave bank board, at least the minimum contribution of annual leave established by the board. To ensure equitable treatment of employees who (1) move into an organization operating a leave bank or (2) return from extended absences outside the open enrollment period, the interim rule also authorizes leave bank boards to establish individual enrollment periods for such employees.

Because of the varying characteristics of the agencies experimenting with the voluntary leave bank program and because this is the first leave bank experiment conducted in the Federal sector, OPM considers it impractical to prescribe by regulation the exact number, timing, or length of enrollment periods. The interim rule requires that an open enrollment period last at least 30 calendar days to ensure that employees have an adequate opportunity to contribute annual leave and to minimize the need to establish individual enrollment periods for new employees or employees absent from duty during open enrollment periods. Agencies may determine the number and scheduling of enrollment periods. (See § 630.1004 paragraphs (c) through (f).)

Additional contributions of annual leave. To help the leave bank board maintain an adequate supply of annual leave in the leave bank, the interim rule permits an employee to contribute annual leave at any time during the leave year. Agencies are encouraged to take advantage of this provision by appealing for additional voluntary contributions when additional annual leave is needed. Contributions outside the established enrollment periods will not, however, entitle an employee to become a leave bank member. (See § 630.1004(k).)

Time limits for filing application. The interim rule authorizes leave bank boards to establish rules governing the

timeliness of an application to become a leave recipient. (See § 630.1006(b).)

Response time for applications to become a leave recipient. The interim rule requires the agency to set a time limit on the leave bank board's action on an application to become a leave recipient. (See § 630.1007(e).)

Limitations on withdrawal of annual leave from a leave bank. The interim rule authorizes leave bank boards to set limits on the amount of annual leave that may be withdrawn from the leave bank by a single leave recipient. OPM's review of experience in public sector leave bank programs indicates that such limitations may help agencies ensure that each leave bank maintains an adequate supply of annual leave. Leave bank boards may wish to consider establishing limitations such as (1) a limit on the total amount of annual leave that may be withdrawn from the leave bank by a single leave recipient, (2) a limit on the amount of annual leave a single leave recipient may withdraw during a given time period, or (3) a limit on the amount of annual leave that may be *available* to a single leave recipient at any one time. (See § 630.1007(f).)

Rules of employee movement. The interim rule prescribes general policies governing employee movement into and out of an organization operating a leave bank. For ease of administration, a leave recipient's medical emergency will be considered to have terminated on the date the employee moves. Therefore, unused annual leave withdrawn from a leave bank will be returned to the leave bank when a leave recipient moves out of the organization operating the leave bank. The employee may then (1) apply to become a leave bank member in his or her new organization (if applicable) by making the minimum contribution with accrued annual leave, and (2) apply to become a leave recipient under the voluntary leave bank program or voluntary leave transfer program, as applicable. (See §§ 630.1014 and 630.1015.)

Technical changes in Voluntary Leave Transfer Program. Publication of the interim rule for the voluntary leave bank program has required several technical changes in the interim rule for the voluntary leave transfer program published in the **Federal Register** on January 31, 1989. In addition, the amended rule clarifies the requirement to establish a separate leave account for leave accrued while an employee is in a transferred leave status.

Finally, the new law and interim rule require approved agencies to implement the voluntary leave bank program by July 31, 1989. Until an agency implements its voluntary leave bank program, the voluntary leave transfer program authorized by Pub. L. 100–566 remains in effect.

Pursuant to sections 553(b)(3)(B) and 553(d)(3) of title 5, United States Code, I find that good cause exists for waiving the general notice of proposed rulemaking and for making this amendment effective in less than 30 days. The notice and the 30-day delay in the effective date are being waived because of the need to facilitate the implementation of the voluntary leave bank program by participating Federal agencies.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significnt economic impact on a substantial number of small entities because they will affect only Federal employees and Executive agencies.

List of Subjects in 5 CFR Part 630

Government employees.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM is amending Part 630 of Title 5 of the Code of Federal Regulations as follows:

PART 630—ABSENCE AND LEAVE

1. The authority citation for Part 630 is revised to read as set forth below:

Authority: 5 U.S.C. 6311; Section 630.303 also issued under 5 U.S.C. 6133(a); Section 630.501 and Subpart F also issued under E.O. 11228; Subpart G also issued under 5 U.S.C. 6305; Subpart H issued under 5 U.S.C. 6326; Subpart I also issued under 5 U.S.C. 6332 and Pub. L. 100–566; Subpart J also issued under 5 U.S.C. 6362 and Pub. L. 100–566.

Subpart I—Voluntary Leave Transfer Program

2. In Subpart I, § 630.901(b) is revised; § 630.907 (d) is redesignated as paragraph (e), and a new paragraph (d) is added; a new paragraph (d) is added to § 630.908; § 630.909(a) is revised, paragraphs (b) and (c) are redesignated as paragraphs (c) and (d), respectively, and a new paragraph (b) is added; § 630.910(a) (2), (3), and (4) are redesignated as paragraphs (a) (3), (4), and (5), respectively, and a new paragraph (a)(2) is added, to read as follows:

§ 630.901 Purpose and applicability.

* * * * *

(b) *Applicability.* This subpart applies to officers and employees—

(1) To whom subchapter I of chapter 63 of title 5, United States Code applies; and

(2) Who are not employed in agencies or their organizational subunits approved by the Office of Personnel Management to operate a voluntary leave bank program under Subpart J of this part.

* * * * *

§ 630.907 Accrual of annual and sick leave.

* * * * *

(d) If the leave recipient's employing agency makes available at the beginning of the leave year the amount of annual leave the employee normally would accrue during the entire leave year under 5 U.S.C. 6302(d)—

(1) The leave recipient's employing agency shall establish procedures to ensure to the extent practicable that 40 hours (or, in the case of a part-time employee or an employee with an uncommon tour of duty, the average number of hours of work in the employee's weekly scheduled tour of duty) of annual leave are placed in a separate annual leave account and made available for use after the medical emergency terminates; and

(2) The employee shall continue to accrue annual leave while in a transferred leave status to the extent necessary for the purpose of reducing an indebtedness caused by the use of annual leave made available at the beginning of the leave year.

* * * * *

§ 630.908 Limitations on donation of annual leave.

* * * * *

(d) The limitations in this section shall apply to the total amount of annual leave donated or contributed under Subparts I and J of this part.

§ 630.909 Use of transferred annual leave.

(a) A leave recipient may use annual leave transferred to his or her annual leave account under § 630.906 in the same manner and for the same purposes as if he or she had accrued the annual leave under 5 U.S.C. 6303.

(b) Except as provided in § 630.907, during each biweekly pay period a leave recipient is affected by a medical emergency, he or she shall use any accrued annual leave (and sick leave, if applicable) before using transferred annual leave.

* * * * *

§ 630.910 Termination of medical emergency.

(a) The medical emergency affecting a leave recipient shall terminate—

* * * * *

(2) When the leave recipient transfers from an agency or organizational subunit operating a voluntary leave transfer program to an agency or organizational subunit operating a voluntary leave bank program;

* * * * *

3. Subpart J is added to read as follows:

Subpart J—Voluntary Leave Bank Program

Sec.

630.1001 Purpose and applicability.
630.1002 Definitions.
630.1003 Establishing leave banks and leave bank boards.
630.1004 Application to become a leave contributor and leave bank member.
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630.1014 Movement between voluntary leave bank programs.
630.1015 Movement between voluntary leave bank program and voluntary leave transfer program.
630.1016 Termination of voluntary leave bank program.

Subpart J—Voluntary Leave Bank Program

§ 630.1001 Purpose and applicability.

(a) *Purpose.* The purpose of this subpart is to establish procedures and requirements for a voluntary leave bank program in approved agencies under which the unused accrued annual leave of an employee may be contributed to a leave bank for use by a leave bank member who needs such leave because of a medical emergency.

(b) *Applicability.* This subpart applies to officers and employees—

(1) To whom subchapter I of chapter 63 of title 5, United States Code applies; and

(2) Who are employed in agencies and their organizational subunits approved by the Office of Personnel Management to operate a voluntary leave bank program under this subpart.

§ 630.1002 Definitions.

"Agency" means an "Executive agency," as defined in 5 U.S.C. 105, or a "military department," as defined in 5 U.S.C. 102, that has been approved by OPM to operate a voluntary leave bank program under this subpart. "Agency" does not include the Central Intelligence Agency, the Defense Intelligence Agency, the National Security Agency, the Federal Bureau of Investigation, or any other Executive agency or subunit thereof, as determined by the President, whose principal function is the conduct of foreign intelligence or counterintelligence activities.

"Employee" has the meaning given that term in 5 U.S.C. 6301(2), excluding an individual employed by the government of the District of Columbia. Except as otherwise indicated, "employee" means an employee of an agency or organizational subunit of an agency that has been approved by OPM to operate a voluntary leave bank program under this subpart.

"Family member" has the meaning given that term in Subpart I of this part.

"Leave bank" means a pooled fund of annual leave established by an agency under § 630.1003.

"Leave bank member" means a leave contributor who has contributed, in an open enrollment period (or individual enrollment period, as applicable) of the current leave year, at least the minimum amount of annual leave required by § 630.1004.

"Leave contributor" means an employee who contributes annual leave to a leave bank under § 630.1004.

"Leave recipient" means a leave bank member whose application to receive contributions of annual leave from a leave bank has been approved under § 630.1007.

"Medical emergency" has the meaning given that term in Subpart I of this part.

"Paid leave status under subchapter I" has the meaning given that term in Subpart I of this part.

§ 630.1003 Establishing leave banks and leave bank boards.

(a) By July 31, 1989, each agency approved by OPM to participate in the voluntary leave bank program shall, in accordance with the regulations in this subpart—

(1) Develop written policies and procedures for establishing and administering leave banks and leave bank boards;

(2) In consultation with OPM, establish one or more leave bank boards to perform the duties authorized by this subpart; and

(3) Establish and begin operating one or more leave banks.

(b) No more than one leave bank board may be established for each leave bank.

(c) Each leave bank board shall consist of three members. At least one member shall represent a labor organization or employee group.

(d) Each leave bank board shall—

(1) Establish its internal decision-making procedures;

(2) Review and approve or disapprove each application to become a leave contributor under § 630.1004 and a leave recipient under §§ 630.1006 and 630.1007;

(3) Monitor the status of each leave recipient's medical emergency;

(4) Monitor the amount of leave in the leave bank and the number of applications to become a leave recipient;

(5) Maintain an adequate amount of annual leave in the leave bank to the greatest extent practicable in accordance with § 630.1004; and

(6) Perform other functions prescribed in this subpart.

(e) Annual leave may not be borrowed, contributed, or otherwise transferred between leave banks.

§ 630.1004 Application to become a leave contributor and leave bank member.

(a) An employee may make voluntary written application to the leave bank board to become a leave contributor. The application shall specify the number of hours of annual leave to be contributed and any other information the leave bank board may reasonably require.

(b) An employee may request that annual leave be contributed to a specified bank member other than the leave contributor's immediate supervisor.

(c) A leave contributor shall become a leave bank member for a particular leave year if he or she submits an application meeting the requirements of this section during an open enrollment period established by the leave bank board under paragraphs (d) and (e) of this section (or where applicable, during an individual enrollment period established under paragraph (f) of this section).

(d) For the leave year beginning in 1989, the leave bank board shall establish at least one open enrollment period, beginning on the date the agency establishes the voluntary leave bank program. For each leave year beginning after 1989, the leave bank board shall establish at least one open enrollment period.

(e) An open enrollment period shall last at least 30 calendar days. The agency shall take appropriate action to inform employees of each open enrollment period.

(f) An employee entering the agency or participating organizational subunit or returning from an extended absence outside an open enrollment period may become a leave bank member for the leave year by submitting an application meeting the requirements of this section during an individual enrollment period lasting at least 30 calendar days, beginning on the date the employee entered or returned to the agency or organizational subunit.

(g) Except as provided in paragraph (h) of this section, the minimum contribution required to become a leave bank member for a leave year shall be—

(1) 4 hours of annual leave for an employee who has less than 3 years of service at the time he or she submits an application to contribute annual leave;

(2) 6 hours of annual leave for an employee who has at least 3, but less than 15, years of service at the time he or she submits an application to contribute annual leave; and

(3) 8 hours of annual leave for an employee who has 15 or more years of service at the time he or she submits an application to contribute annual leave.

(h) After consultation with OPM, the leave bank board may—

(1) Decrease the minimum contribution required by paragraph (g) of this section for the following leave year when the leave bank board determines that there is a surplus of leave in the bank; or

(2) Increase the minimum contribution required by paragraph (g) of this section for the following leave year when the leave bank board determines that such action is necessary to maintain an adequate balance of annual leave in the leave bank.

(i) If a leave recipient does not have sufficient available accrued annual level to his or her credit to make the full minimum contribution required by this section, he or she shall be deemed to have made the minimum contribution.

(j) The leave bank board shall deposit all contributions of annual leave under this subpart in the leave bank. The leave bank board shall not return a contribution of annual leave to a leave contributor after deposit in the leave bank.

(k) A leave bank member may apply to contribute additional annual leave at any time. An employee who is not a leave bank member may apply to become a leave contributor at any time.

§ 630.1005 Limitations on contribution of annual leave.

(a) In any one leave year, a leave contributor may contribute no more than a total of one-half of the amount of annual leave he or she would be entitled to accrue during the leave year in which the contribution is made.

(b) In the case of a leave contributor who is projected to have annual leave that otherwise would be subject to forfeiture at the end of the leave year under 5 U.S.C. 6304(a), the maximum amount of annual leave that may be contributed during the leave year shall be the lesser of—

(1) One-half of the amount of annual leave he or she would be entitled to accrue during the leave year in which the contribution is made; or

(2) The number of hours remaining in the leave year (as of the date of the contribution) for which the leave contributor is scheduled to work and receive pay.

(c) The agency shall establish written criteria permitting a leave bank board to waive the limitations on contributing annual leave under paragraphs (a) and (b) of this section in unusual circumstances. Any such waiver shall be documented in writing.

(d) The limitations in this section shall apply to the total amount of annual leave donated or contributed during the leave year under Subparts I and J of this part.

§ 630.1006 Application to become a leave recipient.

(a) A leave bank member may make written application to the leave bank board to become a leave recipient. If a leave bank member is not capable of making application on his or her own behalf, a personal representative may make written application on his or her behalf.

(b) The leave bank board may require leave bank members to submit applications under this section within a prescribed period of time following the termination of a medical emergency.

(c) An application by a leave bank member to become a leave recipient shall be accompanied by the following information concerning the potential leave recipient:

(1) The leave bank member's name, position title, and grade or pay level;

(2) The reasons why leave is needed, including a brief description of the nature, severity, anticipated duration, and if it is a recurring one, the approximate frequency of the medical emergency affecting the leave bank member;

(3) Certification from one or more physicians; or other appropriate experts, with respect to the medical emergency, if the leave bank board so requires; and

(4) Any additional information that may be required by the leave bank board.

(d) If the leave bank board requires a leave bank member to submit certification from two or more sources under paragraph (b)(3) of this section, the agency shall ensure, either by direct payment to the expert involved or by reimbursement, that the leave bank member is not required to pay for the expenses associated with obtaining certification from more than one source.

§ 630.1007 Approval of application to become a leave recipient.

(a) The leave bank board shall review an employee's application to become a leave recipient under procedures established by the agency for the purpose of determining whether the employee is a leave bank member who is or has been affected by a "medical emergency," as defined in § 630.902 of this part.

(b) Before approving an application to become a leave recipient, the leave bank board shall determine that the absence from duty without available paid leave because of the medical emergency is (or is expected to be) at least 80 hours (or, in the case of a part-time employee or an employee with an uncommon tour of duty, the average number of hours of work in the employee's biweekly scheduled tour of duty).

(c) In making a determination as to whether a medical emergency is likely to result in a substantial loss of income, the leave bank board shall not consider factors other than whether the absence from duty without available paid leave is (or is expected to be) at least 80 hours.

(d) The leave bank board shall notify the applicant of the action taken on the application. If the leave bank board disapproves the application, notification shall include the reasons for disapproval.

(e) The agency shall establish a time limit for notifying applicants under paragraph (d) of this section.

(f) The leave bank board may establish written policies limiting the amount of annual leave that may be granted to a leave recipient.

§ 630.1008 Accrual of annual and sick leave.

(a) Except as otherwise provided in this section, annual and sick leave shall accrue to the credit of a leave recipient using annual leave withdrawn from a leave bank at the same rate as if the employee were then in a paid leave status under subchapter I of chapter 63 of title 5, United States Code, except that—

(1) The maximum amount of annual leave that may be accrued by a leave

recipient while using annual leave withdrawn from a leave bank in connection with any particular medical emergency may not exceed 40 hours (or, in the case of a part-time employee or an employee with an uncommon tour of duty, the average number of hours of work in the employee's weekly scheduled tour of duty); and

(2) The maximum amount of sick leave that may be accrued by a leave recipient while using annual leave withdrawn from a leave bank in connection with any particular medical emergency may not exceed 40 hours (or, in the case of a part-time employee or an employee with an uncommon tour of duty, the average number of hours of work in the employee's weekly scheduled tour of duty).

(b) Any annual or sick leave accrued by a leave recipient while using annual leave withdrawn from a leave bank—

(1) Shall be credited to an annual or sick leave account, as appropriate, separate from any leave account of the employee under subchapter I of chapter 63 of title 5, United States Code; and

(2) Shall not become available for use by the leave recipient and may not otherwise be taken into account under subchapter I of chapter 63 of title 5, United States Code, until, under paragraph (c) of this section, it is transferred to the appropriate leave account of the employee under subchapter I of chapter 63 of title 5, United States Code.

(c) Any annual or sick leave accrued by an employee under this section shall be transferred to the appropriate leave account of the employee under subchapter I of chapter 63 of title 5, United States Code, effective as of the beginning of the first applicable pay period beginning after the date on which the employee's medical emergency terminates as described in § 630.1010(a) (2), (3), and (4).

(d) If the leave recipient's employing agency makes available at the beginning of the leave year the amount of annual leave the employee normally would accrue during the entire leave year under 5 U.S.C. 6302(d)—

(1) The leave recipient's employing agency shall establish procedures to ensure to the extent practicable that 40 hours (or, in the case of a part-time employee or an employee with an uncommon tour of duty, the average number of hours of work in the employee's weekly scheduled tour of duty) of annual leave are placed in a separate annual leave account and made available for use after the medical emergency terminates; and

(2) The employee shall continue to accrue annual leave while using annual leave withdrawn from a leave bank to the extent necessary for the purpose of reducing an indebtedness caused by the use of annual leave made available at the beginning of the leave year.

(e) If the leave recipient's medical emergency terminates as described in § 630.1010(a)(1), no leave shall be credited to the employee under this section.

§ 630.1009 Use of annual leave withdrawn from a leave bank.

(a) A leave recipient may use annual leave withdrawn from a leave bank in the same manner and for the same purposes as if he or she had accrued the annual leave under 5 U.S.C. 6303.

(b) Except as provided in § 630.1008, during each biweekly pay period a leave recipient is affected by a medical emergency, he or she shall use any accrued annual leave (and sick leave, if applicable) before using annual leave withdrawn from a leave bank.

(c) The approval and use of annual leave withdrawn from a leave bank shall be subject to all of the conditions and requirements imposed by chapter 63 of title 5, United States Code, Part 630 of this chapter, and the agency on the approval and use of annual leave accrued under 5 U.S.C. 6303, except that annual leave withdrawn from a leave bank may accumulate without regard to any limitation imposed by 5 U.S.C. 6304(a).

(d) Annual leave withdrawn from a leave bank may be substituted retroactively for any period of leave without pay, or used to liquidate an indebtedness for any period of advanced leave, which began on or after the date fixed by the agency as the beginning of the medical emergency.

(e) Annual leave withdrawn from a leave bank may not be—

(1) Included in a lump-sum payment under 5 U.S.C. 5551 or 5552; or

(2) Made available for recredit under 5 U.S.C. 6306 upon reemployment by a Federal agency.

(f) An agency having employees who earn and use annual leave on the basis of an uncommon tour of duty shall establish procedures for administering the contribution and withdrawal of annual leave by such employees under this subpart.

§ 630.1010 Termination of medical emergency.

(a) The medical emergency affecting a leave recipient shall terminate—

(1) When the leave recipient's Federal service terminates;

(2) When the leave recipient leaves the agency or participating organizational subunit;

(3) At the end of the biweekly pay period in which the leave bank board receives written notice from the leave recipient or from a personal representative of the leave recipient that the leave recipient is no longer affected by a medical emergency;

(4) At the end of the biweekly pay period in which the leave bank board determines, after written notice and opportunity for the leave recipient (or, if appropriate, a personal representative of the leave recipient) to answer orally or in writing, that the leave recipient is no longer affected by a medical emergency; or

(5) At the end of the biweekly pay period in which the agency receives notice that the Office of Personnel Management has approved an application for disability retirement for the leave recipient under the Civil Service Retirement System or the Federal Employees Retirement System.

(b) The leave bank board shall ensure that annual leave withdrawn from the leave bank and not used before the termination of a leave recipient's medical emergency shall be returned to the leave bank.

§ 630.1011 Prohibition of coercion.

(a) An employee may not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any other employee for the purpose of interfering with any right such employee may have with respect to contributing, withdrawing, or using annual leave under this subpart.

(b) For the purpose of paragraph (a) of this section—

(1) The term "employee" has the meaning given that term in 5 U.S.C. 6301(2), excluding an individual employed by the District of Columbia; and

(2) The term "intimidate, threaten, or coerce" includes promising to confer or conferring any benefit (such as an appointment or promotion or compensation) or effecting or threatening to affect any reprisal (such as deprivation of appointment, promotion, or compensation).

§ 630.1012 Records and reports.

(a) OPM shall require agencies to maintain records and may require agencies to report pertinent information concerning the administration of the voluntary leave bank program for the purpose of evaluating the desirability, feasibility, and cost of a voluntary leave bank program.

(b) An agency shall maintain the following information for each leave bank:

(1) The number of leave bank members for each leave year;

(2) The number of applications approved for medical emergencies affecting the employee and the number of applications approved for medical emergencies affecting an employee's family member;

(3) The grade or pay level of each leave contributor and the total amount of annual leave he or she contributed to the bank;

(4) The grade or pay level of each leave recipient and the total amount of annual leave he or she actually used;

(5) The estimated direct and indirect costs of processing applications to become leave contributors and leave recipients, monitoring the use of leave withdrawn from a leave bank, operating leave bank boards, and other activities related to administering the voluntary leave bank program; and

(6) Any additional information OPM may require.

§ 630.1013 Nonparticipation in voluntary leave transfer program.

(a) Beginning on the date an agency or organizational subunit establishes a voluntary leave bank program under this subpart—

(1) An employee may not participate in a voluntary leave transfer program under Subpart I of this part; and

(2) Except as provided in paragraphs (b) and (c) of this section, any annual leave previously transferred under the voluntary leave transfer program shall remain to the credit of the leave recipient and shall become subject to the agency's policies and procedures for administering this subpart.

(b) Upon termination of a leave recipient's medical emergency, any annuall leave previously transferred under the voluntary leave transfer program and remaining to the credit of a leave recipient shall be restored under § 630.911 paragraphs (a) through (d).

(c) Transferred annual leave restored to the account of a leave donor under paragraph (b) of this section shall be subject to the limitation imposed by 5 U.S.C. 6304(a) at the end of the leave year in which the annual leave is restored.

§ 630.1014 Movement between voluntary leave bank programs.

If an employee moves between an agency or organizational subunit operating one leave bank to an agency or organizational submit operating a different leave bank, the following procedures shall apply:

(a) On the date of the employee's move, he or she shall become subject to the policies and procedures of the voluntary leave bank program of the new agency or organizational subunit; and

(b) Nothing in § 630.1010 (a)(2) or (b) of this subpart shall interfere with the employee's right to submit an application to become a leave contributor or leave recipient in accordance with the policies and procedures of the voluntary leave bank program of the new agency or organizational subunit.

§ 630.1015 Movement between voluntary leave bank program and voluntary leave transfer program.

If an employee moves between an agency or organizational subunit covered by a voluntary leave bank program under this subpart and an agency or organizational subunit covered by a voluntary leave transfer program under Subpart I of this part, the following procedures shall apply:

(a) On the date of the employee's move, he or she shall become subject to the policies and procedures of the voluntary leave transfer or voluntary leave bank program (as applicable) of the new agency or organizational subunit;

(b) Nothing in § 630.1010(a)(2) or (b) of this subpart shall interfere with the employee's right to submit an application to become a leave donor (or leave contributor, as applicable) or leave recipient under the voluntary leave transfer or voluntary leave bank program (as applicable) of the new agency or organizational subunit.

§ 630.1016 Termination of voluntary leave bank program.

(a) Each agency shall terminate its participation in the voluntary leave bank program on October 31, 1993.

(b) The leave bank board shall not deposit annual leave in the leave bank after October 31, 1993.

(c) The leave bank board shall treat an application to become a leave recipient submitted to the leave bank board on or before October 31, 1993, as if the voluntary leave bank program remained in effect.

(d) The leave bank board shall not approve an application to become a leave recipient submitted after October 31, 1993.

(e) If the voluntary leave bank program terminates before the termination of the medical emergency affecting a leave recipient, annual leave transferred to a leave recipient shall remain available for use as if the voluntary leave bank program remained in effect.

[FR Doc. 89-10308 Filed 4-27-89; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 663]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 663 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 370,000 cartons during the period April 30 through May 6, 1989. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 663 (§ 910.963) is effective for the period April 30 through May 6, 1989.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 475-3861.

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

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

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

There are approximately 85 handlers of lemons grown in California and Arizona subject to regulation under the lemon marketing order and approximately 2500 producers in the regulated area. 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 handlers and producers of California-Arizona lemons may be classified as small entities.

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

This regulation is consistent with the California-Arizona lemon marketing policy for 1988–89. The Committee met publicly on April 25, 1989, in Bakersfield, California, to consider the current and prospective conditions of supply and demand and unanimously recommended a quantity of lemons deemed advisable to be handled during the specified week. The Committee reports that demand for lemons is strong.

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

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

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

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

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

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

2. Section 910.963 is added to read as follows:

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

§ 910.963 Lemon Regulation 663.

The quantity of lemons grown in California and Arizona which may be handled during the period April 30, 1989, through May 6, 1989, is established at 370,000 cartons.

Dated: April 26, 1989.

Charles R. Brader,

Director, Fruit and Vegetable Division.

[FR Doc. 89–10393 Filed 4–27–89; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88–NM–208–AD; Amdt. 39–6201]

Airworthiness Directives: Aerospatiale Model ATR–42–300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Aerospatiale Model ATR–42–300 series airplanes, which requires repetitive inspections of the engine fuel supply single- and double-shrouded hoses for leakage of fuel, and repair, if necessary. This amendment is prompted by a report of fuel leakage from the fuel hose located between the fuel heater and the nacelle intermediate frame. This condition, if not corrected, could lead to a fuel fire in the nacelle.

EFFECTIVE DATE: May 29, 1989.

ADDRESSES: The applicable service information may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Robert McCracken, Standardization Branch, ANM–113; telephone (206) 431–1979. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include a airworthiness directive, applicable to Aerospatiale Model ATR–42–300 series airplanes, which requires repetitive inspections of the engine fuel supply single- and double-shrouded hoses for leakage of fuel, and repair, if necessary, was published in the **Federal Register** on January 30, 1989 (54 FR 4293).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

Since the issuance of the Notice, Aerospatiale has issued Revision 2 of Service Bulletin ATR42–28–0013, dated January 6, 1989. This revision differs from Revision 1, which was cited in the Notice, in that it contains additional clarifying information. The final rule has been revised to cite this latest revision as applicable service information for procedures relating to the replacement of the fuel supply hoses. The FAA has determined that this change will neither increase the economic burden on any operator, nor increase the scope of the AD.

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

It is estimated that 38 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $4,560, for the initial inspection. Optional replacement of the fuel line is estimated to cost $1,120 per airplaine for parts.

The regulations adopted herein will 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. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this regulation: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative,

on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this regulation and has been placed in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation safety, Safety.

Adoption of the amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Aerospatiale: Applies to Model ATR–42–300 series airplanes up to and including serial number 120 which have not been modified in accordance with Service Bulletin ATR–42–28–0013, Revision 2, dated January 6, 1989, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent a fuel fire in the nacelle, accomplish the following:

A. Within 300 flight hours after the effective date of this AD and thereafter at intervals not to exceed 300 flight hours, and at each engine removal/installation, inspect the engine fuel supply hoses for fuel leakage in accordance with Aerospatiale Service Bulletin ATR–42–28–0012, dated September 9, 1988. If leakage is found, before further flight, repair or replace the leaking fuel line, in accordance with the service bulletin.

B. Replacement of the engine fuel supply hoses in accordance with Aerospatiale Service Bulletin ATR–42–28–0013, Revision 2, dated January 6, 1989, constitutes terminating action for the repetitive inspections required by paragraph A., above.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM–113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modification required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective May 29, 1989.

Issued in Seattle, Washington, on April 17, 1989.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–10193 filed 4–27–89; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 88–NM–209–AD; Amdt. 39–6202]

Airworthiness Directives; Aerospatiale Model ATR–42 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to certain Aerospatiale Model ATR–42 series airplanes, which currently requires modification of the propeller brake electronic control wiring. That action was prompted by reports of electrical interference causing the brake to engage prior to command. This amendment requires the addition of a relay to the propeller brake control unit to maintain the electrical power supply, and replacement of the push button switch with a two-position mechancial switch. This amendment is prompted by reports of electrical interference causing the brake to engage prior to command, incomplete brake locking due to interruption of the power supply, and unlocking of the propeller brake due to non-latching of the push button switch. This condition, if not corrected, could lead to overheating of the propeller brake and damage to the engine.

EFFECTIVE DATE: May 29, 1989.

ADDRESSES: The applicable service information may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Robert McCracken, Standardization Branch, ANM–113; telephone (206) 431–1967. Mailing address; FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations by revising AD 88–14–06, Amendment 39–5967 (53 FR 25134; July 5, 1988), applicable to Aerospatiale Model ATR–42 series airplanes, which requires adding a relay to the propeller brake control unit to maintain the electrical power supply, and replacing the push button switch with a two-position mechanical switch, was published in the **Federal Register** on January 30, 1989 (54 FR 4291).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

Since the issuance of the Notice, Aerospatiale has issued Revision 3 of Service Bulletin ATR42–61–0010, dated December 19, 1988. This revision differs from Revision 2, which was cited in the Notice, in that it contains additional clarifying information. The final rule has been revised to cite this latest revision of the applicable service information for procedures related to replacement of the pushbutton switch. The FAA has determined that this change will neither increase the economic burden on any operator, nor increase the scope of the AD.

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

It is estimated that 38 airplanes of U.S. registry will be affected by this AD, that it will take approximately 11 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $16,720.

The regulations adopted herein will 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. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications

to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. Section 39.19 is amended by revising AD 88-14-06, Amendment 39-5967 (53 FR 25134; July 5, 1988), as follows:

Aerospatiale: Applies to Model ATR-42 series airplanes, as listed in Aerospatiale Service Bulletins ATR42-61-0010, Revision 3, dated December 19, 1988; ATR42-61-0013, Revision 1, dated December 8, 1987; and ATR42-61-0014, Revision 2, dated November 15, 1988, certificated in any category. Compliance is required within 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent the propeller brake from overheating and causing damage to the engine, accomplish the following.

A. For the airplanes listed in Aerospatiale Service Bulletin No. ATR42-61-0013, Revision 1, dated December 8, 1987, modify the propeller brake electronic control wiring, in accordance with this service bulletin.

B. For the airplanes listed in Aerospatiale Service Bulletin No. ATR42-61-0014, Revision 2, dated November 15, 1988, modify the propeller brake control unit, in accordance with this service bulletin.

C. For the airplanes listed in Aerospatiale Service Bulletin No. ATR42-61-0010, Revision 3, dated December 19, 1988, replace the pushbutton switch with a two-position mechanical switch, in accordance with this service bulletin.

D. As an alternative to paragraph A., B., and C., above, operators may remove the propeller brake from the airplane in accordance with Aerospatiale Service Bulletin ATR42-61-0016, Revision 1, dated September 1, 1988.

E. An alternate means of compliance or adjustment of the compliance time, which provides an accceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM-113.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Aerospatiale, 316 Route de Bayonne, 31060 Toulouse Cedex 03, France. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

The Amendment amends AD 88-14-06, Amendment 39-39-5967.

This Amendment becomes effective May 29, 1989.

Issued in Seattle, Washington, on April 17, 1989.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-10194 Filed 4-27-89; 8:45 am]

BILLING CODE 4910-13-M

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-173-AD; Amdt. 39-6200]

Airworthiness Directives; Boeing Model 737-300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive, applicable to certain Boeing Model 737-300 series airplanes, which requires inspection for clearance between the engine fuel feed tube and adjacent thermal anti-ice (TAI) duct, and adjustment or replacement, if necessary. This amendment is prompted by two reports of fuel leaks caused by chafing of the fuel feed tube in the number two engine front right wing strut area. This condition, if not corrected, could result in fuel leakage causing a potential strut fire hazard.

EFFECTIVE DATE: May 30, 1989.

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

FOR FURTHER INFORMATION CONTACT: Mr. Stephen S. Bray, Propulsion Branch, ANM-140S, telephone (206) 431-1969. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to Boeing Model 737-300 series airplanes, which requires the inspection and, if necessary, adjustment of the clearance between the engine fuel feed tube assembly and the adjacent TAI duct, was published in the **Federal Register** on December 9, 1988 (53 FR 49678).

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

The Air Transport Association (ATA), on behalf of its members, noted that the proposed rule references solely the procedures specified in Boeing Alert Service Bulletin 737-28A1077, dated October 6, 1988; however, Boeing Service Bulletins 737-28-1055, Revision 1, dated October 27, 1988, and 737-28A1062, Revision 2, dated September 29, 1988, also address the tube clearance problem. The ATA suggested that the final rule be changed to include the above noted service bulletins as an alternate means of compliance with the requirements. The FAA concurs. Operators who have accomplished the procedures referenced in those service bulletins are considered to have complied with the intent of this AD. The final rule has been revised to indicate that accomplishment of these service bulletins is an approved alternate means of compliance.

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

determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 500 Model 737–300 series airplanes of the affected design in the worldwide fleet. It is estimated that 175 airplanes of U.S. registry will be affected by this AD, that it will take approximately 7.5 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $52,500.

The regulations adopted herein will 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. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities, under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 737–300 series airplanes, listed in Boeing Alert Service Bulletin 737–28A1077, dated October 6, 1988, certificated in any category. Compliance required within three months after the effective date of this AD, unless previously accomplished.

To prevent a fire hazard associated with a fuel leak, due to the fuel feed tube assembly chafing against the thermal anti-ice duct, accomplish the following:

A. Inspect and, if necessary, adjust feed tube assembly clearance, in accordance with Boeing Alert Service Bulletin 737–28A1077, dated October 6, 1988. Replace chafed tubes, before further flight, with a serviceable tube.

B. Accomplishment of the procedures specified in Boeing Alert Service Bulletin 737–28A1062 Revision 2, dated September 29, 1988, or Boeing Service Bulletin 737–28–1055 Revision 1, dated October 27, 1988, is an approved alternate means of compliance for the requirements of paragraph A., above.

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

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

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

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

This amendment becomes effective May 30, 1989.

Issued in Seattle, Washington, on April 13, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certificate Service.

[FR Doc. 89–10195 Filed 4–27–89; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 88–NM–171–AD; Amdt. 39–6203]

Airworthiness Directives; McDonnell Douglas Model DC–8 Series Airplanes Equipped With LH or RH Nose Landing Gear Upper Drag Link Assembly, Part Numbers (P/N) 5716882–1, –501, –503, 5717011–1, –501, or –503

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC-8 series airplanes, which requires inspection of the left (LH) and right (RH) nose landing gear (NLG) upper drag link assembly for fatigue cracking and undersized drag link lower lug stiffening web, and modification or replacement, as necessary. This amendment is prompted by three reported failures of the link assembly which resulted in the collapse of the NLG and damage to the NLG and its adjacent structure. This condition, if not corrected, could result in collapse of the NLG during ground handling, takeoff, or landing.

EFFECTIVE DATE: May 29, 1989.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846; Attention: Director of Publications, C1–L00 (54–60). This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. David Y. J. Hsu, Aerospace Engineer, Airframe Branch, ANM–122L, FAA, Northwest Mountain Region, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (213) 988–5323.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to McDonnell Douglas Model DC–8 series airplanes, equipped with LH or RH nose landing gear (NLG) upper drag link assembly, P/N 5716882–1, –501, –503, 5717011–1, –501, or –503, which requires inspection of the drag link assemblies for fatigue cracking and undersized drag link lower lug stiffening web, and modification or replacement, as necessary, was published in the Federal Register on January 13, 1989 (54 FR 1392).

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

The commenter has no objection to the proposal.

After careful review of the available data, including the comment noted

above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 350 Model DC–8 series airplanes in the worldwide fleet. It is estimated that 256 airplanes of U.S. registry will be affected by this AD, that it will take approximately 7.6 manhours per airplane to inspect for undersized NLG upper drag link lower lug stiffening web and for cracks, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $77,824 for the initial inspection cycle.

The regulations adopted herein will 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. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Applies to Model DC–8 series airplanes, equipped with LH or RH nose landing gear (NLG) upper drag link assembly, P/N 5716882–1, –501, –503, 5717011–1, –501, or 503, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent collapse of nose landing gear during ground handling, takeoff, or landing, due to fatigue failure of the LH or RH nose landing gear (NLG) upper drag link lower lug, accomplish the following:

A. Within the next 400 landings after the effective date of this AD, unless already accomplished within the last 400 landings, conduct a magnetic particle or dye penetrant inspection of the LH and RH nose landing gear upper drag link assembly, and measure the lower lug stiffening web for minimum thickness, in accordance with McDonnell Douglas DC–8 Service Bulletin 32–178, dated May 22, 1987.

1. If cracks are found, or if the minimum web thickness measures .100" or less, before further flight, remove and replace the assembly in accordance with paragraph B. or D. of this AD.

2. If no cracks are found and the minimum web thickness measures greater than .100", repeat the inspection in accordance with paragraph A. of this AD at intervals not to exceed 200 landings, unless reworked in accordance with paragraph C. of this AD, or replaced in accordance with paragraph B. or D. of this AD.

B. If the drag link assembly is replaced with a new assembly not modified in accordance with McDonnell Douglas Service Bulletin 32–178, dated May 22, 1987, upon the accumulation of 4,000 landings on the new assembly, perform the initial inspections in accordance with paragraph A. of this AD, and repeat these inspections at intervals not to exceed 200 landings.

C. If the drag link assembly is modified in accordance with McDonnell Douglas DC–8 Service Bulletin 32–178, dated May 22, 1987, upon the accumulation of 800 landings on the modified assembly, perform the initial inspection in accordance with paragraph A. of the AD, and repeat these inspections at intervals not to exceed 200 landings.

D. Replacement of both LH and RH nose landing gear upper drag link assemblies with P/N 5716882–505 and 5717011–505, or modification of the drag link assembly in accordance with McDonnell Douglas DC–8 Service Bulletin 32–178, dated May 22, 1987, and reidentification of the drag link assembly as SR08328002–3, –5, –7, –9, –11, or –13, as applicable, constitutes terminating action for the inspection requirements of this AD.

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

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

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1–L00 (54–60).

These documents may be examined at FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at 3229 East Spring Street, Long Beach, California.

This Amendment becomes effective May 29, 1989

Issued in Seattle, Washington, on April 17, 1989.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–10196 Filed 4–27–89; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 88–NM–165–AD; Amdt. 39–6204]

Airworthiness Directives; McDonnell Douglas Model DC–8 Series Airplanes Equipped With Main Landing Gear Attach Fittings, Part Numbers (P/N) 5611425–1 Through –508

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–8 series airplanes, which requires visual inspections of the left (LH) and right (RH) main landing gear (MLG) attach fittings for cracks, and, as necessary, rework and replacement. This amendment is prompted by two incidents where cracks were not detected and grew beyond the allowable crack length. This condition, if not corrected, could result in collapse of the MLG during takeoff or landing.

EFFECTIVE DATE: May 29, 1989.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846; Attention: Director of Publications, C1–L00 (54–60). This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900

Pacific Highway South, Seattle, Washington, or 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. David Y.J. Hsu, Aerospace Engineer, Airframe Branch, ANM-122L, FAA, Northwest Mountain Region, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5323.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to McDonnell Douglas Model DC-8 series airplanes equipped with LH or RH main landing (MLG) attach fitting, P/N(s) 5611425-1 through -508, which requires visual inspections of the left and right MLG attach fittings for cracks, and rework and replacement, as necessary, was published in the **Federal Register** on January 13, 1989 (54 FR 1394).

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

The commenter had no objection to the proposal.

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

There are approximately 350 Model DC-8 series airplanes in the worldwide fleet. It is estimated that 256 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 manhours per airplane to inspect both the LH and RH MLG attach fittings for cracks, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $20,480 for the initial inspection cycle.

The regulations adopted herein will 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. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Applies to Model DC-8 series airplanes, equipped with left (LH) or right (RH) main landing gear (MLG) attach fitting, P/N(s) 5611425-1 through -508, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent severe structural damage to the airplane during takeoff or landing due to stress corrosion failure of the MLG attach fittings, accomplish the following:

A. Within the next 12 calendar months after the effective date of this AD, unless already accomplished within the last 12 calendar months, and thereafter at intervals not to exceed 24 calendar months, except as provided below, perform a visual inspection of the MLG attach fittings for cracks at locations in accordance with Figure 1. of McDonnell Douglas DC-8 Service Bulletin 57-94, Revision 1, dated June 23, 1987 (hereafter referred to as the Service Bulletin).

B. If no cracks are found, apply LPS-3 corrosion inhibiting oil to the fitting in accordance with the Service Bulletin, and repeat inspections for cracks in accordance with paragraph A. of this AD.

C. If cracks are found, accomplish the following:

1. If cracks are located in area 1 or 3, as defined in Figure 1. of the Service Bulletin, before further flight, replace the fitting, P/N(s) 5611425-1, -2, -501, -502, -503, -504, -505, 506, 507, or -508, with respective P/N(s) 5893930-1, -2, -1, -2, -509, -510, -507, -508, -505, or -506.

2. If cracks are located in area 2, as defined in Figure 1. of the Service Bulletin, accomplish the following:

a. If cracks are within limits as prescribed by Figure 1. of the Service Bulletin, apply LPS-3 corrosion inhibiting oil to the fitting in accordance with the Service Bulletin, and repeat visual inspections for crack development at intervals not to exceed 7 calendar days, in accordance with the Service Bulletin.

b. If cracks exceed limits as prescribed by Figure 1. of the Service Bulletin, replace the fitting in accordance with paragraph C.1. of this AD before further flight.

D. Replacement of both the LH and RH MLG attach fittings in accordance with paragraph C.1. of this AD constitutes terminating action for the inspection requirements of this AD.

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

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

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1-L00 (54-60). These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at 3229 East Spring Street, Long Beach, California.

This Amendment becomes effective May 29, 1989.

Issued in Seattle, Washington, on April 17, 1989.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-10197 Filed 4-27-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 500, 501, 505, 508, 509, 510, 511, 514, 520, 540, 546, 556, 558, 564, 570, and 573

Animal Drugs, Feeds, and Related Products; Editorial Amendments

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending certain of its regulations for animal drugs, feeds, and related products to

correct cross-references and typographical errors, to update titles, mailing symbols, and addresses of certain organizations, and to remove an outdated section. This action will improve the accuracy and clarity of the regulations.

EFFECTIVE DATE: April 28, 1989.

FOR FURTHER INFORMATION CONTACT: T. Rada Proehl, Regulations Editorial Staff (HFC–222), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2994.

SUPPLEMENTARY INFORMATION: FDA is amending certain of its regulations for animal drugs, feeds, and related products to correct cross-references and typographical errors, to update titles, mailing symbols, and addresses of certain organizations, and to remove outdated 21 CFR 505.10. This section is being removed because its warning and caution statements are also included in individually-approved regulations.

The amendments are wholly editorial in nature. For this reason, FDA finds for good cause that notice and public procedure and delayed effective date are unnecessary (5 U.S.C. 553(b)(B) and (d)).

List of Subjects

21 CFR Part 500

Animal drugs, Animal feeds, Cancer, Labeling, Polychlorinated biphenyls (PCB's).

21 CFR Part 501

Animal foods, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

21 CFR Part 505

Animal drugs, Labeling, Over-the-counter drugs.

21 CFR Part 508

Animal foods.

21 CFR Part 509

Animal foods, Packaging and containers, Polychlorinated biphenyls (PCB's).

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 511

Animal drugs, Medical research, Reporting and recordkeeping requirements.

21 CFR Part 514

Administrative practice and procedure, Animal drugs, Confidential business information, Reporting and recordkeeping requirements.

21 CFR Part 520

Animal drugs.

21 CFR Part 540

Animal drugs, Antibiotics.

21 CFR Part 546

Animal drugs, Antibiotics.

21 CFR Part 556

Animal drugs, Foods.

21 CFR Part 558

Animal drugs, Animal feeds.

21 CFR Part 564

Animal foods, Food additives.

21 CFR Part 570

Animal feeds, Animal foods, Food additives.

21 CFR Part 573

Animal feeds, Food additives.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Parts 500, 501, 505, 508, 509, 510, 511, 514, 520, 540, 546, 556, 558, 564, 570, and 573 are amended as follows:

PART 500—GENERAL

1. The authority citation for 21 CFR Part 500 continues to read as follows:

Authority: Secs. 512, 701(a), 52 Stat. 1055; 82 Stat. 343–351 (21 U.S.C. 360b, 371(a)).

§ 500.27 [Amended]

2. Section 500.27 *Methylene blue-containing drugs for use in animals* is amended in paragraph (d) by removing "Bureau of Veterinary Medicine, Office of Scientific Evaluation" and replacing it with "Center for Veterinary Medicine, Office of New Animal Drug Evaluation".

§ 500.35 [Amended]

3. Section 500.35 *Animal feeds contaminated with Salmonella microorganisms* is amended in paragraph (a) by removing "Center for Disease Control" and replacing it with "Centers for Disease Control".

§ 500.51 [Amended]

4. Section 500.51 *Labeling of animal drugs; misbranding* is amended in paragraph (c) by removing "Bureau of Veterinary Medicine" and replacing it with "Center for Veterinary Medicine".

PART 501—ANIMAL FOOD LABELING

5. The authority citation for 21 CFR Part 501 continues to read as follows:

Authority: Secs. 4, 6, 80 Stat. 1297, 1299, 1300 (15 U.S.C. 1453, 1455) and secs. 403, 602, 701, 52 Stat. 1047–1048 as amended, 1054–1056 as amended (21 U.S.C. 343, 362, 371).

6. Section 501.3 is amended by revising paragraph (e)(3) to read as follows:

§ 501.3 Identity labeling of animal food in package form.

* * * * *

(e) * * *

(3) A food for which a common or usual name is established by regulation (e.g., in a standard of identity pursuant to section 401 of the act, in a common or usual name regulation and may, in addition, bear a fanciful name which is not false or misleading, and established pursuant to Part 502 of this chapter), and which complies with all of the applicable requirements of such regulation(s), shall not be deemed to be an imitation.

* * * * *

§ 501.105 [Amended]

7. Section 501.105 *Declaration of net quantity of contents when exempt* is amended in paragraph (b)(3) by removing the number "2.150.42" and replacing it with "2,150.42".

PART 505—INTERPRETIVE STATEMENTS RE: WARNINGS ON ANIMAL DRUGS FOR OVER-THE-COUNTER SALE

8. The authority citation for 21 CFR Part 505 continues to read as follows:

Authority: Secs. 502, 503, 506, 507, 701, 52 Stat. 1050, as amended, 1052, as amended, 1055–1056, as amended, 52 Stat. 854; 55 Stat. 851; 59 Stat. 463, as amended (21 U.S.C. 352, 353, 356, 357, 371).

§ 505.10 [Removed]

9. Section 505.10 *Animal drug warning and caution statements required by regulations* is removed.

PART 508—EMERGENCY PERMIT CONTROL

10. The authority citation for 21 CFR Part 508 continues to read as follows:

Authority: Secs. 402, 404, 701, 52 Stat. 1046–1047 as amended, 1048, 1055–1056 as amended by 70 Stat. 919 and 72 Stat. 948; 21 U.S.C. 342, 344, 371.

§ 508.5 [Amended]

11. Section 508.5 *Determination of the need for a permit* is amended in paragraph (a)(1) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

§ 508.35 [Amended]

12. Section 508.35 *Thermal processing of low-acid animal foods packaged in hermetically sealed containers* is amended in paragraph (c)(1) and the introductory text of paragraph (c)(2) by removing "Bureau of Foods, Industry Guidance Branch" and "Bureau of Foods, Division of Food Technology, HFF–419" and replacing it with "Center for Food Safety and Applied Nutrition, Industry Programs Branch" and "Center for Food Safety and Applied Nutrition, Division of Food Chemistry and Technology, HFF–410", respectively, in paragraph (c)(2)(ii) by removing "Bureau of Foods" and "HFF–419" and replacing it with "Center for Food Safety and Applied Nutrition" and HFF–410", respectively, in paragraph (j)(1) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition", and in the introductory text of paragraph (l) by removing "§ 80.61" and replacing it with "§ 20.61".

PART 509—UNAVOIDABLE CONTAMINANTS IN ANIMAL FOOD AND FOOD-PACKAGING MATERIAL

13. The authority citation for 21 CFR Part 509 continues to read as follows:

Authority: Secs. 306, 402(a), 406, 408, 409, 701; 52 Stat. 1045–1046 as amended, 1049 as amended, 1055–1056 as amended; 68 Stat. 511–518 as amended; 72 Stat. 1785–1788 as amended (21 U.S.C. 336, 342(a), 346, 346a, 348, 371).

§ 509.5 [Amended]

14. Section 509.5 *Petitions* is amended by removing "§ 10.65" and replacing it with "§ 10.30".

PART 510—NEW ANIMAL DRUGS

15. The authority citation for 21 CFR Part 510 continues to read as follows:

Authority: Secs. 512, 701(a) (21 U.S.C. 360b, 371(a)); 21 CFR 5.10 and 5.83.

§ 510.110 [Amended]

16. Section 510.110 *Antibiotics used in food-producing animals* is amended in paragraph (f) by removing "Antibiotic Form 6" and replacing it with "antibiotic application".

§ 510.112 [Amended]

17. Section 510.112 *Antibiotics used in veterinary medicine and for nonmedical purposes; required data* is amended in paragraph (a) by removing "Room 15B–42" and replacing it with "Room 15–05" and in paragraph (e) by removing "Bureau of Veterinary Medicine" and replacing it with "Center for Veterinary Medicine".

§ 510.301 [Amended]

18. Section 510.301 *Records and reports concerning experience with animal feeds bearing or containing new animal drugs for which an approved application is in effect* is amended in the introductory text paragraph by removing "Bureau of Veterinary Medicine" and replacing it with "Center for Veterinary Medicine".

§ 510.302 [Amended]

19. Section 510.302 *Reporting forms* is amended in paragraph (d) by removing "Bureau of Veterinary Medicine" and replacing it with "Center for Veterinary Medicine".

§ 510.310 [Amended]

20. Section 510.310 *Records and reports for new animal drugs approved before June 20, 1963* is amended in paragraph (f) by removing "Bureau of Veterinary Medicine" and replacing it with "Center for Veterinary Medicine".

PART 511—NEW ANIMAL DRUGS FOR INVESTIGATIONAL USE

21. The authority citation for 21 CFR Part 511 is revised to read as follows:

Authority: Secs. 501, 502, 512, 701 (21 U.S.C. 351, 352, 360b, 371); 21 CFR 5.10 and 5.11.

§ 511.1 [Amended]

22. Section 511.1 *New animal drugs for investigational use exempt from section 512(a) of the act* is amended in paragraphs (c)(1) and (e) by removing "Bureau of Veterinary Medicine" and replacing it with "Center for Veterinary Medicine", everywhere that it appears.

PART 514—NEW ANIMAL DRUG APPLICATIONS

23. The authority citation for 21 CFR Part 514 continues to read as follows:

Authority: Secs. 512(i), (n), 701(a), 52 Stat. 1055; 82 Stat. 343–351 (21 U.S.C. 360b(i), (n), 317(a)); 21 CFR 5.10, 5.11.

§ 514.1 [Amended]

24. Section 514.1 *Applications* is amended in the introductory text of paragraph (b)(6) by removing "Bureau of Veterinary Medicine" and replacing it with "Center for Veterinary Medicine", in the introductory text of paragraph (d)(2) by removing "Information and Education Reso urces Management Staff (HFV–13), Bureau of Veterinary Medicine" and replacing it with "Industry Information Staff (HFV–11), Center for Veterinary Medicine", and in paragraphs (d)(2) (i) and (ii) by removing "Bureau of Veterinary Medicine" and replacing it with "Center for Veterinary Medicine", everywhere that it appears.

§ 514.11 [Amended]

25. Section 514.11 *Confidentiality of data and information is a new animal drug application file* is amended in paragraph (e)(2)(ii)(*a*) by removing "Bureau of Veterinary Medicine" and "Bureau"and replacing it with "Center for Veterinary Medicine" and "Center", respectively, and in paragraph (e)(2)(ii)(*b*) by removing "Bureau of Veterinary Medicine" and replacing it with "Center for Veterinary Medicine".

§ 514.111 [Amended]

26. Section 514.111 *Refusal to approve an application* is amended in paragraph (a)(5)(ii)(*a*)(*6*) by removing "Bureau of Veterinary Medicine" and replacing it with "Center for Veterinary Medicine".

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

27. The authority citation for 21 CFR Part 520 continues to read as follow:

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

§ 520.1242a [Amended]

28. Section 520.1242a *Levamisole hydrochloride drench and drinking water* is amended in paragraph (f)(2)(ii)(*a*) by removing "(f)(2)(1)(*a*)" and replacing it with "(f)(2)(i)(*a*)".

§ 520.1660d [Amended]

29. Section 520.1660d *Oxytetracycline hydrochloride soluble powder* is amended in paragraph (d) by removing "§ 566.500" and replacing it with "§ 556.500".

§ 520.2320 [Amended]

30. Section 520.2320 *Sulfanitran and aklomide in combination* is amended in paragraph (b)(1)(iii) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201–3301".

PART 540—PENICILLIN ANTIBIOTIC DRUGS FOR ANIMAL USE

31. The authority citation for 21 CFR Part 540 continues to read as follows:

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

§ 540.181b [Amended]

32. Section 540.181b *Potassium penicillin G in drinking water* is amended in paragraph (c)(1) by removing "§ 540.280(a)" and replacing it with "§ 540.380(a)".

PART 546—TETRACYCLINE ANTIBIOTIC DRUGS FOR ANIMAL USE

33. The authority citation for 21 CFR Part 546 continues to read as follows:

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

§ 546.110b [Amended]

34. Section 546.110b *Chlortetracycline seed* is amended in paragraph (b)(2) by removing "§ 436.200b" and replacing it with "§ 436.200(b)".

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

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

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

§ 556.250 [Amended]

36. Section 556.250 *Estradiol monopalmitate* is amended in paragraph (b) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

37. Section 556.344 is amended in paragraph (a) by revising the second sentence to read as follows:

§ 556.344 Ivermectin.

* * * * *

(a) *Cattle and reindeer.* * * * The target tissue selected is liver. * * *

* * * * *

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

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

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

39. Section 558.4 is amended in paragraph (d) in the table entitled "Category II" by revising the entries for "Sulfadimethoxine", "Ormetoprim (5/3)", "Ormetoprim (5/1)", and by revising the name of the drug "Suilfaethoxypyridazine" in the first column to read "Sulfaethoxypyridazine", to read as follows:

§ 558.4 Medicated feed applications.

* * * * *

(d) * * *

CATEGORY II

Drug	Assay limits percent [1] type A	Type B maximum (100x)	Assay limits percent [1] type B/C [2]
* * * * *	*	*	*
Sulfadimethoxine	95–115	5.675 g/lb (1.25%)	85–115/75–125
Ormetoprim (5/3)	95–115	3.405 g/lb (0.75%)	
* * * * *	*	*	*
Ormetoprim (5/1)	95–115	17.0 g/lb (3.75%)	
Sulfaethoxypyridazine	* * *	* * *	* * *
* * * * *	*	*	*

[1] Percent of labeled amount.

[2] Values given represent ranges for either Type B or Type C medicated feeds. For those drugs that have two range limits, the first set is for a Type B medicated feed and the second set is for a Type C medicated feed. These values (ranges) have been assigned in order to provide for the possibility of dilution of a Type B medicated feed with lower assay limits to make a Type C medicated feed.

* * * * *

§ 558.62 [Amended]

40. Section 558.62 *Arsanilic acid* is amended in paragraph (c)(2)(iii) by removing "§ 588.78" and replacing it with "§ 558.78".

PART 564—DEFINITIONS AND STANDARDS FOR ANIMAL FOOD

41. The authority citation for 21 CFR Part 564 continues to read as follows:

Authority: Secs. 401, 701, 52 Stat. 1046, 1055 as amended; 21 U.S.C. 341, 371.

§ 564.17 [Amended]

42. Section 564.17 *Temporary permits for interstate shipment of experimental packs of food varying from the requirements of definitions and standards of identity* is amended in paragraph (k) by removing "Part 4" and replacing it with "Part 20".

PART 570—FOOD ADDITIVES

43. The authority citation for 21 CFR Part 570 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10, 5.61.

§ 570.6 [Amended]

44. Section 570.6 *Opinion letters on food additive status* is amended in paragraph (e) by removing "Bureau of Veterinary Medicine" and "20852" and replacing it with "Center for Veterinary Medicine" and "20857", respectively.

§ 570.35 [Amended]

45. Section 570.35 *Affirmation of generally recognized as safe (GRAS) status* is amended in paragraph (c)(2) by removing "office of the Hearing Clerk" and replacing it with "Dockets Management Branch" and in paragraph (c)(3) by removing "Hearing Clerk" and "Hearing Clerk's office" and replacing each with "Dockets Management Branch".

§ 570.38 [Amended]

46. Section 570.38 *Determination of food additive status* is amended in paragraph (b)(1) by removing "office of the Hearing Clerk" and replacing it with "Dockets Management Branch" and in paragraph (b)(2) by removing "Hearing Clerk" and "Hearing Clerk's office" and replacing each with "Dockets Management Branch".

PART 573—FOOD ADDITIVES PERMITTED IN FEED AND DRINKING WATER OF ANIMALS

47. The authority citation for 21 CFR Part 573 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

§ 573.460 [Amended]

48. Section 573.460 *Formaldehyde* is amended by revising footnote 1 to paragraph (a)(1) to read as follows:

[1] Copies of the current edition may be obtained from the Treasurer, Donald H. James, West Virginia Department of Agriculture, Capital Complex/Guthrie Center, Charleston, WV 25305.

§ 573.640 [Amended]

49. Section 573.640 *Methyl esters of higher fatty acids* is amended in paragraphs (b)(4) (i) and (ii) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201–3301".

§ 573.780 [Amended]

50. Section 573.780 *Polyethylene* is amended in paragraph (b)(1) by removing "§ 121.2501(c)" and replacing it with "§ 177.1520(c)".

Dated: April 20, 1989.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-10207 Filed 4-27-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGDI-89-005]

RIN 2115-AA99

Drawbridge Operation Regulations; Bronx River Bridges, NY

AGENCY: Coast Guard, DOT.

ACTION: Temporary and final rules.

SUMMARY: At the request of New York City Department of Transportation (NYCDOT), the Coast Guard is issuing temporary regulations permitting the Bruckner (Eastern) Boulevard (I-278) highway drawbridge over the Bronx River, at mile 1.1, in Bronx County, New York, to remain closed for 36 months from 9 April 1989 through 9 April 1992. This temporary regulation is needed to facilitate the reconstruction of the bascule span. This action will relieve the bridge owner of the burden to open the draw during the reconstruction of the bridge and will only permit marine traffic which can pass under the closed span to transit the waterway. Additionally, the Coast Guard is making a permanent change to this section regarding clearance gages. This change is being made to simplify this section and cross reference it to material in 33 CFR 118.160.

EFFECTIVE DATE: This rule is effective 9 April 1989. Paragraph (a) is suspended for 36 months to 9 April 1992. Paragraph (d) terminates 9 April 1992.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, First Coast Guard District, at (212)668-7994.

SUPPLEMENTARY INFORMATION: On 28 February 1989, the Coast Guard published a proposed rule concerning this amendment. The Commander, First Coast Guard District, also published the proposal as a Public Notice 1-685 dated 27 February 1989. In each notice, interested persons were given until 21 March 1989 to submit comments.

Drafting Information

The drafters of this notice are Waverly W. Gregory, Jr., project officer, and Lt. Robert E. Korroch, project attorney.

Discussion of Comments:

No comments or objections were received to the public notice. No changes have been made in the final rule. The temporary regulations will suspend a portion of the existing regulation and allow the bridge to remain in the closed position from 9 a.m. on 9 April 1989 through 5 p.m. on 9 April 1992, inclusive. On 27 September 1988, the Coast Guard approved the plans to advertise the reconstruction project for the bridge. The existing bridge (built in 1953) is a double leaf bascule bridge. The existing vertical clearance, at mean low and high water, is reported to be 34 and 27 feet, respectively. Consultation with the owner's representative has been performed during the regulatory review process in an attempt to assure the timely opening and completion of the rehabilitation.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation, and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. With the completed dredging of the Bronx River in the vicinity of the bridge, approval of this temporary regulation change will not prevent mariners from transiting the bridges but only require advance planning. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that if adopted, it will not have a significant econonic impact on a substantial number of small entities.

Federalism Implication Assessment

This action has been analyzed under the principles and criteria in Executive Order 12612, and it has been determined that this proposed regulation does not have sufficient federalism implications to warrant preparation of federal assessment.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations is amended as follows:

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. Section 117.771 is revised to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

§ 117.771 Bronx River.

(a) The draw of the Bruckner Boulevard highway bridge mile 1.1 at New York City shall open on signal; except that, from 7 a.m. to 9 a.m. and 4 p.m. to 6 p.m. Monday through Friday, the draws need not be opened for the passage of vessels. Public vessels of the United States, state or local vessels used for public safety and vessels in distress shall be passed without delay.

(b) The draw of the Conrail bridge, mile 1.6 at New York City, need not be opened for the passage of vessels.

(c) The owners of the Bruckner Boulevard highway bridge mile 1.1 and the Conrail bridge mile 1.6 both at New York City shall provide and keep in good legible condition two clearance gages designed, installed and maintained according to the provisions of 118.160 of this chapter.

(d) Repair of Bruckner Boulevard Highway Bridge. The draw of the Bruckner Boulevard highway bridge, mile 1.1 at New York City, need not be opened for the passage of all vessels from 9 a.m., April 9, 1989 through 5 p.m., April 9, 1992 inclusive, to effect repair and reconstruction of the bridge.

Dated: April 19, 1989.

R.I. Rybacki,

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

[FR Doc. 89-10158 Filed 4-27-89; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 117

[CGD5-89-20]

RIN 2115-AA99

Drawbridge Operation Regulations: James River, Between Isleof Wight and Newport News, VA

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule with request for comments.

SUMMARY: At the request of the Virginia Department of Transportation, the Coast Guard is issuing a temporary rule governing the operation of the drawbridge across the James River, mile 5.0, between Isle of Wight and Newport News, Virginia. This rule is being issued

to require advance notification for all bridge openings during the evening and night time hours for a 120-day period in order to allow the contractor for the Virginia Department of Transportation, owner of the bridge, to add studs to the metal grating on the drawspan, while still providing for the reasonable needs of navigation.

Because of the length of time this temporary rule will be in effect, the Coast Guard requests comments on the rule. The temporary rule may be changed based on comments received.

DATES: This temporary rule is effective from April 21, 1989, to August 21, 1989, unless amended or terminated before that date. Comments on the temporary rule must be received on or before May 22, 1989.

ADDRESS: Comments should be mailed to Commander (ob), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004. The comments received will be made available for inspection and copying at room 507 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, (804) 398–6222.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, comments, data or arguments. Persons submitting comments should include their name and address, identify the bridge, and give reasons for any recommended changes to the temporary rule. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

Drafting Information

The drafters of this notice are Linda L. Gilliam, Project Officer, and LCDR Robin K. Kutz, Project Attorney.

Discussion of Temporary Rule

At the request of the Virginia Department of Transportation, owner of the bridge, the Coast Guard is issuing a temporary rule governing the operation of the drawbridge across the James River at mile 5.0, between Isle of Wight and Newport News, Virginia. A contractor for the Department has indicated that it will be necessary to place equipment on the deck of the drawspan in order to add studs to the metal grating on the drawspan that will increase traction for motor vehicles crossing the span. However, for safety reasons the equipment must be removed from the span before it is raised. The Virginia Department of Transportation has advised the Coast Guard that it will take 20 minutes to remove the equipment, thereby necessitating a 20-minute advance notification by vessels requiring a bridge opening. The Department requested that the work be approved to begin on April 17, 1989, and continue for a period of 120 days. Since the April 17 beginning date does not give the Coast Guard enough time to issue a public notice or to publish this temporary schedule in the **Federal Register**, the work will begin on April 21, 1989. The Department has been notified of the change in the beginning date.

The work will take place from April 21, 1989 through August 21, 1989, seven days a week, from 6:00 p.m. to 5:00 a.m., with the exception of Federal holiday weekends and Harbor Fest Weekend. Vessels requiring an opening during the work period will be required to notify the bridgetender 20 minutes in advance of their estimated time of arrival, to permit the contractor to remove equipment from the deck. The Virginia Pilots Association has been contacted, and they have expressed no objection to the 20-minute advance notice requirement. Since these repairs are necessary for the safety of vehicular traffic, I find that good cause exists for publishing this temporary rule without publication of a notice of proposed rulemaking, and for making it effective in less than 30 days.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the temporary rule does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Economic Assessment and Certification

This temporary rule is considered to be non-significant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. This conclusion is based on the fact that these regulations are not expected to have any effect on commercial navigation or on any businesses that depend on waterborne transportation for successful operations. Since the economic impact on these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

Environmental Impact

This rulemaking has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.g. of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and has been placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations is amended as follows:

PART 117—DRAWBRIDGE OPERATIONS REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. A new § 117.1012 is temporarily added to read as follows:

§ 117.1012 James River

(a) The James River Bridge, mile 5.0, between Isle of Wight and Newport News, VA:

(1) From April 21, 1989 to August 21, 1989, from 6:00 p.m. to 5:00 a.m. daily, the draw need not open unless 20 minutes advance notice is given.

(2) From 6:00 p.m. to 5:00 a.m. on Memorial Day Weekend, May 27–29, 1989; on Independence Day Weekend, July 1–4, 1989; and on Harbor Fest Weekend, June 2–4, 1989, the draw shall open on signal.

(3) Shall open on signal at all other times.

Dated April 17, 1989.

H.B. Gehring,

Captain, U.S. Coast GuardCommander, Fifth Coast Guard District, Acting.

[FR Doc. 89–10159 Filed 4–27–89; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPTS–50568A; FRL–3563–2]

Pentabromoethylbenzene; Significant New Use of Chemical Substance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is promulgating a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) which will require persons to notify EPA at least 90 days before commencing the manufacture, import, or processing of pentabromoethylbenzene (PEB, CAS Number 85–22–3) for any use. EPA believes that this action is necessary because PEB may be hazardous to human health and the environment, and that any use of PEB and activities associated with such use may result in significant human and environmental exposure. The notice will furnish EPA with the information needed to evaluate the intended use and associated activities, and an opportunity to protect against potentially adverse exposure to PEB before it can occur.

DATES: In accordance with 40 CFR 23.5, this rule shall be promulgated for purposes of judicial review at 1 p.m. eastern time on May 12, 1989. This rule becomes effective on June 12, 1989.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB–44, 401 M Street SW., Washington, DC 20460. Telephone: (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: The SNUR for PEB requires persons to notify EPA at least 90 days before commencing the manufacture, import, or processing of PEB for any use. The required notice will provide EPA with the information needed to evaluate an intended use and associated activities, and an opportunity to protect against potentially adverse exposure to PEB before it can occur. This rule was proposed in the **Federal Register** of November 22, 1988 (53 FR 47228). No public comments were received in response to the proposal.

Public reporting burden for this collection of information is estimated to vary from 30 to 170 hours per response, with an average of 100 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 SW., Washington, DC 20460; and to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

I. Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the substance for that use.

Persons subject to this SNUR would comply with the same notice requirements and EPA regulatory procedures as submitters of premanufacture notices (PMNs) under section 5(a)(1)(A) of TSCA. In particular, these requirements include the information submission requirements of section 5(b) and (d)(1), the exemptions authorized by section 5(h) (1), (2), (3), and (5), and the regulations at 40 CFR Part 720. Once EPA receives a SNUR notice, EPA may take regulatory action under section 5(e), 5(f), 6, or 7 to control the activities for which it has received a SNUR notice. If EPA does not take action, section 5(g) of TSCA requires EPA to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a substance identified in a final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret section 12(b) appear at 40 CFR Part 707. Persons who intend to import a chemical substance are subject to the TSCA section 13 import certification requirements, which are codified at 19 CFR 12.118 through 12.127 and 127.28. Persons who import a substance identified in a final SNUR must certify that they are in compliance with the SNUR requirements. The EPA policy in support of the import certification appears at 40 CFR Part 707.

II. Applicability of General Provisions

In the **Federal Register** of September 5, 1984 (49 FR 35011), EPA promulgated general regulatory provisions applicable to SNURs (40 CFR Part 721, Subpart A). On July 27, 1988 (53 FR 28354), EPA promulgated amendments to the general provisions which apply to this SNUR except as provided in § 721.1515(b)(1). The entire text of Subpart A was published in that document; interested persons should refer to it for further information. In the **Federal Register** of August 17, 1988 (53 FR 31252), EPA promulgated the "User Fee Rule" (40 CFR Part 700) under the authority of TSCA section 26(b). Provisions requiring persons submitting significant new use notices to submit certain fees to EPA are discussed in detail in that **Federal Register** notice.

III. Summary of this Rule

The chemical substance which is the subject of this SNUR is PEB. EPA is designating any use of PEB as a significant new use. Thus, this rule requires persons who intend to manufacture, import, or process PEB for any use to notify EPA at least 90 days before such manufacture, import, or processing.

IV. Background Information on PEB

Background information on production, use, human health effects, and exposure for PEB appears in the preamble to the proposed rule (53 FR 47228). Interested persons should refer to that document for further information.

V. Objectives and Rationale for this Rule

To determine what would constitute a significant new use of PEB, EPA considered relevant information on the toxicity of the substance, likely exposures and releases associated with possible uses, and the four factors listed in section 5(a)(2) of TSCA. Based on these considerations, EPA wishes to achieve the following objectives with regard to the significant new use that is designated in this rule:

1. EPA wants to ensure that it will receive notice of any company's intent to manufacture, import, or process PEB for any use before that activity begins.

2. EPA wants to ensure that it will have an opportunity to review and evaluate data submitted in a significant new use notice before the notice submitter begins manufacturing, importing, or processing PEB for any use.

3. EPA wants to ensure that it will be able to regulate prospective manufacturers, importers, or processors of PEB before any manufacturing, importing, or processing of PEB occurs, provided that the degree of potential health and environmental risk is sufficient to warrant such regulation.

PEB is structurally related to known and suspected carcinogenic substances. Data indicate that absorption occurs when PEB is administered orally. Additionally, evidence exists that PEB persists in the environment and may bioconcentrate. Currently, PEB is not subject to any Federal regulation that would notify the Federal Government of activities that might result in adverse

exposures or releases, or provide a regulatory mechanism that could protect human health from potentially adverse exposures or protect the environment from potentially adverse releases before they occur.

EPA believes that the resumption of any use of PEB, and its related manufacture, import, or processing, has a high potential to increase the magnitude and duration of exposure to PEB as well as increasing the probability of environmental releases. Given the potential toxicity of PEB, the reasonably anticipated situations that could result in exposure or release, and the lack of sufficient regulatory controls, individuals and/or the environment could be exposed to PEB at levels which may result in adverse effects.

Because EPA is concerned about potential exposure during the entire life cycle of PEB, EPA is modifying the requirements of § 721.5(a)(2) as applied to this rule to require any prospective manufacturer, importer, or processor of PEB who intends to distribute the substance in commerce to submit a significant new use notice.

VI. Alternatives

In the proposed SNUR, EPA considered regulatory actions for PEB including the use of a TSCA section 4(a)(1)(A) test rule or a section 8(a) reporting rule. No comments were received that addressed the regulatory approach chosen. For the reasons discussed in the preamble to the proposed rule, EPA has decided to proceed with the promulgation of a SNUR for PEB.

VII. Applicability of Rule to Uses Occurring Before Effective Date of the Final Rule.

EPA believes that the intent of section 5(a)(1)(B) is best served by designating a use as a significant new use as of the proposal date of the SNUR rather than as of the effective date of the final rule. If uses begun during the proposal period of a SNUR were considered ongoing as of the effective date of a SNUR, it would be difficult for EPA to establish SNUR notice requirements, because any person could defeat the SNUR by initiating the proposed significant new use before the rule became effective; this interpretation of section 5 would make it extremely difficult for EPA to establish SNUR notice requirements.

Thus, persons who begin commercial manufacture, importation, or processing of PEB for any use between proposal and the effective date of the SNUR must cease that activity before the effective date of this rule. An exception to this general requirement appears at § 721.45(h) (53 FR 28354, July 27, 1988). A person may comply with a proposed SNUR before it is promulgated. If a person were to meet the conditions of advance compliance as codified at § 721.45(h), the person will be considered to have met the requirements of the final SNUR for those activities. If persons who begin commercial manufacture, importation, or processing of the substance between proposal and the effective date of the SNUR do not meet the conditions of advance compliance, they must cease that activity before the effective date of the rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

VIII. Test Data and Other Information

EPA recognizes that under TSCA section 5, persons are not required to develop any particular test data before submitting a significant new use notice. Rather, persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them.

However, in view of the potential health and/or environmental risks that may be posed by a significant new use of PEB, EPA suggests potential SNUR notice submitters consider conducting tests that would permit a reasoned evaluation of risks posed by PEB when utilized for an intended use. SNUR notices submitted without accompanying test data may increase the likelihood that EPA would take action under section 5(e).

EPA encourages persons to consult with EPA before selecting a protocol for testing PEB. As part of this optional prenotice consultation, EPA will discuss the test data it believes necessary to evaluate a significant new use of the substance. Test data should be developed according to TSCA Good Laboratory Practice Standards at 40 CFR Part 792. Failure to do so may lead EPA to find such data to be insufficient to evaluate reasonably the health or environmental effects of the substance.

EPA urges SNUR notice submitters to provide detailed information on human exposure or environmental release that may result from the significant new use of PEB. In addition, EPA encourages persons to submit information on potential benefits of the substance and information on risks posed by the substance compared to risks posed by potential substitutes.

IX. Economic Analysis

EPA has evaluated the potential costs of establishing significant new use notice requirements for potential manufacturers, importers, and processors of PEB. EPA's complete economic analysis is available in the public record for this rule (OPTS–50568A).

X. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPTS–50568A). This record contains basic information considered by EPA in developing this rule. EPA will supplement the record with additional information as it is received. The record now includes the following:

1. The proposed rule.
2. The economic analysis of this rule.
3. The three documents listed under REFERENCES (Unit XI of this preamble).
4. Letter from Ethyl Corporation, dated August 18, 1986, informing EPA of their decision to cease production of PEB.
5. ITC report on PEB.
6. This final rule.

A public version of this record containing nonconfidential materials is available for reviewing and copying from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, located at Rm. NE–G004, 401 M St., SW., Washington, DC.

XI. References

1. TSCA section 8(d) document number 878214933.
2. Veith, G.D., DeFoe, D.L. and Bergstedt, B.J. "Measuring and Estimating the Bioconcentration Factor of Chemicals in Fish." *Journal of the Fishery Research Board of Canada*. 38:1040–1048. 1979.
3. Zitko, V. and Carson, W.G. "Uptake and Excretion of Chlorinated Diphenyl Ethers and Brominated Toluenes by Fish." *Chemosphere*. 6:293–301. 1977.

XII. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this rule is not a "major" rule because it will not have an effect on the economy of $100 million or more, and it will not have a significant effect on competition, costs, or prices. While there is no precise way to calculate the total annual cost of compliance with this rule, EPA estimates that the reporting cost for submitting a significant new use

notice will be approximately $1,400 to $8,000. EPA believes that, because of the nature of the rule and the substance involved, there will be few significant new use notices submitted. Furthermore, while the expense of a notice and the uncertainty of possible EPA regulation may discourage certain innovation, that impact will be limited because such factors are unlikely to discourage an innovation that has high potential value.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this rule will not have a significant impact on a substantial number of small businesses. EPA has not determined whether parties affected by this rule will likely be small businesses. However, EPA expects to receive few SNUR notices for PEB. Therefore, EPA believes that the number of small businesses affected by this rule will not be substantial, even if all of the SNUR notice submitters were small firms.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et. seq.*, and has assigned OMB control number 2070–0038.

Public reporting burden for this collection of information is estimated to vary from 30 to 170 hours per response, with an average of 100 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 St., SW., Washington, DC 20460; and to 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 Part 721

Chemicals, Environmental protection, Hazardous materials, Reporting and recordkeeping requirements, Significant new uses.

Dated: April 20, 1989.

Susan F. Vogt,

Acting Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR Part 721 is amended as follows:

PART 721—[AMENDED]

1. The authority citation for Part 721 continues to read as follows:

Authority: 15 U.S.C. 2604 and 2607.

2. By adding new § 721.1515 to read as follows:

§ 721.1515 Pentabromoethylbenzene.

(a) *Chemical substance and significant new use subject to reporting.* (1) The chemical substance pentabromoethylbenzene (CAS Number 85–22–3) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new use is: Any use.

(b) *Specific requirements.* The provisions of Subpart A of this Part apply to this section except as modified by this paragraph:

(1) *Persons who must report.* Section 721.5 applies to this section except for § 721.5(a)(2). A person who intends to manufacture, import, or process for commercial purposes the substance identified in paragraph (a)(1) of this section and intends to distribute the substance in commerce must submit a significant new use notice.

(2) [Reserved]

(Approved by the Office of Management and Budget under OMB control number 2070–0038.)

[FR Doc. 89–10245 Filed 4–27–89; 8:45am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87–468; RM–6009 & RM–6229]

Radio Broadcasting Services; Easton and Delmar, MD

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes FM Channel 244B1 for Channel 244A at Easton, Maryland, as that community's first wide coverage area FM service, in response to a petition filed by Clark Broadcasting Company. We shall also modify the license of Station WCEI–FM to specify operation on the higher class channel. The coordinates for Channel 244B1 at Easton are 38–46–13 and 76–04–55. The counterproposal filed by Apex Associates, Inc., proposing the allotment of FM Channel 243A at Delmar, Maryland, has been withdrawn. With this action, this proceeding is terminated.

EFFECTIVE DATE: June 9, 1989.

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. 87–468, adopted April 11, 1989 and released April 24, 1989. 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 Maryland is amended by deleting Channel 244A and adding Channel 244B1 at Easton.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–10150 Filed 4–27–89; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 88–331; RM–6356]

Radio Broadcasting Services; Duluth, MN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel *247C2 to Duluth, Minnesota, reserving the channel for noncommercial educational use, in response to a petition filed by Minnesota Public Radio. Canadian concurrence has been obtained for this

allotment. The coordinates for Channel *247C2 at Duluth are 46–47–00 and 92–06–48. With this action, this proceeding is terminated.

EFFECTIVE DATE: June 9, 1989.

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. 88–331, adopted April 11, 1989, and released April 24, 1989. 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 Duluth, Minnesota, is amended by adding Channel *247C2.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–10151 Filed 4–27–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 88–435; RM–6411]

Radio Broadcasting Services; Brookfield, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 245C2 to Brookfield, Missouri, and modifies the license of Station KZBK, Channel 249A, to specify operation on Channel 245C2. This action is taken in response to a petition filed by Dwight Carver, licensee of Station KZBK. The channel can be used at the existing site for Station KZBK, at coordinates 39–50–26 and 93–04–51. With this action, this proceeding is terminated.

EFFECTIVE DATE: June 9, 1989.

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. 88–435, adopted April 11, 1989, and released April 24, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended by revising the entry to Brookfield, Missouri, to remove Channel 249A and add Channel 245C2.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–10152 Filed 4–27–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 88–110; RM–6134, RM–6381]

Radio Broadcasting Services; Los Ybanez and Denver City, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 300C2 to Los Ybanez, Texas, as that community's first local FM service at the request of Israel Ybanez. In addition, this action substitutes Channel 248C2 for Channel 296A at Denver City, Texas, as that community's first wide coverage area FM service and modifies the construction permit of Station KDNC(FM), as requested by Gayle C. Atchley. Channel 300C2 requires a site restriction of 5.8 kilometers (3.6 miles) west of the city at coordinates 32–43–45 and 101–58–09. Mexican concurrence has been obtained for Channel 300C2 at Los Ybanez. Channel 248C2 can be substituted at the current site of Station KDNC(FM). The coordinates are 33–01–53 and 102–48–47. With this action, this proceeding is terminated.

DATES: Effective June 9, 1989; the window period for filing applications for Channel 300C2 at Los Ybanez, Texas, will open on June 12, 1989, and close on July 12, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88–110, adopted April 11, 1989, and released April 24, 1989. 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 Texas, by adding Los Ybanez, Channel 300C2; and by adding Channel 248C2 and deleting Channel 296A at Denver City.

Karl. A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–10153 Filed 4–27–89; 8:45 am]

BILLING CODE 6712–01–M

Proposed Rules

Federal Register
Vol. 54, No. 81
Friday April 28, 1989

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 88-118]

Black Stem Rust

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We propose to revise the Black Stem Rust Quarantine and Regulations by restricting the interstate movement of certain regulated articles to areas where they would not present any risk of crop damage, and by protecting certain areas from possible infestation. This action is warranted to reflect the fact that rust-susceptible alternate host plants have been largely eradicated from the northern small grain producing states where black stem rust would be harmful to crops and because preventative measures are necessary to prevent its re-introduction through plant hosts. In addition, the action would prevent the re-introduction of alternate hosts plants into protected areas by prohibiting the entry of certain plants and by prescribing the conditions under which other regulated articles may be moved interstate.

DATES: Consideration wil be given only to comments postmarked or received on or before May 15, 1989.

ADDRESSES: Send an original and two copies of written comments to Helene R. Wright, Chief, Regulatory Analysis and Development, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 88-118. Comments received may be inspected at USDA, 14th Street and Independence Avenue, SW., Room 1141-South Building, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Thomas G. Flanigan, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, USDA, Room 643, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8247.

SUPPLEMENTARY INFORMATION:

Background

We propose to amend the "Domestic Quarantine Notices" in 7 CFR Part 301 by revising the Black Stem Rust Quarantine and Regulations (referred to below as the regulations) contained in § 301.38 *et seq.* The regulations quarantine the conterminous 48 states and the District of Columbia to prevent the development of new races of black stem rust.

Black stem rust is one of the most destructive plant diseases of small grains known to exist in the United States. The disease is caused by a fungus which reduces the quality and yield of wheat, oats, barley, and rye crops by robbing host plants of food and water. The fungus lives on a variety of host plants that are species of the genera *Berberis, Mahoberberis,* and *Mahonia,* and can spread from host-to-host by way of wind-borne spores.

In the northern small grain producing states, the black stem rust organism overwinters on wild grasses, grain stubble, and in straw piles. The organism cannot attack small grains in this stage, but will infect *Berberis, Mahoberberis,* and *Mahonia* plants in the spring. The spores that are subsequently produced on the plants' leaves can spread the disease to nearby grain fields.

The cooperative federal-state black stem rust program was initiated in 1918. The program's long range strategy has been to reduce the incidence of black stem rust disease by:

(1) Eradicating *Berberis, Mahoberberis,* and *Mahonia* plants growing in small grain producing areas;

(2) Developing varieties of small grains that will not be seriously damaged if infected with black stem rust disease; and

(3) Regulating the interstate movement of *Berberis, Mahoberberis,* and *Mahonia* plants and plant parts.

Two of these goals have been accomplished. Approximately 98 percent of the wild growing *Berberis, Mahoberberis,* and *Mahonia* plants had been eliminated from small grain producing areas when the eradication phase of the cooperative program officially ended in 1981. Research efforts have also been successful—virtually all of the small grain varieties grown in the United States today are completely, or almost completely, impervious to damage from existing races of black stem rust. These advances have minimized crop damage from black stem rust disease.

Resistance, Susceptibility, and Hybridization

Plant species of the genera *Berberis, Mahoberberis,* and *Mahonia* are categorized as being either rust-resistant or rust-susceptible.

1. *Rust-resistant.* For reasons as yet unknown, the black stem rust organism cannot develop a sexual stage when living on rust-resistant plant species. In these circumstances, the black stem rust organism is "deadended," since it cannot spread to other hosts. More than 90 species and varieties of the genera *Berberis, Mahoberberis,* and *Mahonia* have been tested and found resistant to black stem rust.

2. *Rust-susceptible.* Black stem rust organism living on rust susceptible plants of *Berberis, Mahoberberis,* and *Mahonia* will reach the sexual stage, reproduce, and spread. Currently small grain varieties are resistant to existing races of black stem rust. However, during the sexual stage, spores from different black stem rust organisms may combine to produce entirely new, hybird races of black stem rust. For example, 43 different races of black stem rust were isolated from a single spread of rust from barberry, a plant of the *Berberis* genus, to nearby wheat fields.

The primary threat to the continued success of the cooperative federal-state black stem rust program comes from the black stem rust organism's ability to hybridize on rust-susceptible plant hosts. Hybrid black stem rust races are genetically unpredictable. A hybird could be produced with the ability to successfully attack grain varieties that are not harmed by the "parenting" black stem rust races.

The cooperative federal-state black stem rust program's successful eradication phase eliminated wild-growing plants of the genera *Berberis, Mahoberberis,* and *Mahonia* as a possible source of hybridization in northern grain-producing areas.

However, commercial nurseries continue to propagate and extensively distribute rust-resistant varieties of barberry and other host species of *Berberis, Mahoberberis,* and *Mahonia* throughout the northern states, where they are extremely popular for landscape and hedge use.

Current Regulations

The current regulations restrict the interstate movement of *Berberis, Mahoberberis,* and *Mahonia* plants and plant parts in order to prevent dispersion of rust-susceptible plants. These provisions were written during the pre-1981 eradication phase of the program, however, and do not reflect current conditions and programs needs.

The current regulations quarantine all states within the conterminous United States and the District of Columbia. Those states, or portions of states, that have adopted and are enforcing procedures to eradicate rust-susceptible *Berberis, Mahoberberis,* and *Mahonia* plants are designated "eradication areas." All plants, seeds, fruits, and other parts of plants, capable of propagation, and which belong in the genera *Berberis, Mahoberberis,* and *Mahonia* except *Mahonia* cuttings for decorative purposes, are designated as regulated articles. Certain interstate movement of rust-resistant plant and plant parts of the genera *Berberis, Mahoberberis,* and *Mahonia* is allowed under the conditions set forth in the regulations. Certification or issuance of a permit is usually a prerequisite. Interstate movement of rust-susceptible plants and plant parts of these genera is prohibited.

Overview of Organizational Changes

The following tables represent an overview of the organizational changes contained in our proposal.

DISTRIBUTION TABLE

Current	Proposed
301.38(a)	301.38
301.38(b)	301.38–2
301.38–1	301.38–1
Footnote 1	Deleted
Footnote 2	Deleted
301.38–2	Deleted
301.38–2a	Deleted
301.38.3	301.38–4
Footnote 3	301.38–5(b)(2)
301.38–4	301.38–5
301.38–5	301.38–6
301.38–6	301.38–5
301.38–7	301.38–7
301.38–8	Footnote 1
301.38–9	Footnote 2
301.38–10	301.38–8

DERIVATION TABLE

Proposed	Currentd
301.38	301.38(a), (b)
Footnote 1	301.38–8
301.38–2	301.38–1
301.38–2	301.38(b)
Footnote 2	301.38–9
301.38–3 [new]	
Footnote 3 [new]	
301.38–4	301.38–4
301.38–5	301.38–4; 301.38–6
Footnote 4 [new]	
301.38–6	301.38–5
Footnote 5	301.38–5
301.38–7	301.38–7
301.38–8	301.38–10

The following paragraphs describe the substantive ways in which the current regulations would be revised under our proposal.

Removal of "Eradication Areas."

We propose to delete the eradication area provisions (current §§ 301.38–2 and 301.38–2a) from the regulations. The term "eradication area" is no longer applicable since all federal eradication operations were discontinued in 1981, when the eradication areas assumed responsibility for nursery inspections.

Addition of "Protected Areas."

We propose to add new provisions to the regulations authorizing the Administrator to designate as a "protected area" any state or county using the following criteria:

1. The state has eradicated rust-susceptible plants of the genera *Berberis, Mahoberberis,* and *Mahonia* under the cooperative Federal-State eradication program and maintains and enforces an inspection program under which all plant nurseries within the state are inspected at least one every year to ensure that plant nurseries are free of rust-susceptible plants.

2. The county is in a state which has eradicated rust-susceptible plants of the genera *Berberis, Mahoberberis,* and *Mahonia* from specific areas under the cooperative federal-state eradication program and intrastate movements are restricted in a manner equivalent to those we are proposing to impose on interstate movements. In addition, the state must maintain and enforce an inspection program under which all plant nurseries within the proposed area are inspected at least once every year to ensure that they are free of rust-susceptible plants.

These areas would be those presently designated as "eradication areas" under the current regulations that maintain the necessary inspection programs and intrastate movement regulations. In addition, a county located in a state containing eradication areas under the current regulations would also be eligible for designation as a protected area if the proposed criteria are satisfied.

3. For a state to qualify as a protected area, or for any county within a state to so qualify, the state must employ personnel having responsibility for the issuance of the certificates required for interstate movement of regulated articles, in accordance with proposed § 301.38–5, in addition to conducting the required nursery inspections. The state must annually submit a written statement to the Animal and Plant Health Inspection Service (APHIS), signed by an inspector, starting that the inspections have been conducted in accordance with the regulations. This statement would be required before January 1st of each year so that APHIS has the necessary assurances before the shipping season, which usually begins in March. We would require in the statement a list of the nurseries inspected and found free of rust-susceptible plants. Those nurseries would be the only ones eligible to ship rust-resistant *Berberis, Mahoberberis,* and *Mahonia.*

During the requisite nursery inspections, all nursery stock would be examined by an inspector. Any variety or species of plant or plant part of the genera *Berberis, Mahoberberis,* and *Mohonia* that is not a rust-resistant variety and true to type would be destroyed. The inspector would also have to verify, by visual inspection, that no wild or domesticated rust-susceptible plants are growing within one-half mile of any nursery growing any rust-resistant plants of *Berberis, Mahoberberis,* and *Mahonia* from seed, since hybridization could occur and may result in germination of new rust-susceptible varieties near the nursery. It is known that the wind can carry seeds of regulated plants up to one-quarter mile. One-half mile is being proposed to add a margin of safety.

The visual inspection would be performed by inspectors, working side by side, 10 to 20 feet apart, who would walk the half mile distance measured from the edge of the nursery so that they could observe all plant growth in the half-mile band. The distance between the inspectors would depend upon the ease and range of visibility of plant growth. In areas with low brush and flat terrain, the inspectors could be the maximum distance of 20 feet apart because they could observe plants growing within 10 feet of them. In areas of high plant growth or hilly terrian the inspectors would have to be closer

together since their range of visibility would be shorter. This procedure must be repeated so that the entire half mile band, measured from the border of the nursery to the circumference of an imaginary circle having the nursery as its mid-point, is visually inspected.

The proposed protected area classification would serve two purposes. First, it would augment existing state efforts to prevent the introduction or re-introduction of black stem rust by prohibiting the movement of rust-susceptible plants into the state. Second, it would be self-policing, in effect, by requiring yearly inspection of nurseries and surrounding areas in order for states and counties to retain their protected status under the regulations.

A list of those states and counties that the Administrator proposes to designate as protected areas are listed in proposed § 301.38–3(c).

Under our proposal, the following states would meet the criteria to be designated as protected areas based upon their current status as eradication areas under § 301.38–2a and participation in cooperative federal-state black stem rust eradication efforts:

Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Montana, Nebraska, North Dakota, Ohio, Pennsylvania, South Dakota, West Virginia, and Wisconsin.

We are proposing to include the Commonwealth of Pennsylvania in its entirety because we believe that Philadelphia and Delaware Counties in that state also meet the crietia to be designated as protected areas although they are not eradication areas under the current regulations.

The following counties in the State of Washington would meet the criteria to be designated as protected areas:

Adams, Asotin, Benton, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Kittitas, Klickitat, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman, and Yakima.

Removal of Protected Area Status

Under our proposal, the Administrator could determine that a state or county's "protected area" designation should be removed if he or she finds that it no longer meets the criteria. A hearing would be held to resolve any conflict as to any material fact in accordance with rules of practice adopted by the Administrator for the proceeding. If, after opportunity for a hearing, the Administrator finds that removal of protected status is appropriate, we would publish a proposed rule in the **Federal Register**. The Agency's final action on the matter would be published in a final rule in the **Federal Register** after notice and an opportunity for public comment.

Conditions For Interstate Movement of Regulated Articles

We propose to revise the conditions governing interstate movement of regulated articles (currently contained in § 301.38–3) as follows:

1. The quarantine of the conterminous 48 states and the District of Columbia would continue in effect, however, all current requirements relating to interstate movement to, from, or between eradication areas would be deleted.

2. Interstate movement of all *Berberis, Mahoberberis,* and *Mahonia* plants and plant parts would be allowed without restriction into or through any state or county not designated as a protected area. This is because movement restrictions are effective only in those areas where a nursery inspection program exists to protect against interestate, as well as intrastate, dispersal of rust-susceptible host plants through the commercial nursery trade. Rust-susceptible host plants were eradicated during the eradication phase of the cooperative program, however, nurseries continue to grow new varieties of barberry from seed, which, due to hybridization, may not be rust-resistant. We believe that nurseries alone grow new varieties of barberry from seed. Therefore, the inspection program would assure that any rust-susceptible varieties that may be developed are detected and destroyed.

3. Interstate movement of rust-suseceptible *Berberis, Mahoberberis,* and *Mahonia* plants and plant parts, into or through protected areas, would be prohibited (except under the narrow circumstances where a limited permit has been issued). Interstate movement of *all Berberis* seedlings and plants of less than 2 years' growth into or through protected areas would also be prohibited because it is not possible to identify whether their species is rust-resistant or rust-susceptible until it has 2 years' growth. This would prevent contamination or re-infestation of nursery stock by rust-susceptible varieties from outside the protected area.

4. Interstate movement of rust-resistant *Berberis, Mahoberberis,* and *Mahonia* plants and plant parts, into or through protected areas, would be allowed if accompanied by a certificate issued and attached in accordance with the regulations. The certificate would verify to protected areas that the plants are rust resistant and do not present any risk of spreading black stem rust.

List of Rust-Resistant Plants

We propose to include in the regulations a list of all of the species and horticultural varieties of the genera *Berberis, Mahoberberis,* and *Mahonia* that have been tested and determined resistant to black stem rust. The test is conducted by the Agricultural Research Service of the United States Department of Agriculture at its Cereal Rust Laboratory in St. Paul, Minnesota. The test is performed in the following manner: In a greenhouse, the suspect plant or test subject is placed under a screen with a control plant—a known rust-susceptible variety of *Berberis, Mahoberberis,* or *Mahonia.* Infected wheat stems, a primary host of black stem rust, are placed on top of the screen. The plants are moistened and maintained in 100% humidity. This causes the spores to swell and fall on the plants lying under the screen. The plants are then observed for 7 days at 20–80% relative humidity. If the rust-susceptible plant shows signs of infection after 7 days and the test plants do not, the test results indicate that the test plants are rust-resistant. This test must be performed 12 times and all 12 tests must yield the same result, before USDA can make a determination as to whether the test plant variety is rust-resistant. The test may be conducted on 12 individual plants, or it may be performed multiple times on fewer plants, *e.g.,* 6 plants tested twice or 3 plants tested 4 times. Based upon 30 years of experience with this test, we believe that 12 is the reliable test sample size on which USDA can make its determination. We do not know of any plant which was subsequently discovered to be rust-susceptible after undergoing this procedure 12 times and determined by USDA to be rust-resistant. The tests must be performed on new growth, just as the leaves are unfolding. Therefore, the tests are usually conducted in the spring or fall, during the growing season. All 12 tests generally cannot be conducted on the same day because of the plants' different growth stage.

Any person seeking to move plants or plant parts of the genera *Berberis, Mahoberberis,* and *Mahonia,* except *Mahonia* cuttings used for decorative purposes, into or through a protected area must know whether they are rust-resistant or rust-susceptible. *Mahonia* cuttings used for decorative purposes do not produce any propagative material and therefore would not be included as regulated articles under this subpart.

Removal of Certain Permit Provisions

We propose to remove the definitions of "restricted destination permit" and "scientific permit" from current § 308–1, and all reference to them in the regulations, as revised, because there is no need for them.

Currently, § 301.38–4 provides for the issuance, by an inspector, or permits authorizing restricted interstate movement of regulated articles not eligible for movement under the Black Stem Rust regulations or other Federal domestic plant quarantines because of possible pest risk. It also provides for issuance of scientific permits authorizing interstate movement of regulated articles under prescribed conditions.

We would continue to authorize issuance of "limited permits" to allow regulated articles to move into or through protected areas to a destination outside the protected area, without a certificate, under conditions that ensure against contamination by or re-introduction of host plants. With a limited permit, regulated articles that are ineligible for certification under the regulations could move into or through a protected area if they are placed in a closed sealed container that prevents the unauthorized removal of the regulated articles and that is kept sealed until the regulated articles reach the final destination stated in the permit. At the final destination, the sealed container must be opened either in the presence of an inspector or with an inspector's authorization obtained expressly for that shipment.

The Department of Agriculture no longer issues scientific permits. Instead, Departmental permits are available for movement of a regulated article for scientific or experimental purposes under the conditions specified on the permit. We are proposing to add a definition of "Departmental permit."

Certificates and Compliance Agreements

The current regulations contain provisions for issuance and withdrawal of the certificates required for interstate movement of regulated articles, and for entry into and withdrawal of a compliance agreement between APHIS and a person engaged in the business of growing, handling, or moving regulated articles.

Under our proposal, protected areas would be responsible for issuance of the certificates necessary for interstate movement of regulated articles. A person who seeks to move interstate a regulated article would obtain the required certificate from an inspector. A state that is designated a protected area or which encompasses a protected area may enter into a compliance agreement with a person who seeks to move regulated articles interstate to facilitate inspections and issuance of certificates. The state would be responsible for enforcement of compliance agreements and the proper use of certificates. In non-protected areas, persons seeking to move regulated articles interstate would obtain certificates from an inspector and may enter into a compliance agreement with APHIS, as under the current regulations.

A person who enters into a compliance agreement with APHIS or with a state would, by entering into the agreement, agree to comply with the provisions of this subpart, to provide inspectors and state or county plant regulatory officials with information concerning the source of any regulated articles acquired each year, and to prevent the unauthorized use of certificates issued for future use under the compliance agreement.

Additionally, any state that enters into a compliance agreement or that has issued a certificate for movement of regulated articles must provide a hearing as a means of resolving conflicts as to any material fact between the protected area and the person with whom it has entered into a compliance agreement or to whom it has issued a certificate, in connection with the cancellation of the compliance agreement or the withdrawal of the certificate.

We are proposing conforming changes and nonsubstantive changes for purposes of clarity. In addition, the following time limitations would apply to the withdrawal of any certificate issued by an inspector and to the cancellation of a compliance agreement: Receipt of a written confirmation and explanation of an oral withdrawal (20 days), an appeal by the holder of a withdrawn certificate or cancelled compliance agreement (10 days), followed by a hearing on an appeal if there is a conflict as to any material fact. In protected areas, the appeal must be granted or denied, in writing, as promptly as circumstances allow, and the reasons for the decision must be stated. In non-protected areas, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision, as promptly as circumstances allow.

Assembly and Inspection of Regulated Articles

Under the current regulations, persons who must obtain a certificate to move regulated articles interstate must request that an inspector examine the regulated articles "as far in advance as possible." We believe it is reasonable to require that requests be made to state or county plant regulatory officials and inspectors no less than 48 hours before the desired interstate movement, in order to permit them to arrange their schedules accordingly.

In the proposed rule, these requirements would be included with the provisions for issuance and cancellation of certificates, because they are a prerequisite to issuance.

The proposed rule would provide that to assist a person requesting a certificate, an inspector may direct that the regulated articles be assembled in a certain manner by that person in order to facilitate the inspection. Allowing an inspector to determine how he or she may best complete inspection of the regulated articles would assist the person who is requesting a certificate since it could be issued faster. If that person does not wish to arrange the regulated articles in the manner suggested by the inspector he or she need not do so, however, this may result in the inspector requiring a longer time to examine the regulated articles proposed for interstate movement.

Costs and Charges

The current regulations contain a disclaimer by the Department for costs other than for the services of an inspector. We propose to clarify this provision by specifying that the services of an inspector "during normal business hours" will be furnished without cost to persons requiring the services. Normal business hours are Monday through Friday, 8 a.m. to 4:30 p.m.

Definitions

We propose to add definitions for the terms "Administrator," "Animal and Plant Health Inspection Service," "Departmental permit," "Protected area," and "Rust-susceptible plants" in order to clarify the use of these terms in the regulations. In addition to removing the terms "Eradicatio area," "Restricted destination permit," and "Scientific permit," as explained above, we propose to delete the following terms and definitions:

1. "Deputy Administrator"—Due to organizational and policy changes, the term "Administrator" is used in place of "Deputy Administrator" wherever it appears;

2. "One year's growth"—The origins of this phrase are unknown. The phrase is neither used in the current regulations nor included in our proposed revision; and

3. "Treatment manual"—Chemical agents were used to eliminate wild growing plant hosts of *Berberis, Mahoberberis,* and *Mahonia* during the eradication phase of the black stem rust program, but have not been applied since 1981.

Due to organizational and policy changes, we would remove reference to "Plant Protection and Quarantine" wherever it appears, and refer instead to "Animal and Plant Health Inspection Service." The definition of "Inspector" would also be modified to conform with organizational and policy changes.

Miscellaneous

For purposes of clarity, we propose to make certain nonsubstantive changes in the regulations.

Review of Existing Regulations

This proposed rule is part of the scheduled review of Subpart-Black Stem Rust, to meet regulatory review requirements. Executive Order 12291 and Department Regulation 1512–1 require that agencies initiate reviews of currently effective rules to bring about the goal of reduction of regulatory burdens and to minimize impacts on small entities.

Executive Order 12291 and Regulatory Flexibility Act

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

The primary impact of our proposed regulatory changes will be on nursery growers of plants of the genera *Berberis, Mahoberberis,* and *Mahonia.* Under our proposal, federal restrictions on interstate movements of these plants and plant parts would be limited to a protected area that includes only 15 states and part of a sixteenth. The substantive interstate movement restrictions applicable to growers within this protected area would not change, in effect, from those of the current regulations, therefore, they will not be affected by the proposed revision of the regulations.

Potential benefits from the revision may accrue, however, to nursery growers in the non-protected areas. Under our proposal, these growers would be able to sell and transport interstate all varieties of *Berberis, Mahoberberis,* and *Mahonia* within the non-protected area without certification or inspection requirements. Under the current regulations, sales of rust-susceptible varieties in non-eradication areas are limited to intrastate transactions. Secondly, under our proposal, persons growing new varieties of *Berberis* in the non-protected area would no longer have to wait for the two-year period necessary to determine rust-susceptibility, as long as the new varieties are moved only in the non-protected area. This would relieve certain growers from the monetary losses resulting from developing new hybrids which are subsequently found to be rust-susceptible, and therefore may only be sold intrastate in non-eradication areas under the existing regulations.

Based upon Small Business Administration (SBA) statistics and the 1982 Census of Agriculture statistics, the most recent statistics available to us, we estimate that 71 percent of the 13,217 growers of nursery products in the United States (9,384), would be in the non-protected areas, and that 29 percent (3,833) would be in the protected areas. Our projections indicate that of this total, 96 percent are small businesses, as classified by the SBA in its Standards (those with $500,000-or-less in annual receipts). The number of small nursery growers dealing in plants of the restricted genera and the proportion of their revenues derived from such plants are unkown, however, due to the absence of specific data. Nevertheless, we believe that because of current restrictions on the interstate movement of rust-susceptible varieties, most growers of nursery products grow rust-resistant varieties primarily, so that they can sell them to a broader market and ship interstate.

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

Public Comment

Dr. James W. Glosser, Administrator of the Animal and Plant Health Inspection Service, has determined that this rulemaking proceeding should be expedited by allowing a 15-day comment period on this proposal. This comment period would allow the Agency to promulgate and implement a final rule on an expedited basis. Earlier implementation of a final rule would allow nursery growers to move interstate, in non-protected areas, rust-susceptible plant varieties during the spring 1989 shipping season without presenting a plant health risk. As explained in the preceding Supplementary Information, we believe the current restriction on this interstate movement is no longer necessary and can be removed from the regulations. Accordingly, good cause exists to expedite this rulemaking.

Executive Order 12372

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

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), we have submitted the information collection provisions in this proposed rule to the Office of Management and Budget (OMB) for approval. You may send written comments on these provisions to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please send a copy of your comments to Helene R. Wright, Chief, Regulatory Analysis and Development, PPD, Animal and Plant Health Inspection Service, United States Department of Agriculture, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Black stem rust, Plant diseases, Plant pests, Plants (Agriculture), Quarantine Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we propose to amend 7 CFR Part 301 as follows:

1. The authority citation for Part 301 is revised to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff; 161, 162, 164–167; and 450; 7 CFR 2.17, 2.51, and 351.2(c).

2. Subpart—Black Stem Rust (which currently consists of §§ 301.38 through 301.38–10) is revised to consist of §§ 301.38 through 301.38–8 to read as follows:

Subpart—Black Stem Rust

Sec.
301.38 Notice of quarantine; restrictions on interstate movement of regulated articles.
301.38–1 Definitions.
301.38–2 Regulated articles.
301.38–3 Protected areas.
301.38–4 Interstate movement of regulated articles.
301.38–5 Assembly and inspection of regulated articles; issuance and cancellation of certificates.
301.38–6 Compliance agreements and cancellation.
301.38–7 Attachment and disposition of certificates.
301.38–8 Costs and charges.

Subpart—Black Stem Rust

§ 301.38 Notice of quarantine; restrictions on interstate movement of regulated articles.

The conterminous 48 states and the District of Columbia are quarantined in order to prevent the spread of black stem rust. No person shall move interstate any regulated article except in accordance with this subpart.[1]

§ 301.38–1 Definitions.

In this subpart the following definitions apply:

Administrator. The Administrator, Animal and Plant Health Inspection Service (APHIS), or any person authorized to act for the Administrator.

Animal and Plant Health Inspection Service (APHIS). The Animal and Plant Health Inspection Service of the United States Department of Agriculture.

Black stem rust. The disease commonly known as the black stem rust of grains (*Puccinia graminis*).

Certificate. A document in which an inspector, or a person operating under a compliance agreement, affirms that a specified regulated article has met the criteria in § 301.38–5(b) of this subpart and may be moved interstate to any destination.

Compliance agreement. A written agreement between a state that is a protected area or that encompasses a protected area and a person who moves regulated articles interstate, or in a non-protected area between APHIS and such person, in which that person agrees to comply with this subpart.

Departmental permit. A document issued by the Administrator in which he or she affirms that interstate movement of the regulated article identified on the document is for scientific or experimental purposes, and that the regulated article is eligible for interstate movement under the conditions specified on the Departmental permit and found by the Administrator to be adequate to prevent the introduction of rust-susceptible varieties of the genera *Berberis, Mahoberberis,* and *Mahonia* into protected areas.

Inspector. Any APHIS employee or other person authorized by the Administrator in accordance with law to enforce this subpart.

Interstate. From any state into or through any other state.

Limited permit. A document issued by an inspector to allow the interstate movement into or through a protected area of regulated articles not eligible for certification under this subpart to a specified destination outside the protected area.

Moved (movement, move). Shipped, offered to a common carrier for shipment, received for transportation or transported by a common carrier, or carried, transported, moved, or allowed to be moved. "Movement" and "move" shall be construed in accordance with this definition.

Person. Any association, company, corporation, firm, individual, joint stock company, partnership, society, or any other legal entity.

Protected area. Those states or counties designated in § 301.38–3(c) of this subpart.

Rust-resistant plants. All plants of the genera *Berberis, Mahoberberis,* and *Mahonia* species, and their progeny, that have proven resistant to black stem rust during testing by the United States Department of Agriculture,[2] and that are listed as rust-resistant under §§ 301.38–2 (b) and (c).

Rust-susceptible plants. All plants of the genera *Berberis, Mahoberberis,* and *Mahonia* species not listed as rust-resistant under §§ 301.38–2 (b) and (c).

Regulated article. Any article listed in § 301.38–2 (a) through (d) of this subpart or otherwise designated as a regulated article in accordance with § 301.38–2(e) of this subpart.

Seedling. Any plant of the genera *Berberis, Mahoberberis,* and *Mahonia* grown from seed and having less than 2 years' growth.

State. The District of Columbia, Puerto Rico, the Northern Mariana Islands, or any state, territory or possession of the United States.

Two years' growth. The growth of a plant during all growing seasons of 2 successive calendar years.

§ 301.38–2 Regulated articles.

The following are regulated articles: [3]

(a) All seedlings and plants of less than 2 years' growth of the genus *Berberis.*

(b) All plants, seeds, fruits, and other plant parts capable of propagation from the following rust-resistant *Berberis* species:

B. aridocalida
B. beaniana
B. buxifolia
B. buxifolia nana
B. alliantha
B. candidula
B. cavallieri
B. chenaulti
B. chenaulti "Apricot Queen"
B. circumserrata
B. concinna
B. coxii
B. darwini
B. dasystachya
B. dubia
B. feddeana
B. formosana
B. franchetiana
B. gagnepaini
B. gilgiana
B. gladwynensis
B. gyalaica
B. heterophylla
B. horvathi
B. hybrido-gagnepaini
B. insignis
B. julianae
B. julianae "Nana"
B. julianae "Spring Glory"
B. koreana
B. lempergiana
B. lepidifolia
B. inearifolia
B. linearifolia var. "Orange King"
B. lologensis
B. manipurana
B. media "Park Juwell"
B. mentorensis
B. pallens
B. potanini
B. Renton
B. replicata
B. sanguinea
B. sargentiana

[1] Any properly identified employee of the Animal and Plant Health Inspection Service is authorized to stop and inspect persons and means of conveyance, and to seize, quarantine, treat, apply other remedial measures to destroy, or otherwise dispose of regulated articles as provided in section 10 of the Plant Quarantine Act (7 U.S.C. 164a) and sections 105 and 106 of the Federal Plant Pest Act (7 U.S.C. 150dd, 150ff).

[2] Testing is performed by the Agricultural Research Service of USDA as follows: In a greenhouse, the suspect plant, or test subject, is placed under a screen with a control plant, *i.e.,* a known rust-susceptible variety of *Berberis, Mahoberberis,* or *Mahonia.* Infected wheat stems, a primary host of black stem rust, are placed on top of the screen. The plants are moistened and maintained in 100% humidity, causing the spores to swell and fall on the plants lying under the screen. The plants are then observed for 7 days at 20–80% relative humidity. This test procedure is repeated 12 times. If in all 12 tests, the rust-susceptible plant shows signs of infection after 7 days and the test plants do not, USDA will declare the test plant variety rust-risistant. The tests must be performed on new growth, just as the leaves are unfolding.

[3] Permit and other requirements for the interstate movement of black stem rust organisms are contained in Part 330 of this chapter.

B. sikkimensis
B. stenophylla
B. stenophylla diversifolia
B. stenophylla irwini
B. stenophylla gracilis
B. stenophylla nana compacta
B. taliensis
B. telomaica artisepala
B. thunbergii
B. thunbergii aurea
B. thunbergii argenteo marginata
B. thunbergii atropurpurea
B. thunbergii atropurpurea erecta
B. thunbergii atropurpurea erecta Marshalli
B. thunbergii atropurpurea "Golden Ring"
B. thunbergii atropurpurea "Knight Burgundy"
B. thunbergii atropurpurea nana
B. thunbergii atropurpurea "Redbird"
B. thunbergii atropurpurea "Rosy Glow"
B. thunbergii "Bagatelle"
B. thunbergii "Dwarf Jewell"
B. thunbergii erecta
B. thunbergii "globe"
B. thunbergii "golden"
B. thunbergii "Helmond Pillar"
B. thunbergii "Kobold"
B. thunbergii maximowiczi
B. thunbergii minor
B. thunbergii pluriflora
B. thunbergii "Sparkle"
B. thunbergii "Thornless"
B. thunbergii "Upright Jewell"
B. thunbergii variegata
B. thunbergii xanthocarpa
B. triacanthophora
B. triculosa
B. verruculosa
B. virgatorum
B. workingensis
B. xanthoxylon

(c) All plants, seedlings, seeds, fruits, and other plant parts capable of propagation from the following rust-resistant *Mahoberberis* and *Mahonia* species, except *Mahonia* cuttings for decorative purposes:

(1) General Mahoberberis:

M. aqui-candidula
M. aqui-sargentiae
M. miethkeana

(2) Genera Mahonia:

M. amplectens
M. aquifolium
M. aquifolium atropurpurea
M. aquifolium compacta
M. aquifolium compacta "John Muir"
M. aquifolium "Donewell"
M. aquifolium "Kings Ransom"
M. aquifolium "Orangee Flame"
M. aquifolium "Winter Sun"
M. "Arthur Menzies"
M. bealei
M. dictyot
M. fortunei
M. "Golden Abundance"
M. japonica
M. lomarifolia
M. nervosa
M. pinnata
M. pinnata "Ken Hartman"
M. piperiana
M. pumila
M. repens

(d) All plants, seeds, fruits, and other plant parts capable of propagation from rust-susceptible species and varieties of the genera Berberis, Mahoberberis, and Mahonia, and seedlings from rust-susceptible species and varieties of the genera Mahoberberis and Mahonia, except Mahonia cuttings for decorative purposes.

(e) Any other product or article not listed in paragraphs (a) through (d) of this section, that an inspector determines presents a risk of spread of black stem rust. The inspector must notify the person in possession of the product or article that it is subject to the provisions of this subpart.

§ 301.38–3 Protected areas.

(a) The Administrator may designate as a protected area in paragraph (c) of this section any state that has eradicated rust-susceptible plants of the genera *Berberis, Mahoberberis,* and *Mahonia* under the cooperative Federal-State eradication program. In addition, the state must employ personnel with responsibility for the issuance of certificates in accordance with § 301.38–5, and maintain and enforce an inspection program under which every plant nursery within the state is inspected at least once each year to ensure that they are free of rust-susceptible plants. During the requisite nursery inspections, all nursery stock shall be examined to determine that it consists only of rust-resistant varieties of the genera *Berberis, Mahoberberis,* and *Mahonia,* and that the plants are true to type. Plants that do not meet this criteria must be destroyed. If a nursery within the state raises plants of the genera *Berberis, Mahoberberis,* and *Mahonia* from seed, the state must conduct a visual inspection to verify that no wild or domesticated rust-susceptible plants are growing within one-half mile of the nursery.[4]

[4] Persons performing the inspection must be able to recognize rust-susceptible varieties of *Berberis, Mahoberberis,* and *Mahonia.* Inspectors must work side by side, 10 to 20 feet apart, and walk outward, away from the nursery, a distance of one half mile measured from the edge of the nursery, and observe all plants growing in the half-mile band. The distance between the inspectors may vary within this range depending upon the visibility of plant growth. In areas with low brush and flat terrain, the inspectors may be the maximum distance of 20 feet apart if they can observe all plants growing within ten feet of them. In areas of high plant growth or hilly terrain, the inspectors must be closer together due to limited or obstructed visibility. Each inspector must observe all plants growing between themselves and the mid-point of the distance between themselves and the next inspector. This process must be repeated so that the entire band, measured from the border of the nursery to the circumference of an imaginary circle having the nursery as its mid-point, is visually inspected in this manner.

(b) The Administrator may designate as a protected area any county within a state, rather than the entire state, if areas within the state have eradicated rust-susceptible plants of the genera *Berberis, Mahoberberis,* and *Mahonia* under the cooperative federal-state program, and:

(1) The state employs personnel with responsibility for the issuance of certificates in accordance with § 301.38–5;

(2) The state is enforcing restrictions on the intrastate movement of the regulated articles that are equivalent to those imposed by this subpart on the interstate movement of regulated articles, as determined by the Administrator; and

(3) The state maintains and enforces an inspection program under which every plant nursery within the county is inspected at least once each year to ensure that plant nurseries within that area are free of rust-susceptible plants of the genera *Berberis, Mahoberberis,* and *Mahonia,* and that the plants are true to type. Plants that do not meet this criteria must be destroyed. If a nursery grows plants of *Berberis, Mahoberberis,* and *Mahonia.* During the requisite nursery inspections, all nursery stock shall be examined to determine that it consists only of rust-resistant varieties of the genera *Berberis, Mahoberberis,* and *Mahonia* from seed, the state must conduct a visual inspection to verify that no wild or domesticated rust-susceptible plants are growing within one-half mile of the nursery.[4]

(c) The following are designated as protected areas:

(1) The states of Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Montana, Nebraska, North Dakota, Ohio, Pennsylvania, South Dakota, West Virginia, and Wisconsin.

(2) The following counties in the State of Washington: Adams, Asotin, Benton, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Kittitas, Klickitat, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman, Yakima.

(d) Each state that is a protected area or that encompasses a protected area must submit annually to the Administrator a written statement, signed by an inspector, assuring APHIS that all nursery inspections have been performed in accordance with this section. The statement must be submitted by January 1st of each year, and must include a list of the nurseries inspected and found free of rust-susceptible plants.

(e) The Administrator may remove a protected area from the list of

designated protected areas in paragraph (c) of this section if he or she determines that it no longer meets the criteria of paragraph (a) or (b) of this section. A hearing will be held to resolve any conflict as to any material fact. Rules of practice for the hearing shall be adopted by the Administrator.

§ 301.38–4 Interstate movement of regulated articles.

(a) *Non-protected areas.* (1) Interstate movement of regulated articles into or through any state or area that is not designated a protected area under § 301.38–3(c) is allowed without restriction under this subpart.

(b) *Protected areas.* (1) *Prohibited movement:* The following regulated articles are prohibited from moving interstate into or through any protected area:

(i) All *Berberis* seedlings and plants of less than 2 years' growth, and rust-susceptible *Berberis* plants, seeds, fruits, and other plant parts capable of propagation.

(ii) Rust-susceptible *Mahoberberis* and *Mahonia* plants, seedlings, seeds, fruits, and other plant parts capable of propagation.

(2) *Restricted movement:* The following regulated articles may be moved interstate into or through a protected area with a certificate issued and attached in accordance with §§ 301.38–5 and 301.38–7 of this subpart:

(i) Plants of at least two years' growth, seeds, fruits, and other plant parts capable of propagation of the genus *Berberis* that are designated as rust-resistant in § 301.38–2(b) of this subpart;

(ii) Plants, seedlings, seeds, fruits, and other plant parts capable of propagation of the genera *Mahoberberis* and *Mahonia* that are designated as rust-resistant in § 301.38–2(c) of this subpart.

(c) An inspector may issue a limited permit to allow a regulated article not eligible for certification under § 301.38–4(b)(2) to move interstate into or through a protected area to a specified destination that is stated in the permit and is outside the protected area, if the requirements of all other applicable federal domestic plant quarantines are met. A regulated article moved interstate under a limited permit must be placed in a closed sealed container that prevents unauthorized removal of the regulated article, and that remains sealed until the regulated article reaches the final destination stated in the permit. At the final destination, the sealed container must be opened only in the presence of an inspector or with the authorization of an inspector obtained expressly for that shipment.

(d) The United States Department of Agriculture may move any regulated article interstate into or through a protected area in accordance with the conditions determined necessary to prevent the introduction or spread of black stem rust in protected areas, as specified in a Departmental permit issued for this purpose.

§ 301.38–5 Assembly and inspection of regulated articles; issuance and cancellation of certificates.

(a) Any person, other than a person authorized to issue certificates under paragraph (c), who desires to move interstate a regulated article that must be accompanied by a certificate under § 301.38–4(b), shall, as far in advance of the desired interstate movement as possible (and no less than 48 hours before the desired interstate movement), request an inspector [5] to issue a certificate. To expedite the issuance of a certificate, an inspector may direct that the regulated articles be assembled in a manner that facilitates inspection.

(b) An inspector [5] may issue a certificate for the interstate movement of a regulated article if he or she:

(1) Determines, upon examination, that the regulated article may be moved interstate in accordance with § 301.38–4; and

(2) Determines that the regulated article may be moved interstate in accordance with all other federal domestic plant quarantines and regulations applicable to the regulated article.

(c) Certificates for interstate movement of regulated articles may be issued by an inspector [5] to a person operating under a compliance agreement for use with subsequent shipments of regulated articles to facilitate their movement. A person operating under a compliance agreement must make the determinations set forth in paragraph (b) of this section before shipping any regulated articles.

(d) Any certificate that has been issued may be withdrawn by an inspector, orally or in writing, if he or she determines that the holder of the certificate has not complied with the conditions of this subpart for the use of the certificate. If the withdrawal is oral, the inspector will confirm the withdrawal and the reasons for the withdrawal, in writing, within 20 days of oral notification of the withdrawal. Any person whose certificate has been withdrawn may appeal the decision, in writing, within 10 days after receiving written notification of the withdrawal. The appeal must state all of the facts and reasons upon which the person relies to show that the certificate was wrongfully withdrawn. A hearing will be held to resolve any conflict as to any material fact. An appeal shall be granted or denied, in writing, as promptly as circumstances allow, and the reasons for the decision shall be stated. In a non-protected area, appeal shall be made to the Administrator. The Administrator shall adopt rules of practice for the hearing. The certificate will remain withdrawn pending decision of the appeal.

§ 301.38–6 Compliance agreements and cancellation.

(a) Any state that is a protected area or that encompasses a protected area may enter into a written compliance agreement with any person who grows or handles regulated articles in the protected area, or moves interstate regulated articles from the protected area, under which that person agrees to comply with this subpart, to provide inspectors with information concerning the source of any regulated articles acquired each year, and to prevent the unauthorized use of certificates issued for future use under the compliance agreement.[6]

(b) A compliance agreement may be cancelled by an inspector, orally or in writing, whenever he or she determines that the person who has entered into the compliance agreement has failed to comply with the agreement or this subpart. If the cancellation is oral, the cancellation and the reasons for the cancellation will be confirmed, in writing, within 20 days of oral notification of the cancellation. Any person whose compliance agreement has been cancelled may appeal the decision, in writing, within 10 days after receiving written notification of the cancellation. The appeal must state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongfully cancelled. A hearing will be held to resolve any conflict as to any material

[5] Services of an inspector may be requested by contacting a local APHIS office (listed in telephone directories under Animal and Plant Health Inspection Service (APHIS), Plant Protection and Quarantine). The addresses and telephone numbers of local offices may also be obtained by writing to the Administrator, c/o Domestic and Emergency Operations, PPQ, APHIS, USDA, Room 661, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782.

[6] In non-protected areas, compliance agreements may be arranged by contacting a local office of the Animal and Plant Health Inspection Service (APHIS), Plant Protection and Quarantine, or by writing to the Administrator, c/o Domestic and Emergency Operations Staff, PPQ, APHIS, USDA, Room 646, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782.

fact. An appeal shall be granted or denied, in writing, as promptly as circumstances allow, and the reasons for the decision shall be stated. In a non-protected area, appeal shall be made to the Administrator. The Administrator shall adopt rules of practice for the hearing. The compliance agreement will remain cancelled pending decision of the appeal.

§ 301.38–7 Attachment and disposition of certificates.

(a) The certificate required for the interstate movement of a regulated article must, at all times during the interstate movement, be attached to the outside of the container containing the regulated article except as follows:

(1) The certificate may be attached to the regulated article itself if it is not in a container; or

(2) The certificate may be attached to the accompanying waybill or other shipping document if the regulated article is identified and described on the certificate or waybill.

(b) The carrier must furnish the certificate to the consignee at the destination of the regulated article.

§ 301.38–8 Costs and charges.

The services of an inspector [7] during normal business hours, Monday through Friday, 8 a.m. to 4:30 p.m., will be furnished without cost to persons requiring the services. The United States Department of Agriculture will not be responsible for any other costs or charges.

Done at Washington, DC, this 25th day of April 1989.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88–10208 Filed 4–26–80: 8:45 am]

BILLING CODE 3410–34–M

Agricultural Marketing Service

7 CFR Part 929

[Docket No. FV–89–033PR]

Cranberries Grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York; Increase in Base Quantity Reserve

AGENCY: Agricultural Marketing Service.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on increasing the base quantity reserve for the 1989–90 crop year from the required minimum of 2.0 percent to 7.28 percent of the total base quantities currently issued to cranberry producers, in order to update and expand base quantities for the benefit of producers. This would help to facilitate the appropriate and equitable operation of the cranberry marketing order.

DATE: Comments must be received by May 30, 1989.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5120.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Order No. 929 (7 CFR Part 929), as amended, regulating the handling of cranberries grown in 10 states. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, (7 U.S.C. 601–674), hereinafter referred to as the "Act."

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

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will ot 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 30 handlers of cranberries subject to regulation under the cranberry marketing order, and approximately 950 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having average gross annual 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 handlers and producers of cranberries may be classified as small entities.

This proposed rule invites comments on increasing the reserve base quantity from the minimum 2.0 percent required by the order to 7.28 percent, in order to update and adjust producers' base quantities for the 1989–90 crop year. This proposal was unanimously recommended by the Cranberry Marketing Committee (Committee) at its March 8, 1989, meeting. The Committee is the agency responsible for local administration of the cranberry marketing order.

Each year prior to May 1, the Committee considers its marketing policy for the coming season and estimates a marketable quantity of cranberries. Such quantity is the amount of cranberries deemed necessary to meet the season's total marked demand and provide for an adequate carryover of cranberries to the next season. If annual cranberry production is expected to exceed the desired marketable quantity, and if the Secretary finds, based on a recommendation of the Committee or from other available information, that limiting the quantity of cranberries that may be purchased or handled on behalf of growers would tend to effectuate the declared policy of the Act, the Secretary shall determine and establish the marketable quantity for that crop year. The marketable quantity is then apportioned among all eligible growers by applying an allotment percentage to each producer's base quantity pursuant to § 929.48 of the order. The allotment percentage is established by the Secretary and equals the marketable quantity divided by the total of all producers' base quantities.

Such base quantities are issued to producers: (a) Based on their sales during the period 1968–69 through 1973–74; (b) as a result of transfers of base quantities from other producers; or (c) as part of an annual reserve of at least 2 percent of the total base quantities. The reserve is used annually for the issuance of base quantities to new producers and adjustments in base quantities for existing producers, with 25 percent made available for new growers and 75 percent made available for adjustments for existing producers. Any unallocated portion of the 25 percent available to new producers may, at the discretion of

[7] See footnote 5 in § 301.38–5.

the Committee, be prorated among eligible existing producedrs on an equitable basis.

On March 8, 1989, the Committee held its annual winter meeting to formulate its marketing policy for the 1989–90 crop year. It determined that implementation of § 929.49 (the establishment of a marketable quantity and annual allotment) was not warranted. However, the Committee noted that cranberry production, as in recent years, was projected to exceed the total of all current producers' allotment bases and recommended that additional base be issued to all qualified new and existing producers to the full amount to which each producer requested, contingent on the producer's demonstrated ability to produce and sell cranberries. The increase would make additional base quantity available to new and existing producers by increasing the 2.0 percent minimum base quantity reserve, as currently porovided, to 7.28 percent. This increase would also aid in the updating of base quantities, which would be necessary for any future establishment of a marketable quantity and annual allotment. In addition, this proposed rule is responsive to the U.S. Department of Agriculture's *Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders* which provide for the removal of barriers to entry.

The impact of this regulation on producers and handlers would not be significant because the change represents a relaxation of restrictions by increasing the total amount of base quantity available to producers. The increase in the amount of base quantity to be issued represents the total amount of base quantity requested by qualified new and existing producers for the 1989–90 crop year. The Committee intends to distribute base quantity reserve to approximately 25 new producers and 411 existing producers. This proposed rule would not alter any reporting or recordkeeping requirements currently in effect.

Based on the available information, the Administrator of the AMS has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 929

Marketing agreements and orders, Cranberries, Massachuesetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and New York.

For the reasons set forth in the preamble, 7 CFR Part 929 is proposed to be amended as follows:

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

1. The authority citation for 7 CFR Part 929 continues to read as follows:

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

2. Section 929.153 is amended by revising paragraph (a) to read as follows:

Subpart—Rules and Regulations

§ 929.153 Base quantity reserve.

(a) *Establishment.* An annual reserve base quantity equal to 2 percent of total base quantities is hereby established: *Provided,* That, for the 1989–90 crop year, the reserve base quantity shall be 7.28 percent.

* * * * *

Dated: April 25, 1989.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–10229 Filed 4–27–89; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 998

[Docket No. FV–89–041]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures for administration and indemnification, establish an assessment rate, and authorize continuation of an indemnification reserve under Marketing Agreement 146 for the 1989–90 crop year. Funds to administer this program are derived from assessments on handlers.

DATE: Comments must be received by May 9, 1989.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456. Comments should reference the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Patrick Packnett, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2530–S, Washington, DC 20090–6456, telephone 202–475–3862.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement 146 [7 CFR Part 998] regulating the quality of domestically produced peanuts. This agreement is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

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

Pursuant to requirements set forth in the Regulatory Flexibility Act (FRA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed 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.

There are approximately 68 handlers of peanuts covered under the peanut marketing agreement, and approximately 46,950 producers in the 16 states covered under the agreement. Small agricultural producers have been defined by the Small Business Administration [13 CFR § 121.2] as those having annual gross revenues for the last three years of less than $100,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. Some of the handlers covered under the agreement are small entities, and a majority of producers may be classified as small entities.

Under the marketing agreement, the assessment rate for a particular crop year applies to all assessable tonnage handled from the beginning of such year (i.e., July 1). As annual budget of expenses is prepared by the Peanut Administrative Committee (committee) and submitted to the Department of Agriculture for approval. The members of the committee are handlers and producers of peanuts. They are familiar with the committee's needs and with the costs for goods, services and personnel

for program operations and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed at industry-wide public meetings. Thus, all directly affected persons have an opportunity to participate and provide input. The handlers of peanuts who will be directly affected have signed the marketing agreement authorizing approval of expenses that may be incurred and the imposition of assessments.

The assessment rate recommended by the committe was derived by dividing anticipated expenses by expected receipts and acquisitions of farmers' stock peanuts. It automatically applies to all assessable peanuts received by handlers from July 1, 1989. Because that rate is applied to actual receipts and acquisitions, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses. The recommended budget, rate of assessment, and the continuation of an indemnification reserve were acted upon by the committee on March 28–29, 1989, and expenses are incurred on a continuous basis. Therefore, this budget and assessment rate approval must be expedited so that the committee will have funds to pay its expenses starting on July 1, 1989.

The committee unanimously recommended a 1989–90 budget of administrative expenses of $850,000 or $34,000 more than budgeted last year. Budget items for 1989–90 which have increased compared to those from 1988–89 (in parentheses) are: Executive salaries, $119,521 ($114,374); field representative salaries, $225,500 ($218,000); clerical salaries, $136,000 ($120,000); employee benefits, $89,000 ($77,000); and office rent and parking, $45,700 ($43,000). All other items are budgeted at about last year's amounts except for staff travel expenses which have been decreased from $11,000 to $5,000. Other budget items have also been decreased slightly. The administrative budget includes a reserve for contingencies amounting to $5,279.

The recommended administrative assessment rate for the 1989–90 crop year is $0.50 per ton of assessable peanuts. Last year the assessment rate was $2.48 per ton ($0.48 for administrative expenses and $2.00 for indemnification expenses). The 1989–90 assessable tonnage was estimated at 1.7 million tons, the same as last year. Application of the assessment rate to this estimate would result in $850,000 for administrative expenses.

An estimated $8.4 million would be carried forward into the 1989–90 crop year as a reserve under the agreement to meet 1989–90 indemnification expense. This reserve is deemed adequate to cover indemnification expenses for the 1989–90 crop year. Therefore, the committee did not recommend an assessment to make monetary additions to the indemnification reserve. The reserve is well within the limits authorized by the agreement. Funding for the indemnification account will also be generated from interest on time deposits.

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

Based on the foregoing, it is found and determined that a comment period of less than 30 days is appropriate because the budget and assessment rate approval and the authorization to continue an indemnification reserve for this program need to be expedited. The committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis.

List of Subjects in 7 CFR Part 998

Marketing agreement, Peanuts.

For the reasons set forth in the preamble, it is proposed that § 998.402 be added as follows:

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

1. The authority citation for 7 CFR Part 998 continues to read as follows:

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

2. New § 998.402 is added to read as follows:

§ 998.402 Expenses, assessment rate, and indemnification reserve.

(a) *Administrative expenses.* The budget of expenses for the Peanut Administrative Committee for the crop year beginning July 1, 1989, shall be in the amount of $850,000, such amount being reasonable and likely to be incurred for the maintenance and functioning of the committee and for such purposes as the Secretary may, pursuant to the provisions of the marketing agreement, determine to be appropriate.

(b) *Indemnification expenses.* Expenses of the committee for indemnification payments, pursuant to the terms and conditions of indemnification applicable to the 1989 crop, effective July 1, 1989, are not expected to exceed the balance of the indemnification reserve (approximately $8.4 million), such amount being reasonable and likely to be incurred.

(c) *Rate of assessment.* Each handler shall pay to the committee, in accordance with § 998.48 of the marketing agreement, an assessment rate at the rate of $0.50 per net ton of farmers' stock peanuts received or acquired other than from those described in §§ 998.31 (c) and (d). All funds generated from this assessment shall be for administrative expenses.

(d) *Indemnification reserve.* Monetary additions to the indemnification reserve, established in the 1965 crop year pursuant to the § 998.48 of the agreement, shall continue. That portion of the total assessment funds accrued from previous crop years and not expended in providing indemnification on the 1989 crop peanuts shall be kept in such reserve and shall be available to pay indemnification expenses on subsequent crops.

Dated April 25, 1989.

William J. Doyle,

Deputy Associate Director, Fruit and Vegetable Division.

[FR Doc. 89–10230 Filed 4–27–89; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 1135

[DA–89–021]

Milk in the Southwestern Idaho-Eastern Oregon Marketing Area; Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This notice invites written comments on a proposal to continue a suspension of portions of the Southwestern Idaho-Eastern Oregon Federal milk order. The provisions proposed to be suspended relate to the limits on the amount of milk not needed for fluid (bottling) use that may be moved directly from farms to nonpool manufacturing plants and still be priced under the order. Suspension of the provisions was requested by a cooperative association representing a majority of the producers supplying the market to prevent uneconomic movements of milk. The proposed

suspension would continue for the months of June through November 1989 the suspension that has been in effect since December 1988.

DATE: Comments are due on or before May 5, 1989.

ADDRESS: Comments (two copies) should be filed with the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–7183.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

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

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), the suspension of the following provisions of the order regulating the handling of milk in the Southwestern Idaho-Eastern Oregon marketing area is being considered for June through November 1989:

In § 1135.13, paragraphs (f) (3), (4), (5) and (6).

All persons who want to send written data, views, or arguments about the proposed suspension should send two copies of them to the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20250–6456, by the 7th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to 7 days to permit completion of the required procedures to make the action effective for the month of June.

The comments that are sent will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

Dairymen's Creamery Association, Inc. (DCA), an association of producers that supplies much of the market's fluid milk needs and handles much of the market's reserve milk supplies, requested the suspension. The suspension would continue to remove for June through November 1989 the limit on the amount of producer milk that a cooperative association or other handler may divert from pool plants to nonpool plants.

The order provides that a cooperative association may divert up to 80 percent of its total member milk received at all pool plants or diverted therefrom during any month. Similarly, the operator of a pool plant may divert up to 80 percent of its receipts of producer milk (for which the operator of such plant is the handler during the month) during any month.

DCA indicates that operation of the 80-percent diversion limit would result in over 2,000,000 pounds of milk being unloaded and reloaded each month at another cooperative's Meridian, Idaho, pool supply plant so that it can be transferred as pool milk to nonpool manufacturing plants. Such unnecessary handling, according to the cooperative, would be undertaken for the sole purpose of meeting the delivery requirements of the order. The cooperative states that such unnecessary unloading and reloading takes employee's time, increases the exposure of milk to contamination, and requires additional cleaning of lines and tanks.

DCA states that the requested suspension will allow the pooling of milk of producers who stand ready to supply the fluid milk requirements of the marketing area to be handled without undue expense. The cooperative does not believe that the suspension would encourage the pooling of milk of producers who are not bona fide suppliers of the bottling needs of the market. During the requested suspension, DCA expects to evaluate the advisability of proposing permanent amendments to the order to eliminate such unnecessary handling in the future.

DCA was joined in its request by Western Dairymen Cooperative, Inc. (WDCI), a cooperative association that represents producers whose milk is pooled under the order. WDCI states that it expects to benefit from the proposed suspension in the same way that DCA would because of greatly reduced hauling costs, as well as a reduction of the costs involved in operating the cooperative's supply plant.

List of Subjects in 7 CFR Part 1135

Milk marketing orders, Milk, Dairy products.

The authority citation for 7 CFR Part 1135 continues to read as follows:

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

Signed at Washington, DC, on: April 25, 1989.

J. Patrick Boyle,

Administrator.

[FR Doc. 89–10228 Filed 4–27–89; 8:45 am]

BILLING CODE 3410-02-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

Business Loans

AGENCY: Small Business Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: Pub. L. 100–590, enacted November 3, 1988, amended the *alter ego* rule for development companies so that complete identity of ownership interests would not be required if certain listed family members were owners of the operating business and the so-called *alter ego*, the real estate holding company. This proposed rule proposes an identical change in the regulations for *alter ego* loan guarantees made under section 7(a) of the Small Business Act (15 U.S.C. 636(a)).

DATE: Comments must be submitted on or before May 30, 1989.

ADDRESS: Comments may be mailed to Charles R. Hertzberg, Deputy Associate Administrator for Financial Assistance, 1441 L Street, NW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Charles R. Hertzberg, (202) 653–6574.

SUPPLEMENTARY INFORMATION: On November 3, 1988, Pub. L. 100–590, 102 Stat. 2989, was enacted (1988 legislation). Section 114 of the 1988 legislation amended the Small Business Investment Act of 1958 (15 U.S.C. 697(a)(2)) to lessen the restrictions on the use of the *alter ego* rule in the development company area. Under the old rule, there had to be a complete identity of ownership interests between the applicant real estate holding company (the *alter ego*) and the operating small business concern. The 1988 legislation provided that there did not have to exist a complete identity of ownership interests if one or more of the following classes of relatives have the ownership interests in either the *alter ego* real estate entity or the operating

small business concern: father, mother, son, daughter, wife, husband, brother or sister. Regulations implementing this change have been promulgated with respect to development companies (54 FR 6265, February 9, 1989).

There is no reason to have a different *alter ego* rule with respect to loans guaranteed under section 7(a) of the Small Business Act (15 U.S.C. 636(a)). Up until the present time, the *alter ego* regulations for both the development company area (13 CFR Part 108) and section 7(a) loans (13 CFR Part 120) have been substantially similar. It is proper to interpret that if Congress expressly amended the rule for development companies, the Agency should revise the rule for section 7(a) loans so that the rules would continue to be substantially similar. S. Rep. 416, 100th Cong., 2nd Sess (1988), stated that the former strict rule had prevented a number of meritorious projects from receiving financing. Similarly, while the Small Business Administration (SBA) does not maintain statistics in this regard, it is possible that strict adherence to the complete identity of interest rule has also prevented some meritorious financing in the loan guaranty field.

Section 120.101–2(e)(5) of SBA regulations (13 CFR 120.101–2(e)(5)) would be amended so that the ownership interests between the applicant real estate holding company (the *alter ego*) and the operating small concern would not need to be identical if such ownership was by the father, mother, son, daughter, wife, husband, brother or sister.

For purposes of the Regulatory Flexibility Act (5 U.S.C. 605(b)), SBA certifies that this proposed rule, if promulgated in final form, will not have a significant impact on a substantial number of small entities since the preponderance of the Agency's guaranteed loans are not made to *alter ego* applicants of small concerns. Similarly, SBA certifies that this proposed rule does not constitute a major rule for the purposes of Executive Order 12291, since the change is not likely to result in an annual effect on the economy of $100 million or more.

If promulgated in final form, this proposed rule would not impose additional reporting or recordkeeping requirements which would be subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

This proposed rule would not have federalism implications warranting the preparation of a Federal Assessment in accordance with Executive Order 12612.

List of Subjects in 13 CFR Part 120

Loan programs/Business.

Pursuant to the authority contained in section 5(b)(6) of the Small Business Act (15 U.S.C. 634(b)(6)), SBA proposes to amend Part 120, Chapter I, Title 13, Code of Federal Regulations, as follows:

PART 120—BUSINESS LOAN POLICY

1. The authority citation for Part 120 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6) and 636(a)(h).

2. Section 120.101–2(e)(5) would be amended by revising it to read as follows:

§ 120.101–2 Type of business.

* * * * *

(e) *Lending or investment, "Alter Ego."*

* * * * *

(5) It must have ownership interest(s) completely identical with and in the same proportion as the ownership interest(s) in the operating company and agree in writing that such identity of ownership shall remain unchanged until the loan is paid in full or unless SBA gives written approval for an earlier change, *Provided, however,* That SBA shall not decline a loan or a guaranty to an applicant when the ownership interests in the operating small concern and in such applicant holding company are not identical and not in the same proportion solely because one or more of the following members of the same family have such interest or interests in one and/or the other: father, mother, son, daughter, wife, husband, brother or sister. In each such case, SBA shall make a determination that such ownership, such guaranty and the proceeds of such loan will substantially benefit the operating small concern.

* * * * *

(Catalog of Federal Domestic Assistance Programs No. 59.012, Small Business Loans)

Dated: February 27, 1989.

James Abdnor,

Administrator.

[FR Doc. 89–10180 Filed 4–27–89; 8:45 am]

BILLING CODE 8025–01–M

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13 CFR Part 122

Business Loans

AGENCY: Small Business Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Small Business Administration Reauthorization and Amendment Act of 1988, Pub. L. 100–590 (102 Stat. 2989), (the 1988 legislation), enacted November 3, 1988, authorizes the Small Business Administration (SBA) to guaranty loans up to $1,000,000 to eligible small concerns for financing pollution control facilities. This proposed regulation would implement this new authority under section 7(a) of the Small Business Act (15 U.S.C. 636(a)).

DATE: Comments must be submitted on or before May 30, 1989.

ADDRESS: Comments may be mailed to: Everett Shell, Small Business Administration, 1441 L Street, NW., Room 804, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Everett Shell, 202–653–6470.

SUPPLEMENTARY INFORMATION: For ten years, the Small Business Administration (SBA) has had the authority under the Small Business Investment Act of 1958 (15 U.S.C. 694–1) (SBI Act) to guaranty 100 percent of a loan to an eligible small concern to finance pollution control facilities. The 1988 legislation in effect revokes this program and, in lieu thereof, adds this authority to section 7(a) of the Small Business Act (15 U.S.C. 636(a)) while retaining the purpose for such lending as set forth in the SBI Act. There are several effects of this change. First, the amount of a loan that can be guaranteed under the new legislation cannot exceed $1,000,000. (Under the SBI Act, SBA could guarantee up to $5 million.) Second, the funding for the financing under the new legislation comes from the SBA business loan and investment fund applicable to section 7(a). (Under the SBI Act, there existed a separate revolving fund.) This means that other financing under section 7(a) to the small concern will reduce the SBA assistance available for pollution control financing. Third, the fees payable to SBA under the financing available in the SBI Act are eliminated. Instead, the borrower would be liable under section 7(a) for just the 2 percent guaranty fee chargeable for all section 7(a) loans.

Proposed § 122.58–1 would set forth the policy of Congress to authorize SBA to provide guaranteed loans to eligible small concerns for pollution control facilities.

Proposed § 122.58–2 would define a "pollution control facility" as set forth in the SBI Act. Thus, it would mean such property (both real and personal) which is likely to help prevent, reduce, abate or control noise, air or water pollution or contamination by removing, altering, disposing or storing pollutants, contaminants, wastes or heat, and such property (both real and personal) which would be used for the collection, storage, treatment, utilization, processing, or final disposal of solid or liquid waste, including any related resource recovery property when such

recovery property is stated to be useful for pollution abatement by local, State or Federal environmental regulatory authority.

Proposed § 122.58–3 would require that the small concern meet the criteria generally applicable to section 7(a) borrowers: be independently owned and operated, not dominant in its field, and subject to the eligibility rules set forth in Part 120 of SBA regulations. Further, the size standards in Part 121 of SBA regulations applicable to section 7(a) borrowers generally would be applicable to borrowers under this program. The particular size standard in the regulations presently which applied under the SBI Act authority would not be applicable under this new authority since Congress clearly intended to apply the section 7(a) rules and criteria to this program.

Proposed § 122.58–4 would state that the amount that can be guaranteed under this program cannot exceed $1,000,000 which is an expressed statutory exception to the $750,000 applicable to section 7(a) borrowers generally. The proposed section would also ensure that a borrower who has obtained other Section 7(a) financing first will be eligible for pollution control financing up to a limit of $1,000,000 less the amount of previous outstanding SBA section 7(a) financing.

For purposes of the Regulatory Flexibility Act (5 U.S.C. 605(b)), SBA certifies that this proposed rule will not, if promulgated in final form, have a significant impact on a substantial number of small entities. This is because, in recent years, when higher guaranty financing has been available, fewer pollution control applications have been submitted to SBA. SBA anticipates even fewer applications under the lower financing maximum proposed here.

For the same reason, SBA certifies that this proposed rule does not constitute a major rule for the purposes of Executive Order 12291, since the change is not likely to result in an annual effect on the economy of $100 million or more.

The proposed rule, if promulgated in final form, would not impose additional reporting or recordkeeping requirements which would be subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

This proposed rule would not have federalism implications warranting the preparation of a Federal Assessment in accordance with Executive Order 12612.

List of Subjects in 13 CFR Part 122

Loan programs/Business.

Pursuant to the authority contained in section 5(b)(6) of the Small Business Act (15 U.S.C. 634(b)(6)), SBA hereby proposes to amend Part 122, Chapter I, Title 13, Code of Federal Regulations, as follows:

PART 122—[AMENDED]

1. The authority citation for Part 122 is the same:

Authority: 15 U.S.C. 634(b)(6) and 636(a)

2. New §§ 122.58 through 122.58–4 would be added to read as follows:

§ 122.58 Pollution Control Program.

§ 122.58–1 Policy.

The Act authorizes SBA to guaranty loans to assist a small concern to finance the planning, design, or installation of a pollution control facility. No direct financing by SBA is authorized.

§ 122.58–2 Pollution control facility.

A "pollution control facility" means such property (both real and personal) which is likely to help prevent, reduce, abate, or control noise, air or water pollution or contamination by removing, altering, disposing or storing pollutants, contaminants, wastes or heat, and such property (both real and personal) which will be used for the collection, storage, treatment, utilization, processing, or final disposal of solid or liquid waste, including any related resource recovery property when such recovery property is stated to be useful for pollution abatement by a local, State or Federal environmental regulatory authority.

§ 122.58–3 Eligibility.

In order to be eligible for a guarantee for a pollution control facility, the small concern must:

(a) Be independently owned and operated and not dominant in its field;

(b) Be eligible under SBA loan policy as set forth in Part 120 of this Title; and

(c) Together with its affiliates (as defined in § 122.3–2(a)) qualify as a small business as defined for section 7(a) borrowers generally in Part 121 of this Title. The provisions of § 121.4(f) of this Title expressly do not apply to loans guaranteed in this section.

§ 122.58–4 Amount.

The guaranty by SBA shall not exceed $1,000,000 for financing a pollution control facility. The aggregate amount of $1,000,000 available from the business loan and investment fund under this section shall be reduced by any other financing from SBA pursuant to section 7(a) of the Small Business Act.

Dated: February 27, 1989.

James Abdnor,

Administrator.

[FR Doc. 89–10179 Filed 4–27–89; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89–NM–46–AD]

Airworthiness Directives; Boeing Model 737–100, –200, and –200C Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD), applicable to Boeing Model 737–100, –200, and –200C series airplanes, which currently requires repetitive ultrasonic inspections of the aft engine mount cone bolt, verification of the cone bolt torque, and mandatory installation of aft engine mount secondary supports and a cone bolt failure indicator. This action would reduce the compliance time for the installation of the aft engine mount secondary supports and cone bolt failure indicator. This proposal is prompted by a recent incident of an aft engine mount cone bolt failure which caused separation of an engine from the airplane.

DATE: Comments must be received no later than May 22. 1989.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 89–NM–46–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Steven C. Fox, Airframe Branch, ANM–120S; telephone (206) 431–1923.

Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89–NM–46–AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On January 27, 1989, FAA issued Telegraphic AD T89–02–53, Revision 1 (RI), which superseded AD 88–01–07–RI, Amendment 39–6044 (53 FR 39250; October 6, 1988), applicable to Boeing Model 737–100, –200, and –200C series airplanes, to require repetitive ultrasonic inspections of the aft engine mount cone bolt, verification of cone bolt torque, and mandatory installation of aft engine mount secondary supports and a cone bolt failure indicator within 4,000 landings after November 17, 1988. That action was prompted by a report of an incident which occurred on January 20, 1989, where an engine separated from a Model 737–200 airplane during flight. The engine separation was attributed to the failure of the aft engine mount cone bolt.

As a result of this incident, which was the second reported engine separation in flight, the FAA has determined that the current compliance time for the requirement to install the improved secondary engine mount safety bolt and cone bolt failure indicator must be reduced to the minimum time required to provide an acceptable level of safety, consistent with the current forecast of parts availability.

Since this condition may exist or develop on other airplanes of this same type design, an AD is proposed that would supersede Telegraphic AD T89–02–53–RI, with a new AD which would retain the repetitive inspections currently required, but would reduce the compliance time for installation of the secondary engine mount safety bolt and cone bolt failure indicator from "4,000 landings" to "within the next 3,000 landings after November 17, 1988, or within 5 months after the effective date of this AD, whichever occurs first."

There are approximately 1,144 Model 737–100, –200, and –200C series airplanes of the affected design in the worldwide fleet. It is estimated that 432 airplanes of U.S. registry would be affected by this AD, that it would take approximately 18 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $311,040.

The regulations proposed herein 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. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By superseding telegraphic AD T89–02–53–R1, issued January 27, 1989, which superseded AD 88–01–07–R1, Amdt 39–6044 (53 FR 39250; October 6, 1988), with the following new airworthiness directive:

Boeing: Applies to all Model 737–100, –200, and –200C series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent separation of an engine from the airplane as a result of the failure of an aft cone bolt, accomplish the following:

A. Within the next 150 landings after January 27, 1989 (issuance date of Telegraphic AD T89–02–53–R1), unless previously accomplished within the last 150 landings, and thereafter at intervals not to exceed 300 landings, inspect for cracks in the aft engine mount cone bolt, in accordance with Boeing Alert Service Bulletin 737–71A1212, dated December 22, 1987, using ultrasonic inspection techniques. Replace cracked cone bolts, prior to further flight, with bolts that have been inspected in accordance with the Boeing alert service bulletin, using magnetic particle inspection techniques. Replaced cone bolts must be ultrasonically inspected for internal cracking in accordance with the provisions of this paragraph at intervals not to exceed 300 landings.

Note: Special care should be taken to ensure proper seating of the cone bolt and washers prior to torquing to ensure that torque applied is maintained.

B. At the next ultrasonic inspection, as required by paragraph A., above, unless previously accomplished after cone bolt installation, accomplish a torque check to verify that the cone bolt is torqued to the proper torque limit specified in the appropriate Boeing maintenance manual. This check is to be accomplished without loosening the bolt.

1. If the cone bolt torque is below one half the specified torque, remove the cone bolt and replace it with a serviceable bolt.

2. If the cone bolt torque is equal to or above one-half the specified torque, but below the specified torque, re-torque to the specified level and re-check the torque within the next 300 landings. If, at that time, the torque is below 90 percent of the specified torque, replace the cone bolt with a serviceable bolt.

3. If the cone bolt is within 10 percent of the specified torque, no further torque checks are required.

After every cone bolt installation, accomplish the torque check procedure required by this paragraph, between 150 landings and 300 landings following installation.

C. Within 3,000 landings after November 17, 1988 (the effective date of AD 88-01-07-R1, Amendment 39-6044), or within 5 months after the effective date of this AD, whichever occurs first, accomplish the following:

1. Install an aft engine mount secondary support (2 per airplane), in accordance with Boeing Service Bulletin 737-71-1069, Revision 1, dated May 19, 1988.

2. Install an aft engine mount cone bolt failure indicator, externally, on each engine nacelle, in accordance with Boeing Service Bulletin 737-71-1069, Revision 1, dated May 19, 1988.

3. Following the accomplishment of paragraph C.2., above, inspect the aft mount cone bolt indicator at intervals thereafter not to exceed 3 calendar days (72 hours) on in-service airplanes. Improper alignment indicates a broken aft cone bolt. Broken cone bolts must be replaced with airworthy parts prior to further flight.

Accomplishment of the requirements of this paragraph constitutes terminating action for the requirements of paragraphs A. and B., above.

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

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

Note: Any alternate means of compliance previously approved for paragraph B. of AD 88-01-07-R1, Amendment 39-6044, constitutes alternate means of compliance with paragraph C. of this AD.

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

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

Issued in Seattle, Washington, on April 17, 1989.

Leroy A. Keith,

Manager, Transport Airplane Directorate Aircraft Certification Service.

[FR Doc. 89-10198 Filed 4-27-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-NM-24-AD]

Airworthiness Directives: British Aerospace Model DH/HS/BH/BAE 125 Series Airplanes, Equipped With Sundstrand Turbomach Titan Gas Turbine Auxiliary Power Units (APU), Model T-62T Series, Installed in the Aft Equipment Compartment of the Airplane

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to British Aerospace Model DH/HS/BH/BAe 125 series airplanes equipped with certain APU's, which would require a revision to the Airplane Flight Manual Supplement Limitations Section and the installation of a placard in the cockpit prohibiting the use of the APU during flight. This proposal is prompted by an FAA inspection of the APU, installed in accordance with a certain Supplemental Type Certificate (STC), in which it was determined that this unit must be restricted to ground use only. This condition, if not corrected, could result in a fire in the equipment compartment, a puncture of the aft pressure bulkhead, and severance of the flight control cables.

DATES: Comments must be received no later than June 13, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 89-NM-24-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Pasion, Standardization Branch, ANM-113; telephone (206) 431-1977. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM—103), Attention: Airworthiness Rules Docket No. 89-NM-24-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The FAA recently conducted an inspection of a Sundstrand Turbomach Titan Gas Turbine Auxiliary Power Unit (APU) installation in a British Aerospace Model BAe 125-800A series airplane. The APU was installed in accordance with STC No. SA4710SW. The results of the inspection revealed that the APU was not adequately isolated and installed to minimize the hazards to the airplane in the event of an uncontained rotor failure. This condition, if not corrected, could result in a fire in the aft equipment compartment, a puncture of the aft pressure bulkhead, and severance of the control cables.

These APU's have been installed in accordance with the following Supplemental Type Certificates (STC):

SA674CE
SA1196EA
SA1143EA
SA440NE
SA4710SW
SA1176EA
SA1173EA
SA1923SW

The above-listed STC's may not include all existing approved APU installations; therefore, it is the intent of this AD to apply to all Sundstrand Turbomach Titan APU installations in the aft equipment compartment.

This airplane model is manufactured in the United Kingdom and type

certificated in the United States under the provision of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other British Aerospace Model DH/HS/BH/BAe 125 series airplanes registered in the United States, modified to locate the subject APU's in the aft equipment compartment, an AD is proposed that would require a revision to the Airplane Flight Manual Supplement (AFMS) and the installation of a placard next to the APU start switch in the cockpit, prohibiting the use of the APU during flight.

It is estimated that 120 airplanes of U.S. registry would be affected by this AD, that it would take approximately 1 manhour per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The required placard may be manufactured locally and the cost is expected to be negligible. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $4,800.

The regulations proposed herein 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. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane ($40). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Section 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

British Aerospace: Applies to Model DH/HS/BH/BAe 125 series airplanes certificated in any category, equipped with Sundstrand Turbomach Titan Gas Turbine Auxiliary Power (APU) Unit, Model T-62T Series, installed in the aft equipment compartment of the airplane.

Note: Installation of the subject APU's has been in accordance with, but are not limited to, the following Supplemental Type Certificates (STC):

SA674CE
SA1196EA
SA 1143EA
SA440NE
SA4710SW
SA1176EA
SA1173EA
SA1923SW

This AD applies to all Sundstrand Turbomach Titan APU installations in the aft equipment compartment. Compliance is required as indicated unless previously accomplished.

To prevent a fire in the aft equipment compartment, puncture of the aft pressure bulkhead, and severance of the control cables, due to an uncontained APU rotor failure, accomplish the following:

A. Within the next 10 days after the effective date of this AD:

1. Revise the Limitations Section in the FAA-approved Airplane Flight Manual (AFM) Supplement to include the following statement. This may be accomplished by inserting a copy of this AD in the AFM Supplement Limitations Section: "APU USE PROHIBITED DURING FLIGHT."

2. Install a placard next to the APU start switch in the cockpit to state: "APU USE PROHIBITED DURING FLIGHT."

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Special Programs Branch, ASW-190, FAA, Southwest Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Special Programs Branch, ASW-190.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of modifications required by this AD.

Issued in Seattle, Washington, on April 14, 1989.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-10199 Filed 4-27-89; 8:45 am]

BILLING CODE 49100-13-M

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14 CFR Part 39

[Docket No. 89-NM-40-AD]

Airworthiness Directives; Cessna Model 550 and 551 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to certain Cessna Model 550 and 551 series airplanes, which would require inspection of both engine fuel flow transmitter installations, and replacement, if necessary, of certain defective transmitters. Replacement of transmitters with two-piece electrical connector end fittings would be required. This proposal is prompted by reports of failure of the two-piece electrical connector fitting, resulting in loss of fuel pressure and total engine power loss. This condition, if not corrected, could lead to additional incidents of total engine power loss and the potential for engine compartment fires.

DATES: Comments must be received no later than June 12, 1989.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-40-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Cessna Aircraft Company, Citation Marketing Division, P.O. Box 7706, Wichita, Kansas 67277. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington; or at the FAA, Central Region, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT: Mr. Jack Pearson, Aerospace Engineer, FAA, Central Region, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946-4427.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89–NM–40–AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The FAA has received reports of failures of the fuel flow transmitters on Cessna Model 550 and 551 series airplanes, which have resulted in total engine power loss due to loss of fuel flow. The failed fuel flow transmitters, Part Number (P/N) 9912031–5, were manufactured with a two-piece brazed electrical connector end fitting. The failures occurred at the brazed joint, permitting separation of the connector end fitting and loss of fuel flow to the engine fuel nozzles. This condition, if not corrected, could lead to additional total engine power losses and the potential for engine compartment fires.

The FAA has reviewed and approved Cessna Aircraft Company Service Bulletin SB550–73–2, dated February 10, 1989, which describes procedures for inspection of the engine fuel flow transmitters to determine whether a two- piece brazed electrical connector end fitting is installed, and procedures for continued inspections until fuel flow transmitters having two-piece brazed electrical connector end fittings are replaced. The FAA has also reviewed and approved Cessna Aircraft Company Service Bulletin SB550–73–12, dated February 10, 1989, which describes procedures for replacement of fuel flow transmitters found to have a two-piece electrical connector end fitting.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require inspection for and removal of Cessna Part Number 9912031–5 fuel flow transmitters having a two-piece electrical connector end fitting, and replacement with Cessna Part Number 9912031–6 fuel flow transmitters, in accordance with the service bulletins previously described.

It is estimated that 134 airplanes of U.S. registry would be affected by this AD, that it would take approximately 4 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $21,440.

The regulations proposed herein 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. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Cessna: Applies to Model 550 and 551 series airplanes, Unit Numbers –0002 through –0207 and –0209, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent failure of fuel flow transmitter electrical connector end fittings, which could result in total engine power loss or an engine compartment fire, accomplish the following:

A. Within the next 50 hours time-in-service after the effective date of this AD, inspect both engines to determine whether Cessna Part Number (P/N) 9912031–6 fuel flow transmitters are installed, in accordance with Cessna Service Bulletin SB550–73–2, dated February 10, 1989.

B. If Cessna P/N 9912031–6 fuel flow transmitters are installed on both engines, no further action is necessary.

C. If Cessna P/N 9912031–5 fuel flow transmitters are installed, inspect the transmitter electrical connector end fitting for each, in accordance with Cessna Service Bulletin SB550–73–2, dated February 10, 1989.

1. If each Cessna P/N 9912031–5 fuel flow transmitter is determined to have a one–piece electrical connector end fitting, no further action is necessary.

2. Each Cessna P/N 9912031–5 fuel flow transmitter determined to have a two-piece electrical connector end fitting must be replaced, either:

a. Prior to further flight, in accordance with Cessna Service Bulletin SB550–73–1, dated February 10, 1989; or

b. Within 6 months after the effective date of this AD, in accordance with Cessna Service Bulletin SB550–73–1, dated February 10, 1989, provided that the fitting is initially inspected in accordance with Paragraph 5 of Cessna Service Bulletin SB550–73–2, dated February 10, 1989, and inspected thereafter at intervals not to exceed 25 hours time-in-service, and found to be free of cracks between the electrical connector receptacle and the end fitting base. Any transmitter having a cracked fitting must be replaced prior to further flight, in accordance with Cessna Service Bulletin SB550–73–1. Replacement of a transmitter in accordance with Cessna Service Bulletin SB550–73–1 constitutes terminating action for the repetitive inspection requirements of this paragraph for the transmitter replaced.

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

Note: If appropriate, the request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment, and then send it to the Manager, Wichita Aircraft Certification Office.

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Cessna Aircraft Company, Citation Marketing Division, P.O. Box 7706, Wichita, Kansas 67277. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington; or at the FAA, Central Region, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

Issued in Seattle, Washington, on April 13, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-10200 Filed 4-27-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 89-ANM-01]

Proposed Amendment, Renton Control Zone, Renton, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Renton Control Zone, Renton Washington, by changing the hours of effectiveness. The rule as written publicizes the Control Zone as effective from 0700 to 2300 hours local time daily. Due to seasonal fluctuations in aircraft operations, specifically winter months, very few operations are made in the control zone after 2200 hours. This proposal would allow for changes in the hours of effectiveness by issuance of Notice to Airmen when minor variations in time of designation are anticipated. This action will bring publications up-to-date giving continuous accurate information to the aviation public.

DATES: Comments must be received on or before June 6, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace & System Management Branch, ANM-530, Federal Aviation Administration, Docket No. 89-ANM-01, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

The official docket may be examined at the same address. An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Jerry Parker, ANM-538, Federal Aviation Administration, Docket No. 89-ANM-01, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168, Telephone: (206) 431-2576.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-ANM-01." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking any action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace & System Management Branch, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular 11-2A which describes the application procedure.

The Proposal

The FAA proposes an amendment to § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to change the status of the Renton Airport Control Zone. The Renton Control Tower has modified its hours of operation, and whether observations are not available from 2200-0700 local time daily. The control zone would, therefore, be effective as published except as amended by Notice to Airmen. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12991; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal.

Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation Safety, Control zones.

The Proposed Amendment

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

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

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

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

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Renton, WA [Amended]

By deleting the following statement at the end of the present description:

This Control Zone is effective from 0700 to 2300 hours local time daily.

And replacing that statement with the following statement:

This Control Zone will be effective during the specific dates and times established by a Notice to Airman. The effective date and time will thereafter be continuously established and published in the Airport/Facility Directory.

Issued in Seattle, Washington, on March 29, 1989.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 89-10201 Filed 4-27-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 934

North Dakota Permanent Regulatory Program; Public Comment Period and Opportunity for Public Hearing on Proposed Amendment

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

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing receipt of a proposed amendment to the North Dakota permanent regulatory program (hereinafter, the "North Dakota program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment pertains to changes to the North Dakota Century Code (NDCC), Chapter 38-14.1. The amendment is intended to revise the State program to remove the two-acre exemption and to strengthen the State's law dealing with provisions for performance bond forfeiture.

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

DATES: Written comments must be received by 4:00 p.m., m.d.t. May 30, 1989. If requested, a public hearing on the proposed amendment will be held on May 23, 1989. Requests to present oral testimony at the hearing must be received by 4:00 p.m., m.d.t. on May 15, 1989.

ADDRESSES: Written comments should be mailed or hand delivered to Mr. Jerry R. Ennis at the address listed below.

Copies of the North Dakota program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSMRE's Casper Field Office.

Mr. Jerry R. Ennis, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 East B Street, Room 2128, Casper, WY 82601-1918, Telephone: (307) 265-5776.

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

North Dakota Public Service Commission, Reclamation Division, Capitol Building, Bismarck, ND 58505-0165, Telephone: (701) 224-4096.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry R. Ennis, Director, Casper Field Office, at the address or telephone number listed in "ADDRESSES."

SUPPLEMENTARY INFORMATION:

I. Background on the North Dakota Program

On December 15, 1980, the Secretary of the Interior approved the North Dakota program. Information regarding the general background on the North Dakota program, including the Secretary's findings, the disposition of comments, and detailed explanation of the conditions of approval of the North Dakota program can be found in the December 15, 1980 **Federal Register** (45 FR 82246). Subsequent actions taken with regard to North Dakota's program and program amendments can be found at 30 CFR 934.14, 934.15, and 934.16.

II. Proposed Amendment

By letter dated April 11, 1989, administrative record No. ND-I-01, North Dakota submitted a proposed amendment to its program pursuant to SMCRA. North Dakota submitted the proposed amendment at its own initiative. The statutes that North Dakota proposes to amend are: NDCC 38-14.1-37 (1) (Removal of the two-acre exemption.) NDCC 38.14.1-39 (Appropriation of performance bond forfeiture funds.)

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSMRE is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the North Dakota program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Casper Field Office will not be considered in the final rulemaking or included in the administrative record.

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4:00 p.m., m.d.t. on May 15, 1989. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSMRE representatives to discuss the proposed amendment may request a meeting by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under "**ADDRESSES.**" A written summary of each meeting will be made a part of the administrative record.

List of Subjects in 30 CFR Part 934

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

Date: April 21, 1989.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

[FR Doc. 89-10222 Filed 4-27-89; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-3563-4]

Standards of Performance for New Stationary Sources; Amendments to Subpart J (Petroleum Refineries) and Addition of Performance Specification 7 to Appendix B

AGENCY: Environmental Protection Agency (EPA).

ACTION: Technical amendment and extension of the public comment period.

SUMMARY: A notice entitled "Amendments to Subpart J (Petroleum Refineries) and Addition of Performance Specification 7 to Appendix B" was published in the **Federal Register** on March 1, 1989 (54 FR 8570). This proposed rule is applicable to fuel gas combustion devices and Claus plants in petroleum refineries that are subject to Subpart J of 40 CFR Part 60. The section of the announcement detailing Performance Specification 7 (PS 7) was inadvertently left out of the publication. The purpose of this action is to propose PS 7 and to extend the public comment period for the proposed Subpart J amendments to allow for complete review of the subject matter.

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.

DATES: *Comments.* Comments must be received on or before July 12, 1989.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by May 19, 1989, a public hearing will be held on June 12, 1989 beginning at 10:00 a.m. Persons interested in attending the hearing should call Foston Curtis at (919) 541–1063 to verify that a hearing will be held.

Request to Speak at Hearing. Persons wishing to present oral testimony must contact EPA by May 19, 1989.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to: Central Docket Section (LE–131), Attention: Docket Number A–88–24, U.S. Environmental Protection Agency, South Conference Center, Room 4, 401 M Street, SW., Wasington, 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), Technical Support Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–1063.

Docket. Docket No. A–88–24, containing materials relevant to this rulemaking, is available for public inspection and copying between 8:00 a.m. and 3:30 p.m., Monday through Friday, at EPA's Central Docket Section, South Conference Center, Room 4, 401 M Street, SW., Wasington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Foston Curtis or Roger T. Shigehara, Emission Measurement Branch (MD–19), Technical Support Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–1063.

SUPPLEMENTARY INFORMATION:

List of Subjects in 40 CFR Part 60

Air pollution control.

Date: April 21, 1989.

Donald Clay,

Acting Assistant Administrator for Air and Radiation.

It is proposed that 40 CFR Part 60 be amended as follows:

PART 60—[AMENDED]

1. The authority for 40 CFR Part 60 continues to read:

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 Appendix B, by adding Performance Specification 7 as follows:

Appendix B—Performance Specifications

* * * * *

Performance Specification 7—Specifications and Test Procedures for Hydrogen Sulfide Continuous Emission Monitoring Systems in Stationary Sources

1. *Applicability and Principle*

1.1 Applicability.

1.1.1 This specification is to be used for evaluating the acceptability of hydrogen sulfide (H_2S) continuous emission monitoring system (CEM's) at the time of or soon after installation and whenever specified in an applicable subpart of the regulations.

1.1.2 This specification is not designed to evaluate the installed CEMS performance over an extended period of time nor does it identify specific calibration techniques and other auxiliary procedures to assess CEMS performance. The source owner or operator, however, is responsible to calibrate, maintain, and operate the CEMS. To evaluate CEMS performance, the Administrator may require, under Section 114 of the Act, the source owner or operator to conduct CEMS performance evaluations at other times besides the initial test. See Section 60.13(c).

1.1.3 The definitions, installation specifications, test procedures, data reduction procedures for determining calibration (CD's) and relative accuracy (RA), and reporting of Performance Specification 2 (PS 2), Sections 2, 3, 5, 6, 8, and 9 apply to this specification.

1.2 Principle. Reference method (RM), CD, and RA tests are conducted to determine that the CEMS conforms to the specification.

2. *Performance and Equipment Specifications*

2.1 Instrument Zero and Span. This specification is the same as Section 4.1 of PS 2.

2.2 Calibration Drift. The CEMS calibration must not drift or deviate from the reference value of the calibration gas or reference source by more than 5 percent of the established span value for 6 out of 7 test days (e.g., the established span value is 300 ppm for Subpart J fuel gas combustion devices).

2.3 Relative Accuracy. The RA of the CEMS shall be no greater than 20 percent of the mean value of the RM test data in terms of the units of the emission standard or 10 percent of the applicable standard, whichever is greater.

3. *Relative Accuracy Test Procedure*

3.1 Sampling Strategy for RM Tests, Correlation of RM and CEMS Data, Number of RM Tests, and Calculations. These are the same as that in PS 2, Sections 7.1, 7.2, 7.3, and 7.5, respectively.

3.2 Reference Methods. Unless otherwise specified in an applicable subpart of the regulation, Method 11 is the RM for this PS.

4. *Bibliography*

1. U.S. Environmental Protection Agency. Standards of Performance for New Stationary Sources; Appendix B; Performance Specifications 2 and 3 for SO_2, NO_x, CO_2, and O_2 Continuous Emission Monitoring Systems; Final Rule. 48 CFR 23608. Washington, DC, U.S. Government Printing Office. May 25, 1983.

[FR Doc. 89–10246 Filed 4–27–89; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 148

[CGD 87–069]

RIN 2115–AD02

Marine Transport of Bulk Solid Hazardous Materials

AGENCY: Coast Guard, DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering amending its regulations concerning the bulk carriage of solid hazardous materials. The amendments

being considered would add cargoes carried under Coast Guard Special Permit and cargoes included in the International Maritime Organization's Code of Safe Practice for Solid Bulk Cargoes (IMO Bulk Solids Code), including coal, to the list of hazardous cargoes permitted under the regulations. The Special Permit requirements and requirements of the IMO Bulk Solids Code would be included in the regulations. The amendments being considered would harmonize domestic regulations with international standards, and eliminate the cost of and need to apply for special permits, except for new, or infrequently shipped cargoes.

DATE: Comments must be submitted on or before June 27, 1989.

ADDRESSES: Comments should be submitted in writing to the Executive Secretary, Marine Safety Council [G-LRA-2/3600] [CGD 87-069], U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593-0001. Comments may also be delivered to and will be available for inspection or copying at the Marine Safety Council, Room 3600, at the above address, between the hours of 8 a.m. and 3 p.m., Monday through Friday, except holidays. The telephone number is (202) 267-1477.

FOR FURTHER INFORMATION CONTACT: Mrs. Dawn Anderson, Hazardous Materials Branch, Office of Marine Safety, Security and Environmental Protection, (202) 267-1217.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the earliest stages of this rulemaking procedure by submitting written views, data or arguments. Each comment should include the name and address of the person submitting the comment, refer to the docket number [CGD 87-069] of this advance notice, identify specific issues of this advance notice to which each comment applies, and give reasons for the comments. Receipt of comments will be acknowledged if a self-addressed post card or envelope is enclosed with the comments. All comments received before the expiration of the comment period will be considered before further action is taken. No public hearing is planned, however, one may be held at a time and place to be set in a later notice in the **Federal Register** if written requests for a public hearing are received and the Coast Guard determines that the opportunity to make oral presentations will aid in the rulemaking process.

Interested persons may also participate in the portions of this regulatory action concerning coal transportation by attending meetings of the Chemical Transportation Advisory Committee, Subcommittee on Coal Transportation. These meetings, held in Washington, DC, are open to the public and are announced in the **Federal Register**. The Subcommittee was formed to aid the Coast Guard in developing regulations for the safe carriage of coal.

Drafting Information

The principal persons involved in drafting this advance notice are Mrs. Dawn Anderson, Project Manager, and Lieutenant Commander Don M. Wrye, Project Counsel, Office of Chief Counsel.

Background and Discussion

Bulk solid hazardous materials include those materials grouped into a number of specific classes, the definitions of which are contained in the Department of Transportation Hazardous Materials Regulations (49 CFR 170-189), and also those materials which are hazardous only in bulk, primarily due to their tendency to spontaneously generate heat. A bulk solid hazardous material that is not listed in 46 CFR 148 may only be transported by water if the Coast Guard issues a Special Permit setting forth transportation requirements. Currently there are several standard permits which are issued by the Coast Guard on a regular basis.

The international standard for the marine transport of these materials is the IMO Bulk Solids Code. While the Bulk Solids Code currently is a recommended standard, several countries have adopted it as national regulations. Additionally, amendments have been proposed to Chapter 6 of the International Convention for the Safety of Life at Sea, 1974, as amended, (SOLAS 74/83), to adopt certain general requirements of the Bulk Solids Code as part of the Convention. Of course, if adopted, the proposed amendments to SOLAS 74/83 would become mandatory for those countries signatory to the Convention, including the United States. As a result of the above, many international shipments already comply as a matter of practice with the requirements of the Bulk Solids Code.

The amendments being considered would revise 46 CFR 148 by adding cargoes currently carried under Coast Guard Special Permit and cargoes included in the IMO Bulk Solids Code, including coal, to the list of permitted cargoes. The Special Permit requirements and requirements of the IMO Bulk Solids Code would be included in the regulations. Lastly, the amendments would eliminate conflicts and vagaries in the current regulations.

This advance notice of proposed rulemaking is intended to provide industry and interested parties the opportunity to comment at this early stage in the rulemaking process on how best to conform domestic regulations to existing practice and the proposed amendments to SOLAS 74/83, if adopted. The Coast Guard invites comments on all aspects of the marine transportation of bulk solid hazardous materials, and particularly on the following topics.

1. How can the present regulations be changed to improve the clarity of the regulations and the level of safety they provide?

2. What are the requirements that need to be added to the current special permit requirements to ensure adequate safety of the vessel and its crew? What Special Permits requirements are unnecessary for safety?

The following materials are being considered for inclusion in 46 CFR 148:

A. Materials currently shipped under Special Permit:

a. Ammonium Nitrate Phosphate—containing 70-90% ammonium nitrate and not more than 0.4% combustible material.

b. Ammonium Nitrate—fertilizer grade—as defined in 49 CFR 173.182 footnote #1.

c. Charcoal breeze.

d. Direct Reduced Iron (DRI)—hot molded briquettes.

e. Direct Reduced Iron (DRI)—lumps, pellets and cold molded briquettes.

f. Ferrosilicon—containing 45-70% silicon.

g. Ferrous Sulfate.

h. Hazardous Waste, Solid—designated as such by the EPA.

i. Linted Cotton Seed.

j. Uncalcined Petroleum Coke—at or above 130 °F.

k. Zinc Skimmings.

B. Materials currently listed in the IMO Bulk Solids Code (these materials do not include those already covered by Special Permit):

a. Aluminum Ferrosilicon, powder.

b. Aluminum Silicon, powder, uncoated.

c. Castor Beans.

d. Coal.

e. Fluorspar (Calcium Fluoride).

f. Iron Oxide, spent: Iron Sponge, spent.

g. Metal Sulfide Concentrates.

h. Pitch Prill, Prilled Coal Tar, Pencil Pitch.

i. Seed Cake—containing oil.

j. Silicomanganese.

k. Vanadium Ore.

l. Wood Pulp Pellets, Woodchips.

3. Which, if any, of the materials listed above can be carried safely without detailed requirements?

4. Which, if any, of the above materials should continue to be considered on a case by case basis and authorized only through the issuance of a Special Permit? Why?

5. Which of the above materials are currently being transported in bulk by water?

6. Are there any materials not listed above or in 46 CFR 148 which should be regulated for bulk transport by water? What are they and why should they be regulated?

The amendments being considered would include the following requirements of the IMO Bulk Solids Code in 46 CFR 148, in order to conform U.S. regulations with existing practice and proposed revisions to Chapter 6 of SOLAS 74/83:

a. General loading and unloading requirements;

b. Provision of information by the shipper, to the master, regarding the nature of the material, chemical hazards, flow moisture point, moisture content, stowage factor, and angle of repose;

c. Trimmimg procedures, including suggested methods for determining the angle of repose, moisture content and flow moisture point of the material; and

d. Precautions to be taken when poisoning or asphyxiation hazards are present.

7. What requirements, if any, in addition to the requirements of the IMO Bulk Solids Code being considered for inclusion in Part 148 are necessary to ensure safety?

8. Amendments being considered include the addition of a list of non-hazardous bulk materials, which would not be subject to the regulations developed, and a list of solid materials too hazardous to be carried in bulk. Should such lists be included? If so, what materials should be included in each list?

9. Which, if any, of the current regulations, or the amendments being considered, are too restrictive for application to unmanned barges trading solely on the inland waters of the U.S.? Why are they too restrictive? What alternatives would provide for an adequate level of safety?

Preliminary Economic Analysis and Certification

At this early stage in the rulemaking process, the Coast Guard anticipates that its final rules will not be considered major under Executive Order 12291, or significant under the Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979).

The primary economic impact of the amendments under consideration would be on shippers and carriers of solid hazardous materials in bulk. However, since the IMO Bulk Solids Code has already been adopted by several countries, most U.S. export shipments are already in compliance with many of the amendments being considered. The amendments being considered would actually simplify export shipments by harmonizing U.S. regulations with international standards, alleviating the need to comply with two separate standards.

Since the purpose of the amendments under consideration is simply to consolidate and update existing regulations, and to conform the regulations to existing practice, the Coast Guard certifies that, if adopted, they will not have a significant economic impact on a substantial number of small entities.

At this time the economic impact of the amendments being considered is anticipated to be minimal. If the Coast Guard learns that the financial impact of these regulations, if adopted, would be more than minimal, a detailed regulatory evaluation will be performed at that time.

Paperwork Reduction Act

Under present regulations shippers must apply for a special permit to ship any bulk solid hazardous material not listed in 46 CFR 148. These permits expire after two years and a new application, along with a record of the shipping history, must be submitted and approved for the continued shipment of the material. The amendments being considered would eliminate the need to apply for (and therefore the need to renew) special permits for most materials. Materials newly classified as hazardous and those shipped infrequently would still require a special permit. Approximately 15 requests are received annually, either for new permits or renewals. These requests, and the recordkeeping necessary for permit renewal, will be eliminated by the amendments under consideration.

Federalism Statement

This advance notice of proposed rulemaking has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the concepts discussed herein do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Dated: April 20, 1989.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 89-10160 Filed 4-27-89; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89-90, RM-6679]

Radio Broadcasting Services; Kosciusko, MS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by G. Michael Comfort, proposing the allotment of FM Channel 271A to Kosciusko, Mississippi, as that community's second FM broadcast service. The coordinates for Channel 271A are 23-06-42 and 89-40-36. There is a site restriction 10.3 kilometers northwest of the community.

DATES: Comments must be filed on or before June 16, 1989, and reply comments on or before July 3, 1989.

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:

G. Michael Comfort, 711 Thorngrove Cove, Columbus, Mississippi 39701.

Larry G. Fuss, Contemporary Communications, P.O. Box 4010, Opelika, Alabama 36801 (Consultant to the petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-90, adopted April 11, 1989, and released April 24, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-10154 Filed 4-27-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-91, RM-6659]

Television Broadcasting Services; Billings and Lewistown, MT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Comanche Enterprises, proposing the allotment of TV Channel 13 to Billings, Montana. The coordinates for Channel 13 at Billings are 45-46-48 and 108-30-18. Canadian concurrence is required for this allotment. The allotment at Billings requires the deletion of Channel 13 at Lewistown, Montana, and a site restriction on Channel 13 (vacant), at Glendive, Montana, 58.4 kilometers (36.3 miles) northwest. The new coordinates for Channel 13 at Glendive are 47-26-32 and 105-18-21.

DATES: Comments must be filed on or before June 16, 1989, and reply comments on or before July 3, 1989.

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: Mr. Richard J. Fox, Comanche Enterprises, 2024 Monad Road, Billings, Montana 59102.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-91, adopted April 10, 1989, and released April 24, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

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Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-10155 Filed 4-27-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 383

[FHWA Docket No. MC-89-13]
RIN 2125-AB68

Commercial Driver's License Program; Limited Waiver for State of Alaska

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of petition; request for comment.

SUMMARY: The State of Alaska has sought, and the FHWA proposes to grant, a waiver from compliance with certain provisions of 49 CFR Part 383 for drivers in isolated sections of Alaska. The limited waiver requested by Alaska would extend to those commercial motor vehicle (CMV) operators in that State who operate exclusively over roads that meet *both* of the following criteria:

(1) Such roads are not connected by land highway or vehicular way to the land-connected State highway system; and

(2) Such roads are not connected to any highway or vehicular way with an average daily traffic volume greater than 499.

With respect to drivers satisfying the above criteria, the FHWA would grant Alaska a waiver from the following specific portions of 49 CFR Part 383:

(1) The specifications in Subpart H for knowledge test procedures and methods;

(2) All requirements for driving skills tests; and

(3) The requirement for a photograph on the commercial driver's license CDL (section 383.153(a)(4)).

Commercial licenses issued pursuant to this proposed waiver would restrict the driver from operating a CMV over roads other than those specified above, and would also carry a restriction so that the license is not valid for use in CMVs outside the State of Alaska.

Public comments on this proposed limited waiver for the State of Alaska, as well as on the option of expanding such a waiver to include all of 49 CFR Part 383 for the delimited class of drivers in that State, will be accepted through the deadline shown below.

DATE: Written comments must be received on or before May 30, 1989.

ADDRESS: All signed, written comments should refer to the docket number that appears at the top of this document and should be submitted to Federal Highway Administration, Room 4232, Office of Chief Counsel, HCC-10, 400 Seventh Street SW., Washington, DC 20590. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except legal holidays. Commenters who want to be notified that the FHWA received their comments should include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Ms. Jill L. Hochman, Office of Motor Carrier Standards, (202) 366-4009, or Mr. Paul L. Brennan, Office of the Chief Counsel, (202) 366-1352, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. e.t., Monday through Friday.

SUPPLEMENTARY INFORMATION: In the preamble to the final rule on commercial driver testing and licensing standards (53 FR 27632, July 21, 1988), the FHWA noted "the existence [in Alaska] of many localities that, although physically detached from the State highway

network and from driver testing facilities, still have CMVs and operators subject to this final rule * * * The waiver process as precribed in the Act and in 49 CFR 383.7 would be the most appropriate forum * * * for this specific local problem."

Accordingly, on January 10, 1989, the State of Alaska petitioned the FHWA for a waiver from selected provisions of 49 CFR Part 383 for drivers operating exclusively in areas that are so remote as to be connected neither to the land-connected State highway system, nor to any highway or vehicular way with an average daily traffic volume greater than 499. The State's petition cited the practical obstacles that would prevent driver applicants from bringing representative vehicles from remote areas to test sites, given the vast distances, inhospitable terrain, and lack of highway connectivity so prevalent in the State. The petition (included, without its attachments, as the Appendix to this notice) contains further evidence supporting the waiver request.

The FHWA has found that the Alaska petition has merit. In proposing this waiver, however, the FHWA has included limitations regarding the provisions to be waived, the class of drivers covered, and the restrictions to be placed upon the licenses affected.

The waiver pertains only to the following provisions of 49 CFR Part 383:

(1) *Knowledge Tests.* For the class of drivers covered, the State would be waived from the requirement that the knowledge tests meet the standards for testing procedures and methods contained in Subpart H of Part 383. However, knowledge tests fulfilling the content requirements of Subpart G would continue to be required of *all* applicants.

(2) *Skills Tests.* For the class of drivers covered, the State would be permitted to omit the driving skills test.

(3) *Photo License.* For the class of drivers covered, the State would be waived from section 383.153(a)(4), and no photograph of the driver would be required.

To be exempted from the above provisions of 49 CFR Part 383, drivers must operate *exclusively* over roads that meet *both* of the following criteria:

(1) Such roads are not connected by land highway or vehicular way to the land-connected State highway system; and

(2) Such roads are not connected to any highway or vehicular way with an average daily traffic volume greater than 499.

The purpose of these two criteria is to include in the commercial driver's license program drivers in such areas as Juneau, which—though isolated from the main highway network—have relatively high traffic volumes.

In addition, any commercial licenses issued under the terms of this proposed waiver must carry two restrictions:

(1) Holders may not operate CMVs over roads other than those specified above; and

(2) The license is not valid for CMV operation outside the State of Alaska.

The purpose of the latter restriction is to avoid confusion in the event that an "off-system" commercial driver's license holder should move to another State that is not fully aware of Alaska's unusual highway network and licensing provisions.

Public comment is also sought on the option of expanding the provisions covered by this waiver to include all of 49 CFR Part 383 for the class of drivers delimited above in the State of Alaska.

Authority: Title XII of Pub. L. 99–570, 100 Stat. 3207–170; 49 U.S.C. 3102; 49 U.S.C. App. 2505; 49 CFR 1.48.

Issued on April 10, 1989.

R. D. Morgan,

Executive Director.

Appendix: Petition by the State of Alaska (January 10, 1989)

(Maps discussed in this petition are available for inspection at FHWA, Room 4232, HCC–10, 400 Seventh Street, SW., Washington, DC 20590.)

Robert Farris, *Administrator, Federal Highway Administration, U.S. Department of Transportation, Room 4218, HOA–1, 400 Seventh Street, SW., Washington, DC 20590.*

Dear Mr. Farris:

Under Section 12013 of the Commercial Motor Vehicle Safety Act of 1986 (CMVSA) and 49 CFR, Part 383.7, this letter is to petition for a waiver from compliance with requirements of the CMVSA for those geographic areas of the State of Alaska where the vehicle is being driven or moved on a road in the State that is not connected by a land highway or vehicular way to the land-connected State highway system, or a highway or vehicular way with an average daily traffic volume greater than 499.

Similar exemption language already is used in AS 28.32.900, the Alaska Statute which defines "commercial motor vehicle" for vehicle inspection purposes, AS 28.10.011, vehicles subject to registration, and AS 28.22.200, vehicles subject to mandatory insurance. It intends to accommodate conditions resulting from the State's under developed, remote, and unique geography.

This petition proposes to allow Alaska to issue an "off-system" license to drive a commercial vehicle in these areas, based upon the administration of a knowledge test, by mail if necessary, waiver of the skills test, and a valid without photo license document. This licensing procedure currently is practiced in many remote areas of Alaska to license drivers of passenger cars and motorcycles. A Public Health nurse administers the vision test. In the event that a driver with an off-system license to drive a commercial vehicle would move to an area that is connected to the State Highway system or has roads with a average daily traffic volume greater than 499, then that driver would have to be re-tested to federal guidelines.

Even though commercial vehicles are few in number in remote communities in Alaska, they do exist; however, conditions in these remote areas make administration of the commercial driver skills test according to federal standards impossible. A major portion of the State is not connected to the main road system, and the few miles of roads in these areas are unpaved and unimproved. Frequently, the need for conventional signs and signals to direct tarffic is minimal, or nonexistent. Further, Alaska, generally, has a limited highway system with very few multi-lane roads.

Currently, there are 34 locations in the State where a driver's license can be obtained. (See Exhibit A in the attachments with this letter.) Of these, 16 are accessible by the highway system, nine by ferry, airplane, or barge, and nine by airplace or barge only. Several of these locations have less than 500 vehicles in the community. In these communities, local police departments, under contract with the Division of Motor Vehicles (DMV), administer tests and issue driver's licenses. Given the frequency of employee turnover of Alaska's local police agencies, continually providing the high level of training required for the issuance of commercial driver's licenses would be extremely difficult and costly.

Numerous communities in Alaska are accessible only by air and do not have a DMV office at all. These areas, too, may have from one to four vehicles that could be classed as commercial. To administer a driver test in these areas would not only be cost prohibitive because of the time and distance involved, but impossible because conditions suitable to the maneuvers required in the test would not exist. To require all current and new drivers in these communities to fly at their own expense to a community that does have a licensing facility and suitable conditions would be extremely unpopular. Moreover, this would require a driver to train and test for driving conditions which would not be part of his experience in the community where he would be using the license.

Exhibit B in the attachments to this letter sheds some light on the problems Alaska must deal with as a result of its remoteness and vast distances between points. Exhibit B is an outline map of the 48 contiguous states overlaid with a map of Alaska drawn to a similar scale. The land area of Alaska approximates a quarter of the land area of the contiguous states and the distance between the State's farthest points spans the United States from coast to coast. That travel in Alaska is both costly and time consuming becomes readily apparent. What may not be so apparent, but equally relevant, is the fact that travel frequently is hazardous or not

possible due to inclement weather conditions or inhospitable terrain.

Given the geographic characteristics of Alaska and the consequent difficulties, and in some cases, impossibilities, to fully comply with the CMVSA and 49 CFR Part 383, the State of Alaska believes it is unrealistic and cost prohibitive to require commercial vehicle drivers that operative only in a rural community environment that has no outside road access to be subjected to the full battery of knowledge and skill tests. The off-system commercial driver's license as proposed above would allow for licensing all commercial vehicle operations without adverse impact of highway safety. This alternative for Alaska's remote areas will ensure the greatest degree of compliance with the CMVSA at any afordable cost.

Thank you for providing Alaska the opportunity to present our case, and for your consideration of this request.

Sincerely,

Jay N. Dulany,

Director, Division of Motor Vehicles, State of Alaska Department of Public Safety.

[FR Doc. 89–10254 Filed 4–27–89; 8:45 am]

BILLING CODE 4910–22–M

Notices

Federal Register
Vol. 54, No. 81
Friday, April 28, 1989

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

Agricultural Marketing Service

[TB-89-007]

Flue-Cured Tobacco Advisory Committee; Meeting

In accordance with the Federal Advisory Committee Act (5 U.S.C. App. 1) announcement is made of the following committee meeting:

Name: Flue-Cured Tobacco Advisory Committee.

Date: May 25, 1989.

Time: 1:30 p.m.

Place: Tobacco Division, Agricultural Marketing Service, U.S. Department of Agriculture, Flue-Cured Tobacco Cooperative Stablization Corporation Building, 1306 Annapolis Drive, Raleigh, North Carolina 27605.

Purpose: To discuss the establishment of marketing areas, submarketing areas, selling schedules, opening dates, and related matters for the 1989 flue-cured tobacco marketing season.

The meeting is open to the public. Persons, other than members, who wish to address the Committee at the meeting should contact the Director, Tobacco Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 502 Annex Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-2567, prior to the meeting. Written statements may be submitted to the Committee prior to or after the meeting.

Dated: April 25, 1989.

J. Patrick Boyle,

Administrator.

[FR Doc. 89-10227 Filed 4-27-89; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

[Docket No. 89-064]

Availability of Environmental Assessment and Finding of No Significant Impact Relative to Issuance of a Permit to Field Test Genetically Engineered Tomato Plants

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to Calgene, Inc., to allow the field testing in the State of California of genetically engineered tomato plants, modified to express an anti-sense endopolygalacturonase (PG) RNA. The assessment provides a basis for the conclusion that the field testing of these genetically engineered tomato plants will not present a risk of introduction or dissemination of a plant pest and will not have any significant impact on the quality of the human environment. Based upon this finding of no significant impact, the Animal and Plant health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESS: Copies of the environmental assessment and finding of no significant impact are available for public inspection at Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, Department of Agriculture, Room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

FOR FURTHER INFORMATION CONTACT: Dr. Michael Schectman, Biotechnologist, Biotechnology Permit Unit, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, Department of Agriculture, Room 845, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8761. For copies of the environmental assessment and finding of no significant impact, write Ms. Linda Gordon at this same address. The environmental assessment should be requested under accession number 88-344-07.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR Part 340 regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article can be introduced in the United States. The regulations set forth procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

Calgene, Inc., of Davis, California, has submitted an application for a permit for release into the environment, to field test genetically engineered tomato plants modified to express an anti-sense endopolygalacturonase (PG) RNA.

In the course of reviewing the permit application, APHIS assessed the impact on the environment of releasing the tomato plant under the conditions described in the Calgene, Inc., application. APHIS concluded that the field testing will not present a risk of plant pest introduction or dissemination and will not have any significant impact on the quality of the human environment.

The environmental assessment and finding of no significant impact, which are based on data submitted by Calgene, Inc., as well as a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field testing.

The facts supporting APHIS's finding of no significant impact are summarized below and are contained in the environmental assessment.

1. An endopolygalacturonase gene from tomato has been modified and inserted into a tomato chromosome in

such a way as to produce anti-sense RNA. In this field trial none of the introduced genes can spread to another plant, because the field test plot is located at a sufficient distance from any sexually compatible plant with which an experimental tomato plant could cross-pollinate. In nature, genetic material contained in a chromosome can only be transferred to another sexually compatible plant by cross-pollination and fertilization.

2. Neither the modified endopolygalacturonase gene itself, nor the derived anti-sense RNA, confers on tomato any plant pest characteristic. The tomato cultivar (UC82B) from which the endopolygalacturonase gene was obtained is not a plant pest.

3. The anti-sense PG gene does not provide the transformed tomato plants with any measurable selective advantage over nontransformed tomato plants in their ability to be disseminated or to become established in the environment.

4. The vector used to transfer the anti-sense endopolygalacturonase gene to tomato plants has been evaluated for its use in this specific experiment and does not pose a plant pest risk therein. The vector, although derived from a DNA sequence with known plant pathogenic potential, has been disarmed: that is, the genes that are necessary for pathogenicity have been removed. The vector has been tested and shown to be not pathogenic to a susceptible plant.

5. The vector agent, the phytopathogenic bacterium that was used to deliver the vector DNA carrying the anti-sense endopolygalacturonase gene into a tomato plant cell, was eliminated and is no longer associated with a transformed tomato plant.

6. Horizontal movement of genetic material after insertion into the plant genome (I.E., into chromosomal DNA) has not been demonstrated. After delivering and inserting the DNA to be transferred into the tomato genome, the vector does not survive in or on the transformed plant. No mechanism is known to exist in nature to move an inserted gene horizontally from a chromosome of a transformed plant to any other organism.

7. The field test plot will be approximately 180 feet by 780 feet, and will be planted in part with the tomato plants described herein and in part with other genetically engineered tomato plants for which a separate permit is pending. The test tomato plants will be separated by a sufficient distance (200 feet) from any other cultivated tomatoes to preclude cross-pollination with those plants.

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500–1509), (3) USDA Regulations Implementing NEPA (7 CFR Part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384 and 44 Fr 51272–51274).

Done at Washington, D.C., this 25th day of April 1989.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89–10259 Filed 4–27–89; 8:45 am]

BILLING CODE 3410–34–M

Forest Service

Mono Basin National Forest Scenic Area Boundary Revision

AGENCY: Forest Service, USDA.

ACTION: Notice of boundary revisions.

SUMMARY: The Secretary of Agriculture has approved minor boundary revisions for the Mono Basin National Forest Scenic Area. On July 28, 1988, at 53 FR 28420, the Forest Service gave notice of a proposal to make two minor revisions in the boundary of the Mono Basin National Forest Scenic Area, which was established by section 301 of the California Wilderness Act of 1984 (98 Stat. 1632). The final revisions are identical to those proposed.

EFFECTIVE DATE: By order of the Secretary, these boundary revisions are effective June 27, 1989.

FOR FURTHER INFORMATION CONTACT: Anne S. Fege, Recreation, USDA, Forest Service, P.O. Box 96090, Washington DC 20090–6090, (202) 447–2422 or John Ruopp, Recreation Staff Officer, Inyo National Forest, 873 N. Main, Bishop, California, (619) 873–5841.

SUPPLEMENTARY INFORMATION: In accordance with the provisions of the California Wilderness Act of 1984 (98 Stat. 1632) establishing the Mono Basin National Forest Scenic Area, the Secretary of Agriculture has approved two (2) minor revisions to the boundary of Scenic Area as it was originally shown on a map dated June 1983, and as revised on July 25, 1988. The proposed revisions were reviewed and recommended by the Scenic Area Advisory Board. The proposed revisions were published in the **Federal Register** on July 28, 1988 (53 FR 28420), with a request for comments. One response was received. The comments on the proposed revisions and the agency's response are as follows:

Proposed Revision 1: This proposed revision included 60 acres of patented mining claims and 177 acres of National Forest System land adjacent to the Scenic Area boundary. This parcel was originally excluded from the Scenic Area because of the patented claims. Since then, the property has changed hands, and the new owner has offered the land to the Forest Service in a land exchange proposal. The patented and unpatented mining claims have no proven, present-day economic mineral value.

The Bureau of Mines, United States Department of Interior, suggested that inclusion of this area within the Scenic Area would have major adverse impacts on the availability of future mineral natural resources of these lands, and further stated that Forest Service policy should be to protect the availability of the mineral resource for future potential development.

The Scenic Area is a Congressionally designated area, where management objectives may be different than those found in other portions of the Forest Service System. The Forest Service feels that it is desirable to include the area to protect the scenic values, because operations and activities on this parcel would be seen from other portions of the Scenic area. The enabling legislation for the Scenic area provides that, subject to valid existing rights, all mining claims located within the Scenic Area shall be subject to such reasonable regulations as the Secretary may prescribe to assure that mining will, to the maximum extent practicable, be consistent with the protection of the scenic, scientific, cultural, and other resources of the area. Mineral extraction on valid existing claims can continue under the guidelines for the scenic area. Operations on this parcel are seen from other portions of the Scenic Area. While it is true that inclusion will prevent future filings of claims, it should have little effect on existing, valid claims. Therefore, the boundary is revised as proposed.

Proposed Revision 2: This proposed revision included 1280 acres of National Forest System land. It contains cultural values that are connected with cultural values found elsewhere in the Scenic Area. No comments were received on including this parcel. This boundary revision was, therefore, adopted without change.

Summary: Having considered the comments received, the Secretary adopted the revisions as proposed. A copy of the Secretary's order which includes the legal description of the boundary changes appears at the end of this notice. These actions are of limited magnitude as most of the included lands are public lands. The boundary changes will include lands that will benefit and protect the resources and scenic values of the Scenic Area. The private lands involved (Revision 1) are added with the concurrence of the landowner who has

entered into a land exchange for comparable National Forest System lands within the Inyo National Forest. The net effect is to add approximately 1457 acres of public lands, and approximately 60 acres of private lands.

In addition to publication in the Federal Register, notice of these boundary revisions has been submitted to the Committee of Interior and Insular Affairs of the United States House of Representatives and the Committee of Energy and Natural Resources of the United States Senate, as required in the Act. Maps showing the revisions are available at the Office of the Forest Supervisor, Inyo National Forest, 873 N. Main, Bishop, California, and at the office of the District Ranger, Mono Lake Ranger District, Lee Vining, California.

Dated: April 21, 1989.

James O. Overbay,

Deputy Chief.

Revision of Boundaries of the Mono Basin National Forest Scenic Area, Inyo National Forest California

Pursuant to the authority granted to the Secretary of Agriculture by Section 301 of the California Wilderness Act of 1984 (16 U.S.C. 543), I hereby approve the following minor boundary revisions for the Mono Basin National Forest Scenic Area which are depicted on maps on file at the office of the Forest Supervisor, Inyo National Forest, 873 N. Main, Bishop, California, and at the office of the District Ranger, Mono Lake District Ranger, Lee Vining, California.

All descriptions are for the Mount Diablo Base Meridian.

Revision 1

T1N, R25E, unsurveyed, Sec. 1, NW¼, including Mineral Survey (MS) 6052 (10/22/1931); Sec. 2, E½NE¼, including MS 6052.

T2N, R25E, Sec. 36, that portion of MS 6052 within the section.

Revision 2

T1N, R27E, Sec. 35, All; Sec. 36, All.

The net effect is to add about 1,457 acres of public land and 60 acres of private land to the designated Scenic Area. The private land is added with the concurrence of the landowner, who has entered into a land exchange for comparable National Forest System lands within the Inyo National Forest.

These revisions shall become effective 60 days from the date notice is published in the Federal Register.

Date: March 30, 1989.

Clayton Yeutter,

Secretary.

[FR Doc. 89-10224 Filed 4-27-89; 8:45 am]

BILLING CODE 3410-11-M

Land Management Planning Program Review

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: The Forest Service is initiating a comprehensive study of its land management planning policy and processes. The current planning program has been underway since 1979, when the Forest Service began developing Land and Resource Management Plans for each unit of the National Forest System as directed by the National Forest Management Act of 1976. The study is timely because the first generation of plans has been completed for most of the National Forests.

DATES: The study will begin in May 1989 and is scheduled for completion April 1990.

ADDRESS: Persons wishing to receive further notice or be advised of the progress of this study should send their names and addresses to F. Dale Robertson, Chief (1960), Forest Service, USDA, P. O. Box 96090, Washington, DC 20090-6090.

FOR FURTHER INFORMATION CONTACT: Questions about the study should be addressed to Gary Larsen, Policy Analysis Staff (202) 447-4867.

SUPPLEMENTARY INFORMATION: The National Forest Management Act of 1976 requires the Forest Service to prepare comprehensive Land and Resource Management Plans for each unit of the National Forest Service and to revise the plans on a 10-year cycle or at least every 15 years. Regulations governing the plans are set forth in 36 CFR Part 219 and direction for Forest Service personnel is issued in Forest Service Manual Chapter 1920 and Forest Service Handbook 1909.12. Since the first generation of plans has been completed for most forests, the agency feels it would be instructive to review its land management planning policy and processes as they have evolved since forest planning first began in 1979. The study will result in recommendations applicable to future planning. The study is being conducted prior to the review of NFMA regulations, which is scheduled to begin in the spring of 1990

A Forest Service steering committee will provide the overall guidance for the study. Under the direction of the steering committee, teams have been formed to conduct individual studies of the following topics:

The usefulness of plans for managing National Forests;

The effectiveness of decisionmaking in the plans;

The effectiveness of public participation in planning;

The effectiveness of analytical tools;

The effectiveness of coordination with State and Federal agencies;

The effectiveness of organization and administration of planning; and

National planning policy and direction.

The study will focus on the national policy and processes guiding forest planning rather than on individual Forest Plans. Analysis and study is expected to begin in May 1989 and conclude in April 1990.

As the study is conducted, requests for public participation and updates will be issued periodically to interested parties through the mailing of a "Request for Participation." Those who are interested in becoming involved and in making a contribution to the study, or those who wish to keep informed of the study as it progresses, should write the Forest Service at the address shown earlier in this notice and provide name, mailing address, and a list of those topics in which they are most interested.

Date: April 19, 1989.

George M. Leonard,

Associate Chief.

[FR Doc. 89-10225 Filed 4-27-89; 8:45 am]

BILLING CODE 3410-11-M

Big Island Management Area Analysis; Chugach National Forest, AK

AGENCY: Forest Service, USDA.

ACTION: Revised comment period on Draft Environmental Impact Statement.

SUMMARY: The Department of Agriculture, Forest Service has prepared a draft environmental impact statement (DEIS) for proposed activities to occur under Management Area Analysis for the Big Island Management Areas on the Chugach National Forest, Alaska. The original notice of intent was published in the Federal Register October 9, 1987 (52 FR 37808) and revised October 18, 1988 (52 FR 40748). The Environmental Protection Agency published a notice of availability of the DEIS March 10, 1989 (54 FR 10186). Comments were due by April 24, 1989

Many people knowledgeable and interested in Prince William Sound are directly affected by the oil spill near Valdez and are unable to find time to comment on the DEIS. In order to allow sufficient time to comment on the DEIS, the comment period is extended an additional 30 days.

DATE: Comments concerning the DEIS must be received by May 24, 1989.

ADDRESSES: Written comments and suggestions concerning the DEIS must

be sent to Dalton Du Lac, Forest Supervisor, Chugach National Forest, 201 E. Ninth Avenue, Anchorage, AK. 99501.

FOR FURTHER INFORMATION CONTACT: Cecil R. Kuhn, Chugach National Forest, 201 E. Ninth Avenue, Anchorage, Alaska 99501, phone 907–271–2558.

Date: April 20, 1989

Peggy Fox

Acting Forest Supervisor.

[FR Doc. 89–10226 Filed 4–27–89; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration.

Title: Coast Pilot Report.

Form Number: NOAA Form 77–6.

Type of Request: Request for extension of OMB approval of a currently cleared collection.

Burden: 500 respondents; 250 reporting hours; average hours per response—.5 hours.

Needs and Uses: The Coast Pilot contains marine information for navigators that cannot be shown on charts. Users of the publication are asked to submit the report form if they find information that should be changed, added, or deleted.

Affected Public: Individuals, state or local governments, business or other for-profit, Federal agencies or employees, non-profit institutions, and small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Russell Scarato 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington DC 20230. Written comments and recommendations for the proposed information collection should be sent to Russell Scarato, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: April 21, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89–10171 Filed 4–27–89; 8:45 am]

BILLING CODE 3510–CW–M

[Docket No. 8102–02]

Order Vacating Temporary Denial Order Microelectronics Research Institute

Discussion

Counsel for the Office of Export Enforcement (The "Agency"), Bureau of Export Administration, U.S. Department of Commerce requested, March 1, 1989, the vacating of a temporary denial order ("Temporary Denial Order") issued at the Agency's request in 1983 and modified three times in 1983 and 1984. The Temporary Denial Order was issued November 23, 1983 (48 FR 54,259 (1983)), and modified December 21, 1983 (48 FR 57,347 (1983)), January 31, 1984 (49 FR 4,810 (1984)), and October 30, 1984 (49 FR 44,229 (1984)). It temporarily denied the U.S. export privileges of two South African respondents, nine South African related persons, and one Swiss related person.

Agency Counsel, in his March 1, 1989 request, stated that, as to one of these two South African respondents, Dr. Athol Mayo Harrison, the Temporary Denial Order has been superseded by a November 16, 1988 Order of the Under Secretary for Export Administration (53 FR 47,239 (1988)), which imposed on Dr. Harrison a twenty-year denial of U.S. export privileges. As for the other respondent, Microelectronics Research Institute, Agency Counsel stated that it has ceased to exist. Consequently, Agency Counsel requested that the Temporary Denial Order be vacated.

The grounds advanced by Agency Counsel for vacating the Temporary Denial Order are sufficient. Accordingly, such vacating shall be ordered.

Order

The Temporary Denial Order—issued November 23, 1983 (48 FR 54,259 (1983)), and modified December 21, 1983 (48 FR 57,347 (1983)), January 31, 1984 (49 FR 4,810 (1984)), and October 30, 1984 (49 FR 44, 229 (1984))—is vacated, effective immediately.

One respondent and one related person named in the Temporary Denial Order will, however, remain on the Table of Denial Orders Currently in Effect in Supplement No. 1 to Part 788 of the Export Administration Regulations.[1] Dr. Athol Mayo Harrison, one of the two respondents, remains subject to the twenty-year denial of U.S. export privileges imposed on him by the Order of November 16, 1988 (53 FR 47,239 (1988)). Manfred Schroeder, one of the nine related persons, remains subject to the ten-year denial of U.S. export privileges imposed on him by the Order of April 20, 1989 published elsewhere in today's Federal Register. For Dr. Harrison, the Order of November 16, 1988 and, for Manfred Schroeder, the Order of April 20, 1989 become the sole bases for their inclusion in the Table of Denial Orders Currently in Effect. The full names and addresses of Dr. Harrison and of Manfred Schroeder, who thus remain on the Table, are as follows:

Dr. Athol Mayo Harrison, Al Sunset Hill, Horak Avenue, Camps Bay 8001, South Africa,
and
P.O. Box 7232, Cape Town 8012, South Africa.

Manfred Schroeder, Lottbeker Weg 176, D 2000 Hamburg 65, Federal Republic of Germany.[2]

For the other respondent named in the Temporary Denial Order, Microelectronics Research Institute, and for the other eight related persons named therein, the vacating of the Temporary Denial Order eliminates it as the basis for their inclusion in the Table of Denial Orders Currently in Effect. The names and addresses of Microelectronics Research Institute and these eight related persons, who are thus removed from the Table, are as follows:

Act-Com Pty, Ltd., Cape Town, South Africa.

Computer Add-ons Pty., Ltd., Cape Town, South Africa.

Dancontrol AG, Zug, Switzerland.

Electronica, S.A. (Pty.) Ltd., 101 Connaught Road, Beaconvale (Parow), Cape Town, South Africa,
and
P.O. Box 7232, Roggebuai, Cape Province 8012, South Africa.

Electronica-Stellsels, 101 Connaught Road, Parow, Cape Town, South Africa,
and
P.O. Box 7232, Roggebuai, Cape Province 8012, South Africa.

[1] The Regulations, formerly codified at 15 CFR Parts 368–399, were redesignated as 15 C.F.R. Parts 768–799, effective October 1, 1988 (53 FR 37751, September 28, 1988).

[2] The address listed for Manfred Schroeder in the Temporary Denial Order was Buitenverwachtug Farms, Constantia, South Africa.

Heppner, Detleff, c/o Electronica-Stellsels, 101 Connaught Road, Parow, Cape Town, South Africa.
Optronix Pty., Ltd., 101 Connaught Road, Parow, South Africa.
Microelectronics Research Institute, P.O. Box 7232 Loop Station, 7th Floor, Motor and General Building, Cape Town, South Africa,
and
Banhock Road, Stellenbosch, South Africa.
SEM Investments Pty., Ltd., Cape Town, South Africa.
Whitton, Clive, 46 Moss Street, Newlands, South Africa.

This Order Vacating the Temporary Denial Order shall be published in the **Federal Register**.

Date: April 25, 1989.

Thomas W. Hoya,

Administrative Law Judge.

[FR Doc. 89-10255 Filed 4-27-89; 8:45 am]

BILLING CODE 3510-FG-M

Export Administration Bureau

[Docket No: 8123-01]

Actions Affecting Export Privileges; Manfred Schroeder (pro se)

Summary

Pursuant to the March 21, 1989 Recommended Decision and Order of the Administrative Law Judge (ALJ), which Decision and Order is affirmed by me, Manfred Schroeder, individually (hereinafter referred to as Respondent), with mailing address at Lottbeker Weg 176, D 2000 Hamburg 65, Federal Republic of Germany, is denied for a period of ten years from the date hereof, all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving the direct export of commodities or technical data from the United States to any other destination.

Discussion

On October 20, 1988, the Department issued a Charging Letter against Manfred Schroeder which alleged that Respondent violated the provision of § 387.12 of the Export Administration Regulations (codified at 15 CFR Parts 768–799 (formerly Parts 368–399)) (the Regulations) [1], issued pursuant to the Export Administration Act of 1979 (50 U.S.C. app. § 2401–2420 (1982 and Sup. III 1985), as amended by Pub. L. 100–418, 102 Stat. 1107 (August 23, 1988)).

The Department's Charging Letter alleged that Respondent, as an employee of a person who was denied all U.S. export privileges during all periods relevant to the Charging Letter, participated in a transaction that involved a commodity exported from the United States or which was subject to the export Administration's regulations and that a denied person either obtained some benefit from or had some interest in said transaction, either directly or indirectly. By so doing, Respondent committed one violation of § 787.12 of the Regulations.

Based on the Department's motion for default judgment and evidence submitted therewith, the ALJ correctly found that Respondents committed the one violation of 787.12 of the Regulations as alleged by the Department in its October 20, 1988 Charging Letter. I hereby affirm the ALJ's findings of fact and conclusions of law in that regard. Based on his findings, the ALJ recommended the denial of all of Respondent's U.S. export privileges for a period of ten years, which is five years less than the period of time recommended by the Department.

Order

(A) For a period of ten years from the date of the final agency action, Respondent—

Manfred Schroeder, Lottbeker Weg 176, D 2000, Hamburg 65, Federal Republic of Germany,

and all successors, assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations.

(B) Participation prohibited in any such transaction, either in the United States or abroad, shall include, but not be limited to, participation:

(i) As a party or as a representative or a party to a validated or general export license application;

(ii) In preparing or filing any export license application or request for re-export authorization, or any document to be submitted therewith

(iii) In obtaining or using any validated or general export license or other export control document;

(iv) In carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported; and

(v) In the financing, forwarding, transporting, or other servicing of such commodities or technical data.

Such denial of export privileges shall extend to those commodities and technical data which are subject to the Act and the Regulations.

(C) After notice and opportunity for comment, such denial of export privileges may be made applicable to any person, firm, corporation, or business organization with which the Respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services.

(D) All outstanding individual validated export licenses in which Respondent appears or paticipates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Respondent's privileges of participating in any manner or capacity, in any special licensing procedure, including but not limited to, distribution licenses, are hereby revoked.

(E) No person, firm, corporation, partnership, or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing, shall, with respect to commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with Respondent or any related person, or whereby Respondent or any related person may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly:

(i) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion or any commodity or technical data exported in whole or in part, or to be exported by, to, or for Respondent or related person denied export privileges, or

(ii) Order, buy, receive, use, sell, deliver, store, dispose of, forward,

[1] Effective October 1, 1988, the Regulations were redesignated as Parts 768–799 of Title 15 of the Code of Federal Regulations. 53 FR 37751 (September 28, 1988). The transfer merely changed the first number of each Part from "3" TO "7". Until such time as the Code of Federal Regulations can be found at 15 CFR Parts 368–399 (1988).

The Regulations governing the violations at issue are found in the 1982, 1983 and 1984 versions of the Code of Federal Regulations. Those Regulations are codified at 15 CFR Parts 368–399 (1982, 1983 and 1984) and, to the degree to which they pertain to this matter, are substantially the same as the 1988 version.

transport, finance or otherwise service or participate in any export, reexport, transshipment or diversion of any commodity or technical data exported or to be exported from the United States.

(F) It is thereby ordered that the Respondent shall be denied these privileges for a period of ten years.

This Order constitutes final Agency action.

Dated: April 20, 1989.

Paul Freedenberg,

Under Secretary for Export Administration.

Decision and Order

Appearance for Respondent: Manfred Schroeder (pro se), Lottbeker Weg 176, D 2000 Hamburg 65, Federal Republic of Germany.

Appearance for Agency: Anthony K. Hicks, Esq., Office of Chief Counsel for Export Administration, U.S. Department of Commerce, Room H–3329, 14th & Constitution Ave., NW., Washington, DC 20230.

Preliminary Statement

The Office of Export Enforcement ("the Agency"), Bureau of Export Administration, U.S. Department of Commerce issued an October 20, 1988 charging letter against Respondent Manfred Schroeder. The letter was issued under the authority of the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401–2420) ("the Act"), and of the Export Administration Regulations ("the Regulations"), promulgated pursuant to the Act.[1] The letter charged that Respondent violated § 387.12 of the Regulations in 1983 by participating, without the required U.S. authorization, in the reexport of a U.S.-origin computer that benefited a party denied U.S. export privileges.

Respondent failed to answer the charging letter, and the Agency moved on February 17, 1989 for a default judgment. In reply to a February 21, 1989 Order to Show Cause why he should not be held in default, Respondent filed a March 2, 1989 letter. Respondent's letter, however, was not in English, and was unaccompanied by a translation into English, and thus failed to comply with the requirement that all such submissions either be in English or be accompanied by an English translation.

Discussion

The Agency introduced evidence that the charging letter had been served on Respondent. As to the Agency's substantive case, it focused on Respondent's participation in an October 1983 shipment of a computer from South Africa to Sweden. The Agency's evidence showed that this computer was obtained from the United States by a South African company and shipped in January 1983 from the United States to South Africa. It was thus a U.S.-origin computer.

This South African company was, according to the Agency's evidence, controlled by a party denied U.S. export privileges. Further according to the Agency's evidence, in October 1983 the computer was shipped from South Africa to Sweden, and the exporter for this shipment was another South African company controlled by this party who was denied U.S. export privileges. Consequently, the Agency asserted that the October 1983 shipment constituted a transaction from which this denied party obtained benefit and in which he had an interest.

As for Respondent's connection with this U.S.-origin computer and its shipment from South Africa to Sweden, the Agency's presentation showed first that Respondent came to South Africa from the Federal Republic of Germany in January 1983, at about the same time that the computer arrived in South Africa from the United States. Respondent, according to the Agency's evidence, was a computer programmer, employed by the denied party, and assigned to set up the computer in South Africa and to write programs on it. For the October 1983 shipment to Sweden, further according to the Agency's evidence, Respondent instructed another employee of the denied party as to how to fill out the export and bank documents, and Respondent himself worked on packing the computer. On the basis of his instruction regarding the documents and of his packing activity, the Agency argued that Respondent participated in the October 1983 shipment.

Finally, the Agency's presentation showed further that the party it claimed was denied U.S. export privileges was in fact a denied party. The Agency's case demonstrated also that Respondent had never obtained the required U.S. authorization to participate in an export of U.S.-origin equipment with which the denied party was connected. For a sanction, the Agency proposed a 15 year denial of U.S. export privileges.

The nature of the Agency's evidence was mainly reports of interviews of three men who were employed by the denied party's companies in South Africa in 1983 and who described Respondent's activities as summarized above. The Agency's evidence included also various documents relating to the shipment of the computer from the United States to South Africa and from there to Sweden.

Conclusion

In the absence of any rebuttal by Respondent, the Agency's presentation is persuasive. It established that the computer at issue was of U.S.-origin and that the computer was reexported in October 1983 from South Africa to Sweden. The Agency's presentation established additionally that a denied party had an interest in and benefited from this reexport, and that Respondent, without the required U.S. authorization, participated in it. Therefore the evidence of record sustains the allegation of the Agency's charging letter: that Respondent violated Section 387.12 of the Regulations by participating, without the required U.S. authorization, in a reexport of a U.S.-origin computer that benefited a denied party.

Such a violation is serious, because it undercuts the effectiveness of the denial sanction. Nevertheless, on the face of this record, the Agency's proposal to deny Respondent's U.S. export privileges for 15 years is a little severe. A denial period of ten years would seem appropriate, and it shall be so ordered.

Order

I. For a period of ten years from the date of the final Agency action, Respondent—

Manfred Schroeder, Lottbeker Weg 176, D 2000 Hamburg 65, Federal Republic of Germany.

and all successors, assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations.

II. Participation prohibited in any such transaction, either in the United States or abroad, shall include, but not be limited to, participation:

(i) As a party or as a representative of a party to a validated or general export license application;

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[1] The Act was reauthorized and amended by the Export Administration Amendments Act of 1985, Pub. L. 99–64, 99 Stat. 120 (July 12, 1985), and amended by the Omnibus Trade and Competitiveness Act of 1988, Pub. L. 100–418, 102 Stat. 1107 (August 23, 1988).

The charging letter alleged that Respondent violated the Regulations during 1983. From October 15 to December 4, 1983 the Regulations were maintained in force by Executive Order 12444 (48 FR 48215, October 18, 1983), issued pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701–1706.

The Regulations, formerly codified at 15 CFR Parts 368–399, were redesignated as 15 CFR Parts 768–799, effective October 1, 1988 (53 Fed. Reg. 37751, September 28, 1988).

(ii) In preparing or filing any export license application or request for reexport authorization, or any document to be submitted therewith;

(iii) In obtaining or using any validated or general export license or other export control document;

(iv) In carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported; and

(v) In the financing, forwarding, transporting, or other servicing of such commodities or technical data.

Such denial of export privileges shall extend to those commodities and technical data which are subject to the Act and the Regulations.

III. After notice and opportunity for comment, such denial of export privileges may be made applicable to any person, firm, corporation, or business organization with which the Respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services.

IV. All outstanding individual validated export licenses in which Respondent appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Respondent's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

V. No person, firm, corporation, partnership, or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing, shall, with respect to commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with Respondent or any related person, or whereby Respondent or any related person may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly:

(i) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for Respondent or related person denied export privileges, or

(ii) Order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance or otherwise service or participate in any export, reexport, transshipment or diversion of any commodity or technical data exported or to be exported from the United States.

VI. This Order as affirmed or modified shall become effective upon entry of the Secretary's final action in this proceeding pursuant to the Act (50 U.S.C.A. app. § 2412(c)(1)).

Date: March 21, 1989.

Thomas W. Hoya,

Administrative Law Judge.

To be considered in the 30 day statutory review process which is mandated by section 13(c) of the Act, submissions must be received in the Office of the Under Secretary for Export Administration, U.S. Department of Commerce, 14th & Constitution Ave. NW, Room 3898B, Washington, DC, 20230, within 12 days. Replies to the other party's submission are to be made within the following 8 days. 15 CFR 388.23(b), 50 FR 53134 (1985). Pursuant to section 13(c)(3) of the Act, the final order of the Under Secretary may be appealed to the U.S. Court of Appeals for the District of Columbia within 15 days of its issuance.

[FR Doc. 89-10256 Filed 4-27-89; 8:45 am]

BILLING CODE 3510-DT-M

Bureau of Export Administration

Automated Manufacturing Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Automated Manufacturing Equipment Technical Advisory Committee will be held May 24, 1989, 9:30 a.m. in the Herbert C. Hoover Building, Room 1617F, 14th Street & Constitution Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to automated manufacturing equipment and related technology.

Agenda:

General Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Report by Joint Factory Computing & Communications Subcommittee.
4. Discussion of CCL 1091 (Numerically Controlled Machines).
5. Discussion of CCL 1532 (Inspection Machines).
6. Discussion of CCL 1399 (Automatically Controlled Industrial Systems).
7. Discussion of Sensory Control Systems.
8. Presentation by Office of Foreign Availability.

Executive Session

9. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, Department of Commerce, Washington, DC 20230. For further information or copies of the minutes, contact Lee Ann Carpenter on 202/377-2583.

Dated: April 25, 1989.

Betty Anne Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology and Policy Analysis.

[FR Doc. 89-10261 Filed 4-27-89; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings. In accordance with the Commerce Regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: April 28, 1989.

FOR FURTHER INFORMATION CONTACT: Bernard T. Carreau or Richard W. Moreland, Office of Countervailing Compliance or Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377–2786/2104.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce ("the Department") has received timely requests, in accordance with §§ 353.53a (a)(1), (a)(2), (a)(3), and 355.22(a)(1) of the Commerce Regulations, for administrative reviews of various antidumping and countervailing duty orders and findings.

Initiation of Reviews

In accordance with §§ 353.53a(c) and 355.22(c) of the Commerce Regulations, we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews no later than March 312, 1990.

Antidumping Duty Proceedings and Firms	Periods to be Reviewed
Colombia:	
All Fresh Cut Flowers—A-301-602	03/01/88–02/28/89
Abaco Tulipanes De Colombia	
Achalay	
Agricola Benilda	
Agricola Bojaca	
Agricola Bonanza	
Agricola De Occidente	
Agricola Del Monte	
Agricola El Jardin	
Agricola Floral	
Agricola Guali	
Agricola Jicabal	
Agricola La Floresta	
Agricola La Fontana	
Agricola Los Arboles	
Agricola Los Gaques	
Agricola Malqui	
Agricola Papagayo	
Agro Imperial	
Agrodex	
Agroindustrial Del Rio Frio	
Agromec	
Agromonte	
Agropecuaria Cuernavaca	
Agrosuba	
Agrotabio	
Arawac	
Arboles Azules	
Astro	
Beall Company	
Bogota Flowers	
Ciba Geigy Colombiana	
Cienfuegos	
Claveles Colombianos	
Claveles De Los Alpes	
Combiflor	
Con Flores	
Cultivos Buenavista	
Cultivos De Caribe	
Cultivos El Lago	
Cultivos Medellin	
Daflor	
De La Pava Guevara	
Del Tropico	
Dianticula Colombiana	
Edir	
El Rancho	
El Trentino	
El Zorro	
Epsilon-Editores	
Exportaciones Bochica	
Fantasia Flowers	
Flamingo Flowers	
Floral	
Floralex	
Floramerica	
Florandia Herrera Camacho	
Flores Agua Clara	
Flores Aguila	
Flores Alcala	
Flores Alfaya	
Flores Andinas	
Flores Aurora	
Flores Bachue	
Flores Calaypso	
Flores Calichana	
Flores Cigarral	
Flores Colombianos	
Flores Colon	
Flores Condor De Colombia	
Flores Corinto	
Flores De Cota	
Flores De Funza	
Flores De Hunza	
Flores De La Pradera	
Flores De La Sabana	
Flores De Las Mercedes	
Flores De Los Amigos	
Flores De Los Andes	
Flores De Los Arrayanes	
Flores De Nemocon	
Flores De Serezuela	
Flores De Suba	
Flores De Suesco	
Flores Del Bosque	
Flores Del Campo	
Flores Del Cauca	
Flores Del Cielo	
Flores Del Cortijo	
Flores Del Lago	
Flores Del Monte	
Flores Del Pinar	
Flores Del Rio	
Flores Del Tambo	
Flores Dos Hectareas	
Flores El Arenal	
Flores El Chircal	
Flores El Gallinero	
Flores El Lobo	
Flores El Puente	
Flores El Rosal	
Flores El Vino	
Flores Estrella	
Flores Galia	
Flores Generales	
Flores Hana Ichi De Colombia	
Flores Intercontinental	
Flores Internacionales	
Flores Juanambu	
Flores Juncalito	
Flores La Conchita	
Flores La Conejera	
Flores La Estancia	
Flores La Macarena	
Flores La Maria	
Flores La Pampa	
Flores La Union	
Flores La Valvanera	
Flores Las Caicas	
Flores Las Palmas	
Flores Llanogrande	
Flores Los Rosales	
Flores Marandua	
Flores Maria Luisa	
Flores Monserrate	
Flores Monte Verde	
Flores Mountgar	
Flores Palimana	
Flores Petaluma	
Flores San Carlos	
Flores Santa Fe	
Flores Santa Rosa	
Flores Sausalito	
Flores Suasque	
Flores Tairona	
Flores Tecnicas	
Flores Tejas Verdes	
Flores Tenerife	
Flores Tequendama	
Flores Tiba	
Flores Timana	
Flores Tokai Hisa	
Flores Tomine	
Flores Tropicales	
Flores Urimaco	
Floresa	
Florex	
Florexpo	
Floricola La Gaitana	
Florlinda	
Hacienda Curubital	
Hacienda La Embarrada	
Horticultura De La Sabana	
Industrial Agricola	
Ingro	
Internacianal De Flores	
Inverflores	
Invermel	
Inverpalmas	
Inversiones Agricolas	
Iversiones Almer	
Inversiones El Bambu	
Iversiones Istra	
Iversiones La Serena	
Iversiones Morcote	
Iversiones Paxti	
Iversiones Penas Blancas	
Iversiones Santa Rita	
Iversiones Santa Rosa	
Iversiones Targa	
Jaramillo Y Daza	
Jardines Bacata	
Jardines De Chia	
Jardines De Colombia	
Jardines De Los Andes	
Jardines Del Muna	
Jardines Fredonia	
Jardines La Aurora	
Jardines La Florida	
Jardines Natalia	
Kingdom	
La Comuna	
La Plazoleta	

Antidumping Duty Proceedings and Firms	Periods to be Reviewed
Las Amalias	
Las Flores	
Linda Colombiana	
Los Gaques	
Los Geranios	
MG Consultores	
Monteverde	
Orquideas Acatayma	
Plantaciones Delta	
Plantas Ornamentales De Colombia	
Pompones	
Potrero	
Prismaflor	
Productora El Rosal	
Productos El Cartucho	
Rosaflor	
Rosales De Colombia	
Rosas Colombianas	
Rosas De Colombia	
Rosas Sabantilla	
Rosas Tesalia	
Rosas Y Flores	
Rosas Y Jardines Del Tropico	
Roselandia	
Rosex	
Royal Carnations	
Sansa Flowers	
Santa Helena	
Santana Flowers	
Splendid Flowers	
Sun Flowers	
Tecniflores	
Tibati	
Tropiflora	
Turismo El Globo	
Universal De Flores	
Universal Flowers	
Velez De Monchaux E Hijos	
Italy	
Brass Fire Protection Equipment—A-475-401	03/01/88-02/28/89
Rubinetterie A. Giacomini, S.p.A.	
Ganbrook Limited	
Japan	
Television Receiving Sets, Monochrome & Color—A-588-015	03/01/88-02/28/89
Fujitsu General	
Funai	
Hitachi	
Matsushita	
Mitsubishi	
NEC	
Sanyo	
Victor	
Sharp	03/01/86-02/28/87 03/01/88-02/28/89
Toshiba	03/01/86-02/28/87 03/01/88-02/28/89
Ferrite Cores (of the type used in consumer electronic products—A-588-016	03/01/88-02/28/89
Taiyo Yuden Co., Ltd.	
Stainless Steel Pipe Fittings—A-588-702	09/16/87-02/28/89
Nippon Benkan Kogyo Co.	
Sweden	
Brass Sheet and Strip—A-401-601	03/01/88-02/28/89
Mettallverken AB	
Canada	
Iron Construction Castings—A-122-502	03/01/88-02/28/89
Mueller Canada, Inc.	
Thailand	
Circular Welded Carbon Steel Pipes and Tubes—A-549-502	03/01/88-02/28/89
Thai Hong Steel Pipe Co., Ltd.	
Thai Union Steel Pipe Co., Ltd.	
Saha Thai Steel Pipe Co.	

Countervailing Duty Proceedings	Periods to be Reviewed
Mexico	
C-201-405	01/01/88-12/31/88
Certain Textile Mill Products	
New Zealand	
C-614-504	10/01/87-09/30/88
Carbon Steel Wire Rod	
Sri Lanka	
C-542-401	01/01/88-12/31/88
Certain Textile Mill Products and Apparel	
Turkey	
C-489-502	01/01/88-12/31/88
Certain Welded Carbon Steel Pipe and Tube Products	

Interested parties are encouraged to submit applications for administrative protective orders as early as possible in the review process.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930 (19 U.S.C. 1675(a)) and 19 CFR 353.53a(c) and § 355.22(c) of the Commerce Regulations published in the **Federal Register** on December 27, 1988 (53 FR 52354) (to be codified at 19 CFR 355.22).

Dated: April 21, 1989.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 89-10172 Filed 4-27-89; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Mid-Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Mid-Atlantic Fishery Management Council will meet on May 17-18, 1989, at the Ramada Inn, Route 18, East Brunswick, NJ. The public meeting will begin on May 17 at 8:30 a.m., and adjourn on the afternoon of May 18. The meeting may be lengthened

or shortened depending upon progress on the agenda.

The Council will dicuss the Bluefish Fishery Management Plan, Atlantic mackerel specifications for 1990, and other fishery management and administrative matters in open session. The Council may also meet in closed session to discuss personnel and/or national security matters.

For further information, contact John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South and New Street, Dover, DE 19901-6790; telephone: (302) 674-2331.

Date: April 24, 1989.

Richard H. Schaefer,

Director, Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-10173 Filed 4-27-89; 8:45 am]

BILLING CODE 3510-22-M

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

A technical team for the North Pacific Fishery Management Council will meet on April 24-25, 1989, at the National Marine Fisheries Service, Northwest and Alaska Fisheries Center, Building 4, Room 2079, 7600 Sand Point Way, NE., Seattle, WA. The team will meet at 1 p.m., on April 24 to discuss open access options for future management of the Gulf of Alaska and Bering Sea/Aleutian Islands fisheries.

For further information contact Dick Tremaine, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271-2809.

Date: April 24, 1989.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-10174 Filed 4-27-89; 8:45 am]

BILLING CODE 3510-22-M

National Mammals; Issuance of Permit: Sea World, Inc. (P2U)

On February 9, 1989, notice was published in the **Federal Register** (54 FR 6314) that an application had been filed by Sea World, Inc. for a permit to import one (1) killer whale (*Orcinus orca*) for public display at any of the Sea World parks.

Notice is hereby given that on April 18, 1989, as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407) the National Marine Fisheries Service issued a Permit for the above importation subject to certain conditions set forth therein.

Issuance of this permit is based on a finding that the proposed taking is consistent with the purposes and policy of the Marine Mammal Protection Act. The Service has determined that Sea World, Inc. offers an acceptable program for education or conservation purposes. The Sea World facilities are open to the public on a regularly scheduled basis and access to the facilities is not limited or restricted other than by the charging of an admission fee.

The Permit is available for review by interested persons in the following offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, Room 7324, Silver Spring, Maryland 20910;

Director, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, Massachusetts 01930;

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702; and

Director, Southeast Region, National Marine Fisheries Service, NOAA, 300 South Ferry Street, Terminal Island, California 90731.

Dated: April 18, 1989.

N. Foster,

Director, Office of Protected Resources.

[FR Doc. 89-10148 Filed 4-27-89; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1989; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to Procurement List 1989 commodities to be produced and services to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: May 29, 1989.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: On January 27 and March 10, 1989, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (54 FR 4059 and 10177) of proposed additions to Procurement List 1989, which was published on November 15, 1988 (53 FR 46018).

No comments were received concerning the proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified workshops to produce the commodities and provide the services at a fair market price and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities and services listed.

c. The actions will result in authorizing small entities to produce the commodities and provide the services procured by the Government.

Accordingly, the following commodities and services are hereby added to Procurement List 1989:

Commodities

Sweatshirt
8415–01–234–4420
8415–01–234–4421
8415–01–234–4422
8415–01–234–4423
8415–01–234–4424
Sweatpants
8415–01–234–4409
8415–01–234–4410
8415–01–234–4411
8415–01–234–4412
8415–01–234–4413

Services

Brick Joint Cleaning
Andersonville National Historic Site
Andersonville, Georgia

Janitorial/Custodial
Waterways Experiment Station
Vicksburg, Mississippi

Janitorial/Custodial
Federal Building and U.S. Courthouse
15 Henry Street
Binghamton, New York

Janitorial/Elevator Operator
Navy Yard Annex
Buildings 74, 158, 167, 191, 197 and 202
Washington, DC

Beverly L. Milkman,

Executive Director.

[FR Doc. 89–10257 Filed 4–27–89; 8:45 am]

BILLING CODE 6820–33–M

Procurement List 1989 Proposed; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to Procurement List 1989 commodities to be produced by workshops for the blind or other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: May 30, 1989.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities to Procurement List 1989, which was published on November 15, 1988 (53 FR 46018);

Cotton, Purified
6510–00–201–3000

Compress and Skullcap, Head Dressing
6510–00–201–7680

Undershirt, Cold Weather
8415–01–227–9547
8415–01–227–9548
8415–01–227–9549
8415–01–227–9550
8415–01–227–9551

Beverly L. Milkman,

Executive Director.

[FR Doc. 89–10258 Filed 4–27–89; 8:45 am]

BILLING CODE 6820–33–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Administrative Publications and Forms Handling Transfer to National Technical Information Service

AGENCY: Department of the Air Force, DOD.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of the Air Force will transfer responsibility for handling all general public requests for Air Force-wide administrative publications and forms to the National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161. This is presently accomplished by Publishing Distribution Offices at Air Force installations. NTIS will create both foreign and domestic pricing schedules in accordance with the NTIS pricing policy and based on a cost-recovery formula..

EFFECTIVE DATE: June 1, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. George Harris, SAF/AADPD, Bolling AFB DC 20332, telephone (202) 767–6077.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 89–10214 Filed 4–27–89; 8:45 am]

BILLING CODE 3910–01–M

DEPARTMENT OF ENERGY

Availability of Draft Environmental Impact Statement on Decommissioning of Eight Surplus Production Reactors at the Hanford Site, Richland, WA

AGENCY: Department of Energy.

ACTION: Notice of Availability of Draft Environmental Impact Statement (EIS).

SUMMARY: The Department of Energy (DOE) announces the availability of a draft EIS on "Decommissioning of Eight Surplus Production Reactors at the Hanford Site, Richland, Washington" (DOE/EIS–0119D). The draft EIS contains information on the potential environmental impacts of alternatives for the proposed decommissioning of eight surplus plutonium production reactors at the Hanford site in Richland, Washington. The DOE has not identified a preferred alternative. Public comments are invited on the draft EIS for consideration in preparing the final EIS. Four public hearings will be held to receive oral comments on the draft EIS.

DATES: Written comments on the draft EIS should be sent to DOE by July 28, 1989, to ensure consideration in preparation of the final EIS. Comments received after that date will be considered to the extent practicable. Public hearings will be held on July 11, July 13, July 18, and July 20, 1989, as described in this notice. Individuals desiring to make oral statements at the hearings should notify Tom Bauman at the address below, so that DOE may arrange a schedule for presentations.

ADDRESSES: Requests for copies of the draft EIS, written comments on the draft EIS, requests to present oral comments at the hearings, and requests for further information concerning this draft EIS should be directed to: Tom Bauman, Office of Communications, Richland Operations Office, U.S. Department of Energy, P.O. Box 550, Richland, Washington 99352, Attention: "SPRD Draft EIS", (509) 376–7501.

For general information on the procedures DOE followed in complying with the requirements of the National Environmental Policy Act (NEPA) contact: Carol Borgstorm, Director, Office of NEPA Project Assistance (EH–25), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4600.

Public Outreach Activities

Prior to the public hearings, public information and outreach activities related to the draft EIS are planned in multiple Northwest locations. The purpose of these activities is to present information on the alternatives and issues discussed in the draft EIS. This information may be helpful in preparing comments on the draft EIS. These activities will also serve to publicize the public hearings that will be held to receive oral comments on the draft EIS. There will be no formal record of the public outreach activities. The dates and locations of these activities will be announced in the news media.

Public Hearings

Public hearings on the draft EIS will be held at the following times and locations:

Federal Building Auditorium, 825 Jadwin Street, Richland, Washington, Date: July 11, 1989, Time: 10:00 a.m. and 7:00 p.m.

Sheraton Hotel, North 322 Spokane Falls Court, Spokane, Washington, Date: July 13, 1989, Time: 10:00 a.m. and 7:00 p.m.

Execulodge Inn (Portland International Airport), 6221 N.E. 82nd Avenue, Portland, Oregon, Date: July 18, 1989, Time: 10:00 a.m. and 7:00 p.m.

Hilton Hotel (Sea-Tac International Airport), 17620 Pacific Highway South, Seattle, Washington, Date: July 20, 1989, Time: 10:00 a.m. and 7:00 p.m.

Members of the public, organizations, and government agencies are invited to present comments on the draft EIS at any scheduled hearing. Persons desiring to make an oral presentation should notify Mr. Bauman at the above address, so that the DOE may arrange a schedule for the presentations. Persons who have not submitted a request to speak in advance may register to speak at a hearing. To ensure that everyone has the opportunity to present comments, five minutes will be allotted to each speaker. Individuals and representatives of organizations or agencies presenting comments are requested, if possible, to have written copies of their comments for the hearing record. Written and oral comments will receive equal consideration in preparation of the final EIS. The DOE will arrange the schedule of speakers and will establish rules and procedures for conduct of the hearings. The hearings will not be adjudicatory and there will be no cross examination of speakers. Any other procedural rules for the conduct of the hearings will be announced by the presiding officer at the beginning of each hearing. A verbatim transcript of the hearing will be prepared, and placed in the reading rooms and libraries indicated below.

The draft EIS and documents referenced in the draft EIS are available for public inspection at the following locations:

U.S. Department of Energy Public Reading Room, Room 157, Federal Building, Richland, Washington 99352, (509) 376–8583.

Multnomah County Library, 801 SW 10th Avenue, Portland, Oregon 97205, (503) 223–7201.

The draft EIS and copies of major references used in preparing the draft EIS are also avilable for public inspection at the following locations:

U.S. Department of Energy, Freedom of Information Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6020.

Pasco Public Library, 1320 West Hopkins Street, Pasco, Washington 99301, (509) 545–3451.

Walla Walla Public Library, 238 East Alder Street, Walla Walla, Washington 99362, (509) 525–5353.

Kennewick Public Library, 405 South Dayton Street, Kennewick, Washington 99336, 1–800–572–6251 or (509) 586–3156.

Richland Public Library, Swift and Northgate Streets, Richland, Washington 99352, (509) 943–9117.

Yakima Valley Main Public Library, 102 North 3rd Street, Yakima, Washington 98901, (509) 452–8541.
Public Reference Center, Washington Department of Ecology, 5826 Pacific Avenue, Lacey, Washington 98503, (206) 459–6675.
Spokane Public Library, West 906 Main Avenue, Spokane, Washington 99201, (509) 838–4226.
Seattle Public Library, 1000 4th Avenue, Seattle, Washington 98122, (206) 386–4636.

SUPPLEMENTARY INFORMATION: The U.S. Government established the Hanford Site in 1943 to produce plutonium for military purposes. Nine water-cooled, graphite-moderated plutonium production reactors were constructed along the Columbia River between the years 1943 and 1963 in a location designated as the 100 Areas. Eight of these reactors are now retired from service (B, C, D, DR, KE, KW, F, and H), have been declared surplus by DOE, and may be decommissioned. The ninth reactor (N) is in a standby mode and its decommissioning is outside the scope of this EIS.

Proposed Action and Scope of the Draft EIS

The proposed action is to decommission the eight surplus reactors. The purpose of the draft EIS is to provide environmental information that will assist the DOE in deciding which alternative action is most appropriate. The scope of the draft EIS includes the reactors, their associated fuel storage basins, and the buildings that house these facilities. All fuel elements have been removed from the reactor cores. The scope does not include the 100-Area cribs, burial grounds, or settling basins. These facilities were evaluated in the "Final Environmental Statement, Hanford Waste Management Operations, Hanford Reservation," U.S. Energy Research and Development Administration, ERDA–1538, 1975. Further, the DOE is presently re-evaluating these facilities as part of DOE's responsibilities under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

The purpose of decommissioning is to reduce the potential environmental, health, and safety impacts of contaminated facilities; decommissioning actions may include the stabilization, reduction, or removal of radioactive and hazardous materials or the demolition of facilities.

Because the reactors contain irradiated reactor components and because the buildings that house the reactors are contaminated with low levels of radioactivity, the DOE has determined that there is a need for action to ensure the long-term protection of the environment and public health and safety. Alternative actions considered in the draft EIS include:

(1) Immediate one-piece removal (to the 200-West Area) of the reactor-block assembly and the dismantlement and removal of contaminated equipment and components of the fuel storage basins and reactor building;

(2) Safe storage followed by deferred one-piece removal (i.e., continuation of current maintenance activities for up to 75 years followed by "one-piece removal");

(3) Safe storage followed by deferred dismantlement and removal of the reactor-block assembly and other contaminated components;

(4) *In situ* decommissioning (i.e., the sealing and burial of the reactor facilities at their present location under an engineered protective mound); and

(5) No action (i.e., continue present surveillance, monitoring, and maintenance).

Floodplain/Wetlands

Because the reactors are located along the Columbia River, it is necessary to evaluate the effects of any decommissioning actions with respect to flood hazards, floodplain management, and wetlands protection. In accordance with Executive Order 11988 (Floodplain Management), Executive Order 11990 (Protection of Wetlands) and DOE regulations 10 CFR 1022 (Compliance with Floodplain/Wetlands Environmental Review Requirements), DOE has prepared a floodplain/Wetlands assessment for decommissioning of the surplus production reactors (see Appendix B of the draft EIS). No reactor is in a wetland or the 500-year (critical action) floodplain as defined by the regulations. As a part of the review of the draft EIS and in compliance with executive orders and regulations regarding floodplain management and wetlands protection, the DOE solicits public and agency comments on these determinations.

Historic Preservation

The DOE and the Washington State Historic Preservation Officer have determined that the B Reactor is eligible for inclusion in the National Register of Historic Places according to the procedures in 36 CFR 800 (Protection of Historic and Cultural Properties) and the criteria in 36 CFR 60 (Criteria for Inclusion in the National Register of Historic Places). These findings are discussed in Appendix J of the draft EIS. The DOE solicits public and agency comments on whether or not the B Reactor should be nominated for inclusion in the National Register of Historic Places, on the potential impacts of decommissioning on the inclusion of the B Reactor in the National Register, and on means identified to mitigate the potential impacts of the decommissioning action.

Issued in Washington, DC, on April 14, 1989.

Peter N. Brush,

Acting Assistant Secretary Environment, Safety, and Health.

[FR Doc. 89–10239 Filed 4–27–89; 8:45 am]

BILLING CODE 6450–01–M

Floodplain and Wetland Involvement Notification for Proposed Construction of the 7-GeV Advanced Photon Source at Argonne National Laboratory; Argonne, IL

AGENCY: Department of Energy.

ACTION: Notice of Floodplain/Wetland Involvement.

SUMMARY: The Department of Energy proposes to construct the 7-GeV Advanced Photon Source (APS) at Argonne National Laboratory which is situated on Federally owned lands under the jurisdiction of the U.S. Department of Energy. All activities related to the proposed project will be restricted to approximately 80 acres of vacant grassland and forest on the Federally owned property.

SUPPLEMENTARY INFORMATION: The proposed APS will provide a national facility for advancing the frontiers of research in physics, chemistry, biology and the materials and health sciences. The main APS building will be ring-shaped with a circumference of about 3,500 feet. The complex will also include offices, general and special purpose laboratories, clean room laboratories, and service operation areas. Provisions are included for site access roads, parking, service utilities, and miscellaneous site amenities. Recontouring and construction will require the filling of three palustrine wetland areas containing trees or emergent vegetation which are semi-permanent seasonal to intermittently flooded (0.38, 0.67, and 0.70 acres respectively). These wetlands are shallow, isolated depressions not connected to flowing water. They are temporary ponds that contain water from late fall to early spring and remain dry during the summer months. There will be no dredging of wetland areas. In accordance with DOE's regulations for compliance with floodplain/wetlands

environmental review requirements (10 CFR Part 1022), DOE will prepare a floodplain/wetland assessment that will be incorporated into an Environmental Assessment. Consultations with the U.S. Army Corps of Engineers (COE) have been initiated, and required permits and mitigation plans will be obtained. Two replacement wetlands are proposed and would be constructed contiguous to the construction site. To provide a viable and natural seed source, soil removed from the subject wetlands will be graded into each new wetland. Herbaceous species which do not regenerate from the wetland soil will be planted in the appropriate vegetative zone. Detailed engineering specifications for the created wetlands will be provided to the COE prior to construction and a five-year monitoring program will follow to observe the wetland development. Maps and further information are available from the address shown below.

DATES: Any comments are due on or before May 15, 1989.

ADDRESS: Send written comments to W.S. White, Environment, Safety, and Health Division, U.S. Department of Energy, 9800 S. Cass Avenue, Argonne, Illinois 60439, (312) 972-2101.

Issued at Washington, DC, April 14, 1989.

Dr. Donald K. Stevens,

Acting Director, Director Divison of Materials Sciences, Office of Basic Energy Science.

[FR Doc. 89-10238 Filed 4-27-89; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

[ERA Docket No. 89-02-NG]

Cornerstone Natural Gas Co.; Order Granting Blanket Authorization To Import and Export Natural Gas From and to Canada and Mexico

AGENCY: Office of Fossil Energy; Department of Energy

ACTION: Notice of Order Granting Blanket Authorization to Import and Export Natural Gas from and to Canada and Mexico.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Cornerstone Natural Gas Company (Cornerstone) blanket authorization to import and export natural gas from and to Canada and Mexico. The order issued in ERA Docket No. 89-02-NG authorizes Cornerstone to import up to 100 Bcf and to export up to 100 Bcf of Canadian, Mexican and/or domestically produced natural gas over a two-year period beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, April 12, 1989.

J. Allen Wampler,

Assistant Secretary Fossil Energy.

[FR Doc. 89-10240 Filed 4-27-89; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP89-1225-000, et al.]

Williams Natural Gas Co., et al.; Natural Gas Certificate Filings

April 24, 1989.

Take notice that the following filings have been made with the Commission:

1. Williams Natural Gas Company

[Docket No. CP89-1225-000]

Take notice that on April 17, 1989, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89-1225-000, a request pursuant to §§ 157.205 and 284.223 (18 CFR 157.205 and 284.223) of the Commission's Regulations under the Natural Gas Act for authorization to provide transportation for the City of Auburn, Kansas (Auburn), under WNG's blanket certificate issued in Docket No. CP86-631-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

WNG requests to transport, on an interruptible basis, up to a maximum of 1,200 MMBtu of natural gas per day for Auburn from various receipt points in Kansas, Missouri, Oklahoma, Texas and Wyoming to various delivery points on WNG's pipeline system located in Kansas. WNG anticipates transporting 270 MMBtu on an average day and 98,550 MMBtu on an annual basis.

WNG states that the transportation of natural gas for Auburn commenced on March 17, 1989, as reported in Docket No. ST89-2809-000, for a 120-day period pursuant to § 284.223(a)(1) of the Commission's Regulations and the blanket certificate issued to WNG in Docket No. CP89-631-000. WNG proposes to continue this service in accordance with §§ 284.221 and 284.223 of the Commission's Regulations.

Comment date: June 8, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. Transcontinental Gas Pipe Line Corporation

[Docket No. CP89-1208-000]

Take notice that on April 13, 1989, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1296, Houston, Texas 77251, filed in Docket No. CP89-1208-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for ANR Gathering Company (Shipper), under the blanket certificate issued in Docket No. CP88-328-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Transco states that it proposes to transport for Shipper 1,500,000 dt on a peak day, 100,000 dt on an average day, and 3,650,000 dt on an annual basis. Transco also states that it will receive the gas at various existing receipt points in Offshore Louisiana and Offshore Texas and deliver the gas at various existing delivery points in Louisiana.

Transco further states that it commenced this service March 1, 1989, as reported in Docket No. ST89-275-000.

Comment date: June 8, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. Northwest Pipeline Corporation

[Docket No. CP89-1214-000]

Take notice that on April 14, 1989, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89-1214-000 an application pursuant to §§ 157.205 and 284.223 (18 CFR 157.205 and 284.223) of the Commission's Regulations under the Natural Gas Act for authorization to provide interruptible transportation service for Marathon Oil Company (Marathon), a producer of natural gas, pursuant to Northwest's blanket transportation certificate issued by Commission order on January 19, 1988, in Docket No. CP88-578-000, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northwest states it will receive the gas at various supply sources in the states of New Mexico, Wyoming, Utah and Colorado for transportation and delivery, for the account of Marathon, to various points in the states of Wyoming, Utah and Colorado.

Northwest proposes to transport daily up to 20,000 MMBtu equivalent of gas on

a peak day, 2,000 MMBtu equivalent of gas on an average day and approximately 730,000 MMBtu equivalent annually. Northeast states the transportation service commenced under the 120-day automatic authorization of § 284.223(a) of the Commission's Regulations on March 1, 1989, pursuant to a transportation agreement dated January 1, 1989, as amended January 1, 1989. Northwest notified the Commission of the commencement of the transportation service in Docket No. ST89–2868–000 on March 31, 1989.

Comment date: June 8, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. Texas Gas Transmission Corporation

[Docket No. CP89–1188–000]

Take notice that on April 11, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky, 42301, filed in Docket No. CP89–1188–000, a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP88–686–000, pursuant to section 7 of the Natural Gas Act, for Archer Daniels Midland Company (Archer Daniels), all as more fully set forth in the request on file with the Commission and open to public inspection.

Texas Gas proposes to transport on an interruptible basis up to a maximum of 3,000 MMBtu of natural gas per day for Archer Daniels from specific receipt points in various parishes in Louisiana to the existing interconnection between Texas Gas and Columbia Gas Transmission Corporation in Warren County, Ohio. Texas Gas anticipates transporting up to 3,000 MMBtu on a peak day, 1,000 MMBtu average day, and 365,000 MMBtu annually for Archer Daniels. Texas Gas explains that service commenced March 1, 1989, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–2577.

Comment date: June 8, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. Tennessee Gas Pipeline Company

[Docket No. CP89–1215–000]

Take notice that on April 17, 1989, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89–1215–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of LL&E Gas Marketing, Inc. (LL&E), a marketer of natural gas, under Tennessee's blanket certificate issued in Docket No. CP87–115–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Tennessee proposes to transport, on an interruptible basis, up to 50,000 MMBtu per day for LL&E. Tennessee states that construction of facilities would not be required to provide the proposed service.

Tennessee further states that the maximum day, average day, and annual transportation volumes would be approximately 50,000 MMBtu, 50,000 MMBtu and 18,250,000 MMBtu respectively.

Tennessee advises that service under Section 284.223(a) commenced March 1, 1989, as reported in Docket No. ST89–3027.

Comment date: June 8, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. Williams Natural Gas Company

[Docket No. CP89–1224–000]

Take notice that on April 17, 1989, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89–1224–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas for Osage City (Osage), a local distribution company, under the blanket certificate issued in Docket No. CP86–631–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Williams proposes to transport on an interruptible basis for Osage up to 3,000 MMBtu of natural gas on a peak day, approximately 548 MMBtu on an average day, and 200,020 MMBtu on an annual basis. Williams states that it would transport this gas from various receipt points in Kansas, Missouri, Oklahoma, Texas and Wyoming to various delivery points on Williams' system in Kansas. Williams explains that service commenced under the automatic authorization provisions of Section 284.223 of the Commission's Regulations, as reported in Docket No. ST89–2808–000.

Comment date: June 8, 1989, in accordance with Standard Paragraph G at the end of this notice.

7. Texas Gas Transmission Corporation

[Docket No. CP89–1218–000]

Take notice that on April 17, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89–1218–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and the Natural Gas Policy Act (18 CFR 284.223) for authorization to transport natural gas for PSI, Inc. (PSI) under Texas Gas' blanket certificate issued in Docket No. CP88–686–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Gas proposes to transport on an interruptible basis up to 100,000 MMBtu of natural gas equivalent on behalf of PSI pursuant to a gas transportation agreement dated January 3, 1989, between Texas Gas and PSI. Texas Gas would receive the gas at various existing points of receipt on its system in Texas, offshore Texas, Indiana, Kentucky, Tennessee, Illinois, Arkansas, Ohio, Louisiana and offshore Louisiana and redeliver equivalent volumes, less fuel and lost and unaccounted for volumes, at existing delivery points in Ohio.

Texas Gas further states that the estimated average daily and annual quantities would be 50,000 MMBtu and 18,250,000 MMBtu, respectively. Service under § 284.223(a) commenced on March 2, 1989, as reported in Docket No. ST89–2580–000, it is stated.

Comment date: June 8, 1989, in accordance with Standard Paragraph G at the end of this notice.

8. Natural Gas Pipeline Company

[Docket No. CP89–1220–000]

Take notice that on April 17, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89–1220–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to perform an interruptible transportation service for Mitchell Marketing Company (Mitchell), a marketer, under Natural's blanket certificate issued in Docket No. CP86–582–000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Natural states that pursuant to a transportation agreement dated October

24, 1988, it proposes to receive up to 20 billion Btu of natural gas per day for Mitchell and any additional volumes accepted pursuant to overrun provisions of Natural's Rate Schedule ITS at an existing interconnect with the facilities of Lone Star Gas Company located in Panola County, Texas and redeliver the gas at specified points in the states of Illinois and Texas. Natural states that the peak day, average day, and annual volumes would be 20 billion Btu, 10 billion Btu, and 3,650 Billion Btu, respectively. It is stated that on February 24, 1989, Natural initiated a 120-day transportation service for Mitchell under § 284.223(a) as reported in Docket No. ST89–3054–000.

Natural further states that no facilities need be constructed to implement the service. Natural states that the primary term of the transportation service would expire October 31, 1990, but would continue month to month thereafter unless cancelled by five days prior notice by either party. Natural proposes to charge rates and abide by the terms and conditions of its Rate Schedule ITS.

Comment date: June 8, 1989, in accordance with Standard Paragraph G at the end of this notice.

9. Natural Gas Pipeline Company of America

[Docket No. CP89–1219–000]

Take notice that on April 17, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89–1219–000 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 an interruptible basis for Sun Gas Transmission Limited Partnership (Sun Gas), an intrastate pipeline, under its blanket certificate issued in Docket No. CP86–582–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Natural states that it proposes to transport natural gas for Sun Gas between receipt points in Illinois, Louisiana, offshore Louisiana, Texas and offshore Texas and delivery points in Illinois, Louisiana, Texas, New Mexico, Arkansas and Iowa.

Natural further states that the maximum daily, average daily and annual quantities that it would transport for Sun Gas would be 110,000 MMBtu equivalent of natural gas (plus any additional volumes accepted pursuant to the overrun provisions of Natural's Rate Schedule ITS), 60,000 MMBtu equivalent of natural gas and 21,900,000 MMBtu equivalent of natural gas, respectively.

Natural indicates that in a filing made with the Commission on April 17, 1989, it reported in Docket No. ST89–3055 that transportation service for Sun Gas had begun on February 10, 1989 under the 120-day automatic authorization provisions of § 284.223(a).

Comment date: June 8, 1989, in accordance with Standard Paragraph G at the end of this notice.

10. Sea Robin Pipeline Company

[Docket No. CP89–1211–000]

Take notice that on April 14, 1989, Sea Robin Pipeline Company (Sea Robin), P.O. Box 1478, Houston, Texas 77251, filed in Docket No. CP89–1211–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP88–824–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Sea Robin proposes to transport natural gas on an interruptible basis for First Energy Corporation (First Energy). Sea Robin explains that service commenced March 14, 1989, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–2914. Sea Robin explains that the peak day quantity would be 5,150 MMBtu, the average daily quantity would be 5,150 MMBtu, and that the annual quantity would be 1,879,750 MMBtu. Sea Robin explains that it would receive natural gas for First Energy's account in South Marsh Island, Offshore Louisiana. Sea Robin states that it would redeliver the gas for First Energy's account near Erath, Louisiana to Columbia Gulf Transmission Company, United Gas Pipe Line Company or Faustina Pipeline Company.

Comment date: June 8, 1989, in accordance with Standard Paragraph G at the end of this notice.

11. Williams Natural Gas Company

[Docket No. CP89–1226–000]

Take notice that on April 17, 1989, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89–1226–000 a request pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of the City of Chanute, Kansas (Chanute), a local distribution company, under WNG's blanket certificate issued in Docket No. CP86–631–000 pursuant to section 7 of the Natural Gas Act, all as more fuly set forth in the request which is on file with the Commission and open to public inspection.

WNG proposes to transport, on an interruptible basis, up to 8,000 MMBtu equivalent of natural gas on a peak day, 1,780 MMBtu equivalent on an average day and 649,700 MMBtu equivalent on an annual basis for Chanute. It is stated that WNG would receive the gas for Chanute's account at various receipt points on WNG's system in Kansas, Missouri, Texas, Oklahoma and Wyoming and would deliver equivalent volumes at various points on WNG's system in Kansas. It is asserted that the transportation service would use existing facilities and would not require the construction of additional facilities. It is explained that the transportation service commenced March 17, 1989, under the self-implementing authorization provisions of Section 284.223 of the Comission's Regulations, as reported in Docket No. ST89–2804.

Comment date: June 8, 1989, in accordance with Standard Paragraph G at the end of this notice.

12. Williams Natural Gas Company

[Docket No. CP89–1229–000]

Take notice that on April 17, 1989, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89–1229–000 a request pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of the City of Iola, Kansas (Iola), a local distribution company under WNG's blanket certificate issued in Docket No. CP86–631–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in request which is on file with the Commission and open to public inspection.

WNG proposes to transport, on an interruptible basis, up to 6,000 MMBtu equivalent of natural gas on a peak day, 1,425 MMBtu equivalent on an average day and 520,125 MMBtu equivalent on an annual basis for Iola. It is stated that WNG would receive the gas for Iola's account at various receipt points on WNG's system in Kansas, Missouri, Oklahoma, Texas, and Wyoming and would deliver equivalent volumes at various points on WNG's system in Kansas. It is asserted that the transportation service would use existing facilities and would not require the construction of additional facilities. It is explained that the transportation service commenced March 17, 1989, under the self-implementing

authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89–2806l.

Comment date: June 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraph

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,

Secretary.

[FR Doc. 89–10163 Filed 4–27–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TM89–10–20–000; TF89–2–20–000]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

April 24, 1989.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on April 19, 1989 tendered for filing proposed changes in its FERC Gas Tariff, Second Revised Volume No. 1, as set forth in the revised tariff sheets:

Proposed to be effective April 1, 1989

Thirty-first Revised Sheet No. 201
Substitute Twenty-sixth Revised Sheet No. 204
Twenty-fifth Revised Sheet No. 205

Proposed to be effective May 1, 1989

Twenty-sixth Revised Sheet No. 205

Algonquin states that it is filing Thirty-first Revised Sheet No. 201 and Twenty-fifth Revised Sheet No. 205 as part of an Interim Purchased Gas Adjustment ("PGA") under section 17 of the General Terms and Conditions and a tracker under section 7 of Rate Schedule F–4, respectively, to reflect the lower cost of purchased gas due to Alonquin's pipeline supplier Texas Eastern Transmission Corporation flexing down of the rates underlying Algonquin's Rate Schedules F–1, I–1, WS–1, E–1 and F–4. The changes represent a decrease in purchased gas costs of approximately $2.9 million for the period April 1, 1989 through May 31, 1989.

Algonquin further states that pursuant to section 7 of Rate Schedule F–4, it is filing Twenty-sixth Revised Sheet No. 205 to concurrently track rate changes made by its pipeline supplier, Texas Eastern in the underlying service, as set forth in Texas Eastern's Quarterly PGA filing date March 31, 1989. The rate changes reflect increases of 1.1 cents per MMBtu in the demand charge and 1.68 cents per MMBtu in the commodity charge over those rates contained in Twenty-fifth Revised Sheet No. 205.

Algonquin states that in a filing dated March 30, 1989 in Docket No. TF89–4–16–000, Algonquin's pipeline supplier, National Fuel Gas Supply Corporation ("National"), made an Interim PGA filing to reflect decreases in its estimated cost of purchased gas. Algonquin states that it is filing Substitute Twenty-sixth Revised Sheet No. 204 to concurrently track the rate changes made by National in the service underlying Algonquin's Rate Schedule F–3. Substitute Twenty-sixth Revised Sheet No. 204 represents an increase of 23.0 cents per MMBtu in the demand charge and a decrease of 12.64 cents per MMBtu in the commodity charge from National's Interim PGA dated February 27, 1989 in Docket No. TF89–3–16–000.

Algonquin notes that copies of this filing were served upon the affected parties and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before, May 1, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89–10212 Filed 4–27–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ID–2398–000]

Jon H. Miller; Filing

April 25, 1989.

Take notice that on April 7, 1989, Jon H. Miller filed an application pursuant to section 305(b) of the Federal Power Act to hold the following positions:

Director, Idaho Power Company
Trustee, Northwestern Mutual Life Insurance Company

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 21 and 214 of the Commissions Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before May 10, 1989. 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,

Secretary.

[FR Doc. 89–10213 Filed 4–27–89; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2671; Maine]

Kennebec Water Power Co.; Intent to File an Application for a New License

April 24, 1989.

Take notice that on December 30, 1988, Kennebec Water Power Company (c/o Central Maine Power Company), the existing licensee for the Moosehead Lake Outlet Dams Project No. 2671, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99–495. The original license for Project No. 2671 was issued effective May 1, 1954, and expires December 31, 1993.

The project is located on the Kennebec River in Somerset and Piscataquis Counties, Maine. The principal works of the Moosehead Lake Project include East Outlet Dam with earthfill embankments at both ends and a gated concrete spillway at sill elevation 1,018.5 feet m.s.l.; West Outlet Dam with earthfill embankments at both ends and a gated concrete spillway at sill elevation 1,020.5 feet m.s.l.; a reservoir of about 544,000 acrefeet

storage at elevation 1,029 feet m.s.l. and a drawdown of 7.5 feet; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No RM87-7-000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at Edison Drive, Augusta, ME 04336.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 89-10164 Filed 4-27-89; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3563-6]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared April 10, 1989 through April 14, 1989 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the Federal Register dated April 14, 1989 (54 FR 15006).

Draft EISs

ERP No. D-AFS-B61017-NH, Rating EO2, Loon Mountain Ski Area, South Mountain Expansion Project, Special Use Permit, White Mountain National Forest, Grafton County, NH.

Summary: EPA has determined that the draft EIS does not evaluate all reasonable alternatives; does not sufficiently address direct, indirect or cumulative impacts; and does not adequately evaluate mitigation measures. Furthermore, EPA believes that the South Mountain Project as proposed would result in significant environmental impacts that must be avoided.

ERP No. D-AFS-L65129-OR, Rating EC2, Shady Beach Fire Recovery Project, Implementation, Willamette National Forest, Lane County, OR.

Summary: EPA believes that additional information is needed to support the final EIS. This information should include documentation for a water quality/fish monitoring plan and a description of how the project will comply with Oregon Water Quality Standards for turbidity.

ERP No. D-NOA-690008-TX, Rating LO, Flower Garden Banks National Marine Sanctuary Establishment, Designation, LA and TX.

Summary: EPA expressed no objections to the proposed alternative as described in this document.

ERP No. D-SCS-C36064-NY, Rating EC2, Virgil Creek Watershed Flood Prevention Plan, Funding and Implementation, Town of Dryden, Town of Harford and Village of Dryden, Tompkins and Cortland Counties, NY.

Summary: EPA has concerns about the potential impacts to the existing functions and values of the rivers and floodplains downstream of the proposed dam. Additionally, the draft EIS does not adequately address the potential impacts associated with sediment removal, sediment disposal, and site geology for the proposed project. EPA has requested that additional information on these issues be included in the final EIS.

Regulations

ERP No. R-AFS-A65158-00, 36 CFR Part 222; Grazing Fees on National Forest System Lands in the Eastern States (54 FR 6425).

Summary: EPA recommends that the final regulation allow the application of grazing fee credits to a wide range of watershed and riparian/wetland restoration activities.

Dated: April 25, 1989.

William D. Dickerson,

Acting Director, Office of Federal Activities.

[FR Doc. 89-10294 Filed 4-27-89; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3563-5]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075. Availability of Environmental Impact Statements Filed April 17, 1989 through April 21, 1989 Pursuant to 40 CFR 1506.9.

EIS No. 890091, Draft, NPS, IN, Gary Marina Development, Approval, Indiana Dunes National Lakeshore, City of Gary, Lake County, IN, Due: June 26, 1989, Contact: Dale Engquist (219) 926-7561.

EIS No. 890092, Draft, COE, HI, Kahului Harbor Light Draft Navigation Improvement, Implementation, Island of Maui, Hawaiian Archipelago, HI, Due: June 12, 1989, Contact: Dr. James Maragos (808) 438-2263.

EIS No. 890093, Draft, HUD, PR, Encantada Residential Development, Mortgage Insurance, Dos Bocas Ward, Trujillo Alto, PR, Due: June 12, 1989, Contact: Hector R. Mercado (809) 766-6240.

EIS No. 890094, Draft, IBR, CA, Westlands Water District, Water Supply Project, Intertie Construction, Delta-Mendota Canal to the California Aqueduct, Approval, Alameda County, CA, Due: June 19, 1989, Contact: Wayne Deason (303) 236-9336.

EIS No. 890095, Final, FHW, I-5 Widening, Main Street Interchange to I-205, Funding and 404 Permit, Clark County, WA, Due: May 30, 1989, Contact: B.F. Morehead (206) 753-2120.

EIS No. 890096, Draft, FHW, SC, Northern Outer Bypass Construction, US 501 to US 17, Funding, COE Section 10 and 404 Permits and US Coast Guard Section 9 Permit, City of Conway, Horry County, SC, Due: June 26, 1989, Contact: Charles W. McGiboney (803) 253-3881.

EIS No. 890097, Final, COE, CA, Ox Mountain Sanitary Landfill Expansion, Apanolio Canyon Site, 404 Permit, Apanolio Creek, San Mateo County, CA, Due: May 30, 1989, Contact: Barney Opton (415) 974-0441.

EIS No. 890098, DSuppl, SCS, CO, McElmo Creek Unit, Salinity Control Study, Onfarm Irrigation Improvements, Additional Water Delivery and Management Improvements, Funding and Implementation, Montezuma County, CO, Due: June 12, 1989, Contact: Sheldon G. Boone (303) 964-0295.

EIS No. 890099, Draft, DOE, WA, Hanford Site Eight Surplus Plutonium Production Reactors Decommissioning, Implementation, Richland, WA, Due: July 28, 1989, Contact: Tom Bauman (509) 376-7501.

EIS No. 890100, Draft, COE, CA, Batiquitos Lagoon Enhancement Project, Restoration and Improvement, Implementation, City of Carlsbad, San Diego County, CA, Due: June 12, 1989, Contact: David J. Castanon (213) 894-5606.

EIS No. 890102, Draft, IBR, CO, Uncompahgre Valley Reclamation Project, AB Lateral Hydropower Facility Construction and Operation, Leasing, Delta and Montrose Counties, CO, Due: June 22, 1989, Contact: Wayne Deason (303) 236–9336.

EIS No. 890103, Final, FHW, CA, Ventura County Routes 23 and 118 Freeway Gap Closure, Rt–23 Freeway at New Los Angeles Avenue to Rt–118 Freeway at College View Avenue, Funding, 404 Permit, Moorpark City, Ventura County, CA, Due: May 30, 1989, Contact: Glenn Clinton (916) 551–1310.

EIS No. 890104, FSuppl, NRC, MT, Rare Earths Permanent Waste Disposal Facility Decommissioning, Alternative Site Analysis, License, DuPage County, IL, Due: May 30, 1989, Contact: Ginny Tharpe (202) 492–0610.

Amended Notices

EIS No. 890090, DSuppl, DOE, NM, Waste Isoaltion Pilot Plant Construction, Updated Geological and Hydrological Information, Eddy County, NM, Due: June 20, 1989, Contact: W. John Arthur III (505) 889–3038.

Published FR 04–21–89—Incorrect due date.

Dated: April 25, 1989.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 89–10295 Filed 4–27–89; 8:45 am]

BILLING CODE 6560–50–M

[AD–FRL–3560–7]

National Air Pollution Control Techniques Advisory Committee; Open Meeting

ACTION: Notice of open meeting.

SUMMARY: A meeting of the National Air Pollution Control Techniques Advisory Committee will be held at the Sheraton Imperial Hotel and Towers, Royal Ballroom, I–40 Exit 282 at Page Road, Research Triangle Park, North Carolina 27709. The commercial telephone number is (919) 941–5050.

DATES: June 7 and 8, 1989.

FOR FURTHER INFORMATION CONTACT: All meetings are open to the public. Anyone wishing to make a presentation should contact Ms. Mary Jane Clark at the Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, by May 26, 1989. The commercial telephone number is (919) 541–5571, and the FTS number is 629–5571.

SUPPLEMENTARY INFORMATION: The agenda for the meeting is as follows:

June 7 (Wednesday)—9:00 a.m.

Municipal Waste Combustion, Status Report to the Committee on the Development of Standards and Guidelines under Sections 111(b) and (d) of the Clean Air Act.

Municipal Solid Waste Landfills, Status Report to the Committee on Regulatory Development (Section 111 of the Clean Air Act).

Source Category Ranking System, Review of a New Method Being Developed to Prioritize Sources of Air Toxics Emissions for Regulatory Analysis.

Equipment Leaks, Status Report to the Committee on the Use of Regulatory Negotiation to Improve the Current Leak Detection and Repair Regulations for Emissions from Equipment Leaks (Section 111 and 112 of the Clean Air Act).

Industrial Wastewater Facilities, Review of a Draft Control Technology Document.

Solvent Cleaners, Review of a Draft Alternative Control Technology Document.

June 8 (Thursday)—9:00 a.m.

Continuation of June 7—As Required

The dockets containing material relevant to municipal waste combustion (A–89–08) and municipal solid waste landfills (A–88–09) are located in the U.S. Environmental Protection Agency, Air Docket, Room M1500, 1st floor-Waterside Mall, 401 M Street SW., Washington, DC 20460. The dockets may be inspected between 8:30 a.m. and 3:30 p.m. on weekdays, and a reasonable fee may be charged for copying. (Pub. L. 92–463)

Date: April 18, 1989.

Don R. Clay,

Assistant Administrator for Air and Radiation.

[FR Doc. 89–9879 Filed 4–27–89; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review.

April 21, 1989.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on this information collection should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395–3785.

OMB Number: 3060–0355

Title: Rate of Return Report

Form Number: FCC 492

Action: Extension

Respondents: Businesses (including small businesses)

Frequency of Responses: Quarterly.

Estimated Annual Burden: 126 Responses; 4,032 Hours.

Needs and Uses: The FCC Form 492 is filed by each local exchange carrier (LEC) or group of carriers who file individual access tariffs. The form contains rate of return information on a quarterly and cumulative basis for monitoring the access tariffs and for monitoring the maximum rate of return prescriptions. The FCC 492 is needed to enable the Commission to fulfill its regulatory responsibilities.

Federal Communications Commission

Donna R. Searcy,

Secretary.

[FR Doc. 10156 Filed 4–27–89; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–823–DR]

Major Disaster and Related Determinations; Texas

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Texas (FEMA–823–DR), dated April 23, 1989, and related determinations.

DATED: April 23, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 2047,2 (202) 646–3614.

NOTICE: Notice is hereby given that, in a letter dated April 23, 1989, the President declared a major disaster under the authority of the Robert T. Stafford

Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*, Pub. L. 93–288, as amended by Pub. L. 100–707), as follows:

I have determined that the damage in certain areas of the State of Texas, resulting from severe thunderstorms and flooding on March 28–29, 1989, is of sufficient severity and magnitude to warrant a major disaster declaration under Pub. L. 93–288, as amended by Pub. L. 100–707. I, therefore, declare that such a major disaster exists in the State of Texas.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under Pub. L. 93–288, as amended by Pub. L. 100–707, for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, and redelegated to me, I hereby appoint Robert D. Broussard of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Texas to have been affected adversely by this declared major disaster:

The Counties of Cass, Cherokee, Gregg, Harrison, Marion, and Rusk for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Robert H. Morris,

Acting Director, Federal Emergency Management Agency.

[FR Doc. 89–10223 Filed 4–27–89; 8:45 am]

BILLING CODE 6718–03–M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

April 21, 1989.

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, "to approve of and assign OMB contol numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approval collection of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following forms, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will the submitted to the Board for final approval under OMB delegated authority.

DATE: Comments must be received on or before May 8, 1989.

ADDRESS: Comments, which should refer to the OMB Docket number (or Agency from number in the case of a new information collection that has not yet been assigned an OMB number), should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, or delivered to room B–2223 between 8:45 a.m. and 5:15 p.m. Comments received may be imspected in room B–1122 between 8:45 a.m. and 5:15 p.m., except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.6(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form, the request for clearance (SF 83), supporting statement, instructions, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below. Federal Reserve Board Clearance Officer—Frederick J. Schroeder—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3822)

Proposed to approve under OMB delegated authority the extension, with revision, of the following report:

1. *Report title:* Regulation G Registration Statement, Deregistration Statement, and Annual Report
Agency Form Number: FR G–1, FR G–2, and FR G–4
OMB Docket Number: 7100–0011
Frequency: On occasion for the FR G–1 and FR G–2; annually for the FR G–4
Reporters: Federal and state credit unions, insurance companies, savings and loan associations, commerical and consumer credit organizations, production credit associations, small businesses, etc.
Annual Reporting Hours: 1154, (137 for the FR G–1, 5 for the FR G–2, and 1,012 for the FR G–4
Estimated Average Hours per Response: 2.5 for the FR G–1, 0.25 for the FR G–2, and 2.0 for the FR G–4
Number of Respondents: 581 (55 for the G–1, 20 for the FR G–2, and 506 for the FR G–4)
Small businesses are affected.

General Description of Report

This information collection is mandatory (in the case of FR G–2 respondents, the information collection is only mandatory if they choose to deregister) [15 U.S.C. 78g,w] and is given confidential treatment [5 U.S.C. 552(b)(4), (b)(6)], except the FR G–2, which is not given confidential treatment.

The FR G–1 is needed to elicit certain background and financial information about a lender (other than banks, brokers, or dealers) and the types and amount of credit activities engaged in with respect to stock market credit. The FR G–2 is necessary to notify the Federal Reserve System that a lender registered under Regulation G wishes to and is eligible to deregister. The FR G–4 is required annually from all lenders registered pursuant to Regulation G in order to enable the Federal Reserve to monitor the amount of stock-secured credit extended by such lenders and to aid the Federal Reserve in administering margin requirements pursuant to the Securities Exchange Act of 1934. The revision to FR G–2 is an addition of the registrant's Internal Revenue Service Identification Number, which is already reported on the other two forms.

Proposal to approve under OMB delegated authority the extension, without revision, of the following reports:

1. *Report title:* Statement of Purpose for an Extension of Credit Secured by Margin Securities by a Person Subject

to Registration Under Regulation G
Agency Form Number: FR G–3
OMB Docket Number: 7100–0018
Frequency: On occasion (average of 20 per respondent)
Reporters: Federal and state credit unions, insurance companies, savings and loan associations, commerical and consumer credit organizations, small businesses, etc.
Annual Reporting Hours: 1,792
Estimated Average Hours per Response: 10 minutes
Number of Respondents: 560
Small businesses are affected.

General Description of Report

Repondent's obligation to reply is mandatory [15 U.S.C 78g,w] and is not given confidential treatment.

This report is required to ensure that a lender does not extend credit to purchase, or carry securities in excess of the amount permitted by the Federal Reserve Board pursuant to Regulation G and to ensure that a borrower does not violate Regulation X.

2. *Report title:* Statement of Purpose for an Extension of Credit by a Creditor
Agency Form Number: FR T–4
OMB Docket Number: 7100–0019
Frequency: On occasion
Reporters: Individuals, broker and dealers
Annual Reporting Hours: 117
Estimated Average Hours per Response: 10 minutes
Number of Respondents: 700
Small businesses are not affected.

General Description of Report:

Respondent's obligation to reply is mandatory [15 U.S.C. 78g,w] and is not given confidential treatment.

This report is required in order to have a written record of the amount of "non-purpose" credit being extended, the purpose for which the money is to be used, and a listing and valuation of collateral, as well as to ensure that broker/dealers comply with the law.

Board of Governors of the Federal Reserve System, April 21, 1989
William W. Wiles,
Secretary of the Board.
[FR Doc. 89–10206 Filed 4–27–89; 8:45 am]
BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Family Support Administration

Forms Submitted to the Office of Management and Budget for Clearance

The Family Support Administration (FSA) will publish on Fridays information collection packages submitted to the Office of Management and Budget (OMB) for clearance, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). Since the last scheduled publication for April 21, 1989, the following packages were submitted to OMB:

(For a copy of the packages below, call the FSA Reports Clearance Officer on 202.252–5598.)

(0970–0051) Request for Extension of Approval of Information Collection Requirements Contained in Regulations that Implement the Child Support Enforcement Amendments of 1984.

The information prescribed in the information collection requirements is used by custodial parents, absent parent and the State for a variety of purposes. There are two collection components in this submittal:

(1) Title IV–D State Plan Amendments. Number of Respondents: 54, *Frequency of Response:* 54, *Average Burden of Response:* 43 Minutes, *Estimated Annual Burden:* 38.7 hours.

(2) Notification to the Public of IV–D Services Number of Respondents: 54, *Frequency of Response* 220, *Average Burden per Response:* 400 minutes, *Estimated Annual Burden Hours:* 1,467.

(0970–0085) Provision of Services in Interstate IV–D Cases

This collection continues regulation 45 CFR 303.7 which requires State IV–D Agencies to transmit child support information on either URESA Action Request or Interstate Child Support transmittal form. Respondents will be state agencies involved in child support activities. *Number of Respondents:* 54, *Frequency of Response:* 2,400, *Average Burden per Response:* 2, *Estimated Annual Burden:* 259,200 hours.

OMB Desk Clearance Office: Justin Kopca. Written comments and recommendations for the proposed information collections should be sent directly to the OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3201, 1725 17th Street, NW. Washington, DC 20503.

Dated: April 4, 1989.

Sylvia E. Vela,
Deputy Associate Administrator, Office of Management and Information Systems, FSA.
[FR Doc. 89–10157 Filed 4–27–89; 8:45 am]
BILLING CODE 4150–04–M

Health Care Financing Administration

Public Information Collection Requirements Submitted to the Office of Management and Budget for Clearance

AGENCY: Health Care Financing Administration, HHS.

The Department of Health and Human Services (HHS) previously published a list of information collection packages it submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (Pub. L. 96–511). The Health Care Financing Administration (HCFA), a component of HHS, now publishes its own notices as the information collection requirements are submitted to OMB. The HCFA has submitted the following requirements to OMB since the last HCFA list was published.

1. *Type of Request:* Reinstatement; *Title of Information Collection:* Pacemaker Related Data; *Form Number:* HCFA-496; *Frequency:* On occasion; *Respondents:* Businesses or other for profit; *Estimated Number of Responses:* 97,500; *Average Hours per Response:* .16; *Total Estimated Burden Hours:* 15,600.

2. *Type of Request:* New; *Title of Information Collection:* Medicare Influenza Vaccine Demonstration; *Form Number:* HCFA–R–127; *Frequency:* Annually; *Respondents:* Individuals or households, businesses or other for profit, non-profit institutions, and small businesses or organizations; *Estimated Number of Responses:* 28,742; *Average Hours per Response:* .16; *Total Estimated Burden Hours:* 4,790.

This request is for a survey of Medicare beneficiaries regarding influenza immunization status. The survey is part of a demonstration project to determine whether providing influenza immunization to Medicare Part B-enrolled beneficiaries is a cost-effective benefit. The survey will be administered by telephone to a sample of Medicare beneficiaries and by mail to nursing homes where beneficiaries reside. The HCFA has requested expedited review by the Office of Management and Budget. In keeping with the requirements for expeditied reviews, we are attaching a copy of the survey instrument. The public has seven (7) days from date of this notice to comment on this information collection.

3. *Type of Request:* Reinstatement; *Title of Information Collection:* Medicare Carrier Appeals Report; *Form*

Number: HCFA–2590; *Frequency:* Monthly; *Respondents:* Businesses or ohter for profit; *Estimated Number of Responses:* 600; *Average Hours per Response:* 2; *Total Estimated Burden Hours:* 1,200.

4. *Type of Request:* Revision; *Title of Information Collection:* Hospital and Hospital Health Care Complex Cost Report; *Form Number:* HCFA–2552; *Frequency:* Annually; *Respondents:* Businesses or other for profit, non-profit institutions, and small businesses or organizations; *Estimated Number of Responses:* 7,000; *Average Hours per Response:* 54 (Reporting) and 577.5 (Recordkeeping); *Total Estimated Burden Hours:* 380,000 (Reporting) and 4,053,000 (Recordkeeping) = 4,433,560 total hours.

5. *Type of Request:* Extension; *Title of Information Collection:* Payment Adjustment for Sole Community Hospitals, 42 CFR 412.92; *Form Number:* HCFA–R–79; *Frequency:* On occasion; *Respondents:* State/local governments; *Estimated Number of Responses:* 30; *Average Hours per Response:* 4; *Total Estimated Burden Hours:* 120.

6. *Type of Request:* Reinstatement; *Title of Information Collection:* Departmental Clinical Laboratory Survey Report Forum; *Form Number:* HCFA–1557; *Frequency:* Annually; *Respondents:* State/local governments; *Estimated Number of Responses:* 5,500; *Average Hours per Response:* 2; *Total Estimated Burden Hours:* 11,000.

7. *Type of Request:* New; *Title of Information Collection:* Pilot Test of a Home Health Agency Functional Assessment Instrument; *Form Number:* HCFA–R–128; *Frequency:* On occasion; *Respondents:* State/local governments; *Estimated Number of Responses:* 240; *Average Hours per Response:* .18; *Total Estimated Burden Hours:* 431.

8. *Type of Request: Revision; Title of Information Collection:* Survey Report for Examination and Treatment for Emergency Medical Conditions and Women in Active Labor; *Form Number:* HCFA-595; *Frequency:* On occasion; *Respondents:* Individuals or households, State/local governments, Federal agencies or employees, and non-profit institutions; *Estimated Number of Responses:* 1,900; *Average Hours per Response:* .5; *Total Estimated Burden Hours:* 950.

Additional Information or Comments: Call the Reports Clearance Officer on 301–966–2088 for copies of the clearance request packages. Written comments and recommendations for the proposed information collections should be sent directly to the following address: OMB Reports Management Branch, Attention: Allison Herron, New Executive Office Building, Room 3208, Washington, DC 20503.

Date: April 24, 1989.

Louis B. Hays,

Acting Administrator, Health Care Financing Administration.

Survey Questions for Medicare Beneficiaries

Ask to speak with person on label. If not available, record status code XX and schedule callback.

If person on label cannot be interviewed (e.g., bedridden, deaf), you may interview another member of the household (a proxy) about the person.

Hello, I'm ——— calling from Abt Associates, a research firm in Cambridge, Massachusetts. We are working on a study about flu shots for the Health Care Financing Administration, Department of Health and Human Services. We are calling a random sample of people who have Medicare. Your cooperation is voluntary and will not affect your Medicare or any other government benefits. The information you give will be kept strictly confidential.

1. Did (you/person) have a flu shot during the past fall or winter?
   - Yes (skip to Q. 3) 1
   - No 2
   - Don't know/refused (terminate)

2. There are many reasons why people do not get flu shots. Please tell me whether each of the reasons I'm going to read was important for (you/person). Was read item a reason?

	Yes	No	DK/Ref
(You were/person) was healthy and didn't think (you/he/she) needed it	1	2	3
(You were/person) was worried about the side effects	1	2	3
(Your/the person's) doctor did not recommend it	1	2	3
(You/person) didn't want to spend the money	1	2	3
(You don't/person) doesn't like shots or needles	1	2	3
(You/person) never thought about it	1	2	3
(You/person) had a flu shot in the past and got the flu anyway	1	2	3
(You/person) heard that the shot can actually give you the flu	1	2	3
(You/person) heard that you can still get the flu even after you have the shot	1	2	3
(You/person) had a flu shot in the past and didn't think you needed another one	1	2	3
Some other reason (specify) (skip to Q. 5)	1	2	3

3. Where did (you/person) get (your/his/her) flu shot? If necessary, read list. Circle one response.
   - Private practice doctor's office 1
   - Health Maintenance Organization (HMO) 2
   - Clinic run by a government health department 3
   - At a hospital while you were an overnight patient 4
   - At a hospital, but not during an overnight stay 5
   - At a nursing home where (you/person) were staying 6
   - At home by a visiting nurse 7
   - Somewhere else (specify) 8
   - Don't know/refused 9

4. (Were you/Was person) traveling, away on vacation, or living away from home when (you/he/she) got the flu shot?
   - Yes 1
   - No 2
   - Don't know/refused 3

5. Did (you/person) get a flu shot last year, that if for the winter of 198x to 198x?
   - Yes 1
   - No 2
   - Don't know/refused 3

6. Did (you/person) ever get a vaccine for pneumonia?
   - Yes 1
   - No 2
   - Don't know/refused 3

7. How many cigarettes do you smoke daily?
   - None 1
   - 1–19 2
   - 20 or more 3

8. Have (you/person) ever been told by a doctor that (you/person) have a chronic heart condition such as a heart attack, a rheumatic heart condition, high blood pressure, or hardening of the arteries?
   - Yes 1
   - No 2
   - Don't know/refused 3

9. Do (you/person) have asthma, emphysema, tuberculosis, or chronic bronchitis?
   - Yes 1
   - No 2
   - Don't know/refused 3

10. Do (you/person) have diabetes?
   - Yes 1
   - No 2
   - Don't know/refused 3

11. Do (you/person) have a chronic kidney/renal disease?
   - Yes 1
   - No 2
   - Don't know/refused 3

12. Are (you/person) immunosuppressed from any cause, including chemotherapy malignancy, organ transplants, or other disease causing depression in immunity?
   - Yes 1
   - No 2
   - Don't know/refused 3

Closing: That's all the questions. Thank you very much for your time.

Interviewer: Interview was conducted with: Circle one
   - Person on label 1
   - Proxy 2

Note.—Public reporting burden for this collection of information is estimated to average ten minute per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining 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 the burden, to Office of Financial Management and Procurement, HCFA, P.O. Box 26684, Baltimore, MD 21207; and to the Office of Management and Budget, Paper-

work Reduction Project (0938-xxxx) Washington, DC 20503.

Mail Survey of Nursing Homes and Residential Facilities

Survey addressed to Administrator of Institution

Dear ———:

The Health Care Financing Administration of the Department of Health and Human Services is conducting a study of influenza immunization among Medicare beneficiaries. All the nursing homes and residential facilities in several parts of the country, including your area, are being surveyed as part of this study. Enclosed is a survey concerning the Medicare beneficiaries currently served in your institution. We would appreciate your cooperation in answering this survey and returning it as quickly as possible. Your cooperation is voluntary and will not affect your Medicare or Medicaid payments or any other government programs. The information you give will be kept strictly confidential.

If you have any questions, please call the survey researchers, Abt Associates Inc., at 1-800- - .

Thank you for your cooperation.

1. How many beds or living units are in your facility?

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2. Does your facility have a written policy regarding the encouragement of administration of influenza vaccine to all residents?

Yes

No

Don't Know

3. How many Medicare-eligible persons are currently served in your facility?

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4. Of the Part B Medicare beneficiaries in your facility today, what percent received a flu shot within the facility between August of 198x and March of 198x?

Public reporting burden for this collection of information is estimated to average five minute per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining 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 the burden, to Office of Financial Management and Procurement, HCFA, P.O. Box 26684, Baltimore, MD 21207; and to the Office of Management and Budget, Paperwork Reduction Project (0938-xxxx) Washington, DC 20503.

FR Doc. 89-10251 Filed 4-27-89; 8:45 am]

BILLING CODE 4120-03-M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on April 21, 1989.

(Call Reports Clearance Officer on 202-245-2100 for copies of package)

1. Targeted Outreach Demonstration Project—AIDS Initial Assessment—0930-0124—The Targeted Outreach Demonstration Project is designed to obtain information on intravenous drug use and sexual behaviors of populations at high risk of AIDS and to test the effectiveness of community-based outreach and intervention strategies in reducing the spread of AIDS among IV drug users, their sexual partners, and prostitutes. This revision is based on improvements and modifications gained through field experience. Respondents: Individuals or households; Number of Respondents: 12,000; Number of Responses per Respondent: 1; Average Burden per Response: 1 hour; Estimated Annual Burden: 12,000 hours.

2. Nutrition Labeling—0910-0177—The large number of processed foods makes it difficult for consumers to choose foods that provide nutrients necessary for good health. Nutrition labeling of processed foods assists (1) the consumer in making appropriate choices, and (2) the manufacturer in marketing nutritious foods. The nutrition labeling regulations place an information burden on manufacturers who provide such labeling. Respondents: Businesses or other for-profit, small businesses or organizations; Number of Respondents: 3,495; Number of Responses per Respondent: 12.95; Average Burden per Response: 107.42 hours; Estimated Annual Burden: 4,860,585 hours.

3. Design and Pilot Test of a Survey of Visits to Hospital Outpatient and Emergency Departments—0920-0233—the purpose of this project is to develop the design for a national survey of patient visits to hospital outpatient and emergency departments. The resulting design will be tested and evaluated through actual data collection in four geographic areas. Results will be used to implement a national survey of hosptial ambulatory services in the future. Respondents: Businesses or other for-profit, non-profit institutions; Number of Respondents: 40; Number of Responses per Respondent: 304; Average Burden per Response: .0575 hours; Estimated Annual Burden: 699 hours.

4. Cosmetic Risk Assessment Exposure Survey—New—A data base is needed on cosmetic usage practices in the United States that can be used by Food and Drug Administration scientists to conduct scientific risk assessments of the possible health effects due to ingredients or contaminants in cosmetic products. Survey information will be used for constructing exposure estimates. Respondents: Individuals or households; Annual Reporting Burden: Since this is a concept clearance, definitive burden estimates are not yet available. These estimates will be provided when the study design and questionnaire are final and the final clearance request is submitted.

5. Basic OCC National Knowledge, Attitude and Behavior Survey—Addendum—0925-0321—Approval is requested for specific variable items for the Basic OCC National Knowledge, Attitude and Behavior Survey. The variable questions will assist the Office of Cancer Communications in planning related to the Clinical Trials Accrual Education Program and the Mammography Education Program. Respondents: Individuals or households; Number of Respondents: 3,763; Number of Responses per Respondent: 1.11; Average Burden per Response: .263 hours; Estimated Annual Burden: 990 hours.

OMB Desk Officer: Shannah Koss McCallums.

Written comments and recommendations for the proposed information collections should be sent directly to the OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Date: April 24, 1989.

James M. Friedman,

Acting Deputy Assistant Secretary for Health (Planning and Evaluation).

[FR Doc. 89-10215 Filed 4-27-89; 8:45 am]

BILLING CODE 4160-17-M

Social Security Administration

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Pub. L. 96–511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the **Federal Register** on April 21, 1989.

(Call Reports Clearance Officer on (301) 965–4149 for copies of package)

1. Explanation of Determination—0960–0438—The information collected on the form SSA–4268 is used by the Social Security Administration (SSA) to document the claims folder in a claim for disability benefits, and to notify the claimant of the basis for our determination regarding those benefits. The respondents are employees of the State Disability Determination Services who make disability determinations for SSA.

Number of Respondents: 54
Frequency of Response: 77,375
Average Burden Per Response: 20 minutes
Estimated Annual Burden: 1,392,750 hours
OMB Desk Officer: Justin Kopca

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Date: April 24, 1989.

Ron Compston,

Social Security Administration, Reports Clearance Officer.

[FR Doc. 89–10211 Filed 4–27–89; 8:45 am]

BILLING CODE 4190–11–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–010–09–4410–13: GP9–189]

Lakeview District Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: A meeting of the Lakeview District Grazing Advisory Board is scheduled for May 19, 1989. The meeting will begin at 10:00 a.m. in the Lakeview District conference room at 1000 South Ninth in Lakeview and is open to the public.

The purpose of the meeting will be to introduce new board members and elect a chairman for the new term. There will be a discussion of the grazing mitigation measures indentified in the Warner Lakes Plan Amendment for Wetlands and Associated Uplands and other key issues pertinent to the Lakeview District range program.

FOR FURTHER INFORMATION CONTACT: Renee Snyder, Public Affairs Officer, Telephone (503) 947–2177.

Terry H. Sodoroff,

District Manager

[FR Doc. 89–10166 Filed 4–27–89; 8:45 am]

BILLING CODE 4310–33–M

National Park Service

Availability of Plan of Operations and Environmental Assessment; Lake Meredith Recreation Area, TX

Notice is hereby given in accordance with § 9.52(b) of Title 36 of the Code of Federal Regulations that the National Park Service has received from Phillips Petroleum Company a Plan of Operations for plugging and abandonment of its Lee Bivins No. 2W Well, located in the Sanford-Yake Unit of Lake Meredith Recreation Area, Hutchinson County, Texas.

The Plan of Operations and Environmental Assessment are available for public review and comment for a period of 30 days from the publication date of this notice in the Office of the Superintendent, Lake Meredith Recreation Area, 419 E. Broadway, Fritch, Texas; and the Southwest Regional Office, National Park Service, 1220 South St. Francis Drive, Room 347, Santa Fe, New Mexico. Copies are available from the Southwest Regional Office, Post Office Box 728, Santa Fe, New Mexico 87504–0728, and will be sent upon request.

Date: April 17, 1989.

John E. Cook,

Regional Director, Southwest Region.

[FR Doc. 89–10176 Filed 4–27–89; 8:45 am]

BILLING CODE 4310–70–M

General Management Plan; Death Valley National Monument, California and Nevada; Record of Decision

Summary: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, and specifically to regulations promulgated by the Council on Environmental Quality at 40 CFR 1505.2, the Department of the Interior, National Park Service has prepared and approved a Record of Decision on the Final Environmental Statement/General Management Plan for Death Valley National Monument, Inyo and San Bernardino Counties, California and Esmeralda and Nye Counties, Nevada. The National Park Service will implement the Proposed Plan, as described in the Draft Environmental Statement/General Management Plan, issued in April 1988, and as modified and corrected in the Final Environmental Statement/General Management Plan, issued in December 1988.

Copies of the Record of Decision may be obtained either from the Superintendent, Death Valley National Monument, Death Valley, CA 92238; or the Western Regional Office, National Park Service, P.O. Box 36063, San Francisco, CA 94102.

Date: April 14, 1989.

W. Lowell White,

Acting Regional Director, Western Region.

[FR Doc. 89–10175 Filed 4–27–89; 8:45 am]

BILLING CODE 4310–70–M

[Order No. 6, Amdt. 1]

Superintendents, et al., ; Delegation of Authority

Southeast Region Order No. 6, approved August 30, 1977, and published in the **Federal Register** of November 17, 1977, (42 FR 59428), set forth in section 2 certain authority and limitations on authority to officers and employees. This amendment changes paragraphs (h), (i), (k), and (l) to read as follows:

Section 2. Delegation.* * *

(h), Chief, Land Resources Division. The Chief, Land Resources Division, is authorized to execute the land acquisition program, including contracting for acquisition of lands and related properties, and acceptance of offers to sell to, or exchange with the United States, lands or interests in lands, and to execute all necessary agreements and conveyances incidental thereto; to accept deeds conveying to the United States lands and interests in lands; to approve on behalf of the National Park Service offers of settlement in condemnation cases; to provide relocation assistance; and to approve claims for reimbursement under Pub. L. 91–646, as amended.

(i) Field Land Resources Officers. All Field Land Resources Officers are authorized to execute their land acquisition program, including contracting for acquisition of lands and

related properties, and acceptance of offers to sell to, or exchange with the United States lands or interests in land when the amount involved does not exceed $250,000; accept deeds conveying to the United States lands or interests in lands; approve claims for reimbursement under Pub. L. 91–646, as amended, when the amount involved does not exceed $20,000.

(k) Delete

(l) Delete

Date: March 2, 1989.

C.W. Ogle,

Acting Regional Director, Southeast Region.

[FR Doc. 89–10177 Filed 4–27–89; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

AGENCY FOR INTERNATIONAL DEVELOPMENT

Housing Guaranty Program; Notice of Investment Opportunity

The Agency for International Development ("A.I.D.") has authorized the guaranty of a loan for the Government of Cote d'Ivoire as part of A.I.D.'s development assistance program. The proceeds will be used to refinance obligations owed by the Government of Cote d'Ivoire in connection with the A.I.D. Housing Guaranty Program. At this time, the Government of the Cote d'Ivoire has authorized A.I.D. to request proposals from eligible lenders for a refinancing loan under this program of $12.308 Million Dollars ($12,308,000). The name and address of the representatives of the Borrower to be contacted by interesed U.S. lenders or investment bankers, the amount of the loan and project number are indicated below:

Government of the Cote d'Ivoire

Project: 681–HF–002—$12,308,000
Attention: Mr. Leon Naka, Director General, Caisse Autonome d'Amortissement, 01 BP 670, Abidjan 01, Republique de Cote d'Ivoire
Telex No.: 22882 CAA–CI or 23798 CAMOR–CI
Telephone No.: (225) 320611 or 325146.

Interested lenders should submit their bids to the Borrower's representative no later than May 9, 1989. Bids should be received by 8:00 a.m. Abidjan time on Tuesday, May 9, 1989, and should remain open for at least 72 hours. The Borrower reserves the right to reject all bids received.

Bids should also be sent to the following:

Michael G. Kitay, Esq., Agency for International Development, GC/PRE, Room 3328 N. S., Washington, DC 20523.
Telephone: (202) 647–6505.
Telex No.: 892703 AID WSA.
Telefax No.: (202) 663–2552 (preferred communication).
Mr. Stephen Giddings, Assistant Director/West Africa, RHUDO/Abidjan, c/o American Embassy, Department of State, Washington, DC 20520–2010, (street address: 5 Rue Jesse Owens), 01 B.P. 1712, Abidjan, Ivory Coast, Telephone No.: (225)325513 or 325469.

For your information, the bid must include the following terms:

1. *Amount:* U.S. $12,308 million.
2. *Term:* 9 years.
3. *Interest:* Option of either fixed or variable rate, payable semi-annually on February 28 and August 31 of each year, commencing with the first such date to occur after the execution of the loan agreement.
4. *Repayment of Principal:* In eight (8) equal and consecutive semi-annual installments, payable on February 28 and August 31 of each year, commencing on February 28, 1995, and ending on August 31, 1998.
5. *Fees:* None.

Selection of investment bankers and/or lenders and the terms of the loan are initially subject to the individual discretion of the Borrower and thereafter subject to approval by A.I.D.

The full repayment of the loan will be guaranteed by A.I.D. The A.I.D. guaranty will be backed by the full faith and credit of the United States of America and will be issued pursuant to authority in Section 222 of the Foreign Assistance Act of 1961, as amended (the "Act").

Lenders eligible to receive an A.I.D. guaranty are those specified in Section 238(c) of the Act. They are: (1) U.S. citizens; (2) domestic U.S. corporations, partnerships, or associations substantially beneficially owned by U.S. citizens; (3) foreign corporations whose share capital is at least 95 percent owned by U.S. citizens; and (4) foreign partnerships or associations wholly owned by U.S. citizens.

To be eligible for an A.I.D. guaranty, the interest rate may be no higher than the maximum rate established from time to time by A.I.D.

Information as to the eligibility of lenders and other aspects of this loan or the A.I.D. Housing Guaranty Program can be obtained from: Peter M. Kimm, Director, Office of Housing and Urban Programs, Agency for International Development, Room 401, SA–2, Washington, DC 20523–0214, Telephone: (202) 663–2530.

Date: April 26, 1989.

William Gelman,

Assistant Director, Office of Housing and Urban Programs, Agency for International Development.

[FR Doc. 89–10381 Filed 4–27–89; 8:45 am]

BILLING CODE 6116–01–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–1 (Sub-No. 228X)]

Chicago and North Western Transportation Co.; Abandonment Exemption in Converse and Natrona Counties, WY; Corrected Notice of Exemption [1]

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 57-mile line of railroad between milepost 533.0 near Orin to milepost 590.0 near Sean Cohee, in Converse and Natrona Counties, WY.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on the line (or a State or local government entity action on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, an employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on May 13, 1989 (unless stayed pending reconsideration). Petitions to stay that

[1] The notice of exemption seved and published in the **Federal Register** on April 14, 1989 (54 Federal **Register** 15030–15031) contained an error in the description of the number of miles of line that are being abandoned. The correct mileage is 57, not 5.70.

do not involve environmental issues,[2] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by April 24, 1989.[4] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by May 3, 1989, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Mack H. Shumate, Jr., Chicago and North Western, Transportation Company, One North Western Center, Chicago, IL 60606.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by April 18, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275–7316. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: April 24, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89–10221 Filed 4–27–89; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply For Worker Adjustment Assistance

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 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 May 8, 1989.

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 May 8, 1989.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC this 17th day of April 1989.

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
AT&T Network Systems, Microelectronics (CWA).	Radford, VA	4/17/89	3/28/89	22,751	Telecommunication Components.
Aberdeen Sportswear, Inc. (ACTWU)	Trenton, NJ	4/17/89	3/30/89	22,752	Men's Outerwear.
Adobe Resources Corporation (Workers)	Midland, TX	4/17/89	3/13/89	22,753	Oil & Gas.
Ambix Laboratories (Workers)	East Rutherford, NJ	4/17/89	3/29/89	22,754	Pharmaceutical & Cosmetics.
Amperex Electronic Co. (IUE)	Hicksville, NY	4/17/89	3/31/89	22,755	Vacuum Tubes.
Axem Resources, Inc. (Workers)	Denver, CO	4/17/89	3/27/89	22,756	Oil & Gas.
Beef America, Inc. (Workers)	Denison, NE	4/17/89	3/27/89	22,757	Beef & Pork.
Bethlehem Steel Corporation (USWA)	Williamsport, PA	4/17/89	3/27/89	22,758	Wire Rope Products.
Blum & Fink, Inc. (UFCW)	New York, NY	4/17/89	3/29/89	22,759	Jackets & Coats.
Bright Star Industries (IAMAW)	Clifton, NY	4/17/89	4/3/89	22,760	Flashlights, Lanterns & Batteries.
Burwood Products Co. (UAW)	Traverse City, MI	4/17/89	3/27/89	22,761	Clocks & Wall Furnishings.
Cranston Fabrics (Workers)	New York, NY	4/17/89	3/22/89	22,762	Cotton & Synthetic Yarn.
Dana Corp., Spicer Axle Div. (UAW)	Fort Wayne, IN	4/17/89	3/27/89	22,763	Axle Carriers for Trucks.
Decatur Drilling, Co. (Workers)	Decatur, IL	4/17/89	3/20/89	22,764	Oil & Gas.
Dialight Corporation (Workers)	Manasquan, NJ	4/17/89	3/27/89	22,765	Electronic Hardware & Accessories.
Difini Sportswear, Inc. (ACTWU)	Bronx, NY	4/17/89	3/23/89	22,766	Men's Pants.
Eastern Knitting Mills	Philadelphia, PA	4/17/89	3/28/89	22,767	Men & Women's Sweaters.
Eaton Corporation, Specialty Casting Div. (UAW).	Marshall, MI	4/17/89	3/15/89	22,768	Ford Engine Components.
Engineered Yarns, Inc. (Company)	Coventry, RI	4/17/89	3/31/89	22,769	Yarn.
Excelled Sheepskin & Leather Coats (AC&TWU).	Edison, NJ	4/17/89	3/30/89	22,770	Coats.

[2] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 4 I.C.C.2d 400 (1988). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[3] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987), and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440–48446).

[4] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

APPENDIX—Continued

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Florence Mining Co. (UMWA)	Indiana, PA	4/17/89	3/29/89	22,771	Bituminous Coal.
Four Star Plastics (ILGWU)	Jersey City, NJ	4/17/89	3/28/89	22,772	Molding Plastic Products.
GLI—United Plastics (Workers)	Madison Heights, MI	4/17/89	3/31/89	22,773	Plastic.
Halliburton Logging Services, Inc. (Company)	Houston, TX	4/17/89	3/20/89	22,774	Wireline Logging & Perforating Equipment.
Harrell Exploration Co. (Workers)	Denver, CO	4/17/89	4/3/89	22,775	Oil & Gas.
Heinemann Electric Co. (IBEW)	Lawrenceville, NJ	4/17/89	3/23/89	22,776	Circuit Breakers.
Hummelstown Mfg.—(Workers)	Elizabethtown, PA	4/17/89	3/29/89	22,777	Children's Dresses, Slacks & Blouses.
ICO Positive Seal (Workers)	Odessa, TX	4/17/89	4/17/89	22,778	Oil & Gas.
ICO Spincote (Workers)	Odessa, TX	4/17/89	4/17/89	22,779	Oil & Gas.
Jaclyn, Inc. (LGPNWU)	West New York, NY	4/17/89	3/29/89	22,780	Handbags.
LTV Energy Products (Workers)	Bradford, PA	4/17/89	3/27/89	22,781	Oil & Gas.
Lawrence–Cannon Drilling, Inc. (Workers)	Abilene, TX	4/17/89	3/28/89	22,782	Oil & Gas.
Loadcraft Cooper (Workers)	Brady, TX	4/17/89	3/27/89	22,783	Container Chasses.
Luxury Braid Co. (Company)	Elizabeth, NJ	4/17/89	3/27/89	22,784	Decorative Braids for Shoes.
Magic Marker Ind./Dynamics Ind	Trenton, NJ	4/17/89	3/20/89	22,785	Pens.
Nabisco Brands, Inc. (BC&TW)	Fair Lawn, NJ	4/17/89	3/31/89	22,786	Cookies & Crackers.
O'Donnell Mining Co. (UMWA)	Indiana, PA	4/17/89	2/17/89	22,787	Coal.
Pyramid Drilling Co. (Workers)	Abilene, TX	4/17/89	3/22/89	22,788	Drilling.
R & H Knitting Mills, Inc. (Workers)	Brooklyn, NY	3/25/89	4/17/89	22,789	Knit Sportswear.
R.L.D. Dress (ILGWU)	Cadillac, MI	4/17/89	3/21/89	22,790	Ladies' Dresses & Suits.
Spain Construction (Workers)	St. Elmo, IL	4/17/89	3/28/89	22,791	Oil & Gas.
St. Mary Mfg. Corp. (UE)	N. Tonawanda, NY	4/17/89	3/23/89	22,792	Machine Equipment.
Technical Engineering (Workers)	Ypsilanti, MI	4/17/89	3/27/89	22,793	Employment service.
Texas Instruments, Semiconductor Div. (Workers).	Midland, TX	4/17/89	3/31/89	22,794	Semiconductors.
Textron Lycoming (UAW)	Stratford, CT	4/17/89	3/29/89	22,795	Engines.
Trend International limited (Company)	Denver, CO	4/17/89	3/21/89	22,796	Oil & Gas.
U.S. Enertex, Inc. & Xytec, Inc. (Workers)	Farmington, NM	4/17/89	3/27/89	22,797	Oil & Gas.
Warren Insulation Co. Inc. (Workers)	Hays, KS	4/17/89	3/27/89	22,798	Installation for Tanks, Heaters & Pipes.
Western Atlas International, Atlas Wireline Div. (Workers).	Indiana, PA	4/17/89	3/13/89	22,799	Oil & Gas.
C.E. Natco (Workers)	Williston, ND	11/18/88	11/1/88	[1] 21,698	Oilfield Services.

[1] Investigation reopened.

[FR Doc. 89–10217 Filed 4–27–89; 8:45 am]

BILLING CODE 4510-30-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution

Avenue, NW., Room S-3504, Washington, DC 20210.

Modification to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the Federal Register are in parentheses following the decisions being modified.

Volume I
Alabama:
AL89-8 (Jan. 6, 1989) ..... pp. 16-17
Delaware:
DE89-2 (Jan. 6, 1989) ..... p. 95
Maryland:
MD89-1 (Jan. 6, 1989) ..... pp. 412-414
NC89-7 (Jan. 6, 1989) ..... p. 533
North Carolina:
NC89-11 (Jan. 6, 1989) ..... p. 544
New Jersey:
NJ89-2 (Jan. 6, 1989) ..... p. 617
West Virginia:
WV89-2 (Jan. 6, 1989) ..... pp. 1219, 1231
Listing by Location (index) .. pp. xxv-xxviii; pp. xxx-xxxi; pp. xxxiv-xxxv; p. xxxviii.
Listing by Decision (index) .. pp. lii-lix

Volume II
Iowa:
IA89-5 (Jan. 6, 1989) ..... pp. 42-43; pp. 45-46
Michigan:
MI89-2 (Jan. 6, 1989) ..... p. 449
MI89-3 (Jan. 6, 1989) ..... pp. 564, 468-469
Missouri:
MO89-2 (Jan. 6, 1989) ..... pp. 648, 651
Ohio:
OH89-1 (Jan. 6, 1989) ..... pp. 774-786
OH89-2 (Jan. 6, 1989) ..... pp. 788-807
OH89-29 (Jan. 6, 1989) ..... pp. 870-906b
Texas:
TX89-43 (Jan. 6, 1989) ..... pp. 1110-1111
TX89-44 (Jan. 6, 1989) ..... pp. 1114-1115
TX89-46 (Jan. 6, 1989) ..... pp. 1122-1124
TX89-47 (Jan. 6, 1989) ..... pp. 1126-1127
TX89-48 (Jan. 6, 1989) ..... pp. 1130-1131

Volume III
California:
CA89-2 (Jan. 6, 1989) ..... pp. 47-48
Hawaii:
HI89-1 (Jan. 6, 1989) ..... p. 136
Nevada:
NV89-1 (Jan. 6, 1989) ..... pp. 242, 244-245
NV89-5 (Jan. 6, 1989) ..... pp. 289-290
Washington:
WA89-2 (Jan. 6, 1989) ..... pp. 390-393, 395
WA89-3 (Jan. 6, 1989) ..... p. 402
WA89-6 (Jan. 6, 1989) ..... p. 416
WA89-7 (Jan. 6, 1989) ..... p. 418
WA89-8 (Jan. 6, 1989) ..... pp. 424-425

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and Related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 25th day of April 1989.

Robert V. Setera,

Acting Director, Division of Wage Determination.

[FR Doc. 89-10281 Filed 4-27-89; 8:45 am]

BILLING CODE 4510-27-M

Mine Safety and Health Administration

[Docket No. M-89-37-C]

Kilowatt Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Kilowatt Coal Company, Inc., P.O. Box 1270, Elkhorn City, Kentucky 41522 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its No. D-1 Mine (I.D. No. 15-16288) 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 requirement that cabs or canopies be installed on the mine's electric face equipment.

2. Due to an uneven roof and a very soft bottom, the use of cabs or canopies would result in a diminution of safety. The cabs or canopies would:

(a) Strike and dislodge roof support;

(b) Severely limit the equipment operator's visibility;

(c) Strike or dislodge electrical cables creating an electrical fire hazard; and

(d) Limit the equipment operator's seating position causing fatigue, thereby creating potential for an accident.

3. 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 May 30, 1989. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: April 20, 1989

[FR Doc. 89-10218 Filed 4-27-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-41-C]

Tri-Star Mining Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Tri-Star Mining Company, Inc., Box 42-B, Grundy, Virginia 24614 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its No. 5 Mine (I.D. No. 15-15552) 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 requirement that cabs or canopies be installed on the mine's electric face equipment.

2. The mine ranges from 41 to 46 inches in height.

3. The use of cabs or canopies would result in a diminution of safety because the cabs or canopies would:

(a) Limit the equipment operator's visibility, causing operators to lean outside of the cab or canopy exposing themselves to the danger of a roof and rib fall, as well as possibly getting

crushed between the equipment frame and rib;

(b) Strike and dislodge roof bolts; and

(c) Strike, cut or damage electrical trailing cables resulting in an electrical hazard.

4. For these reasons, petitioner requests a modification of the standard.

Requests 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 May 30, 1989. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: April 20, 1989.

[FR Doc. 89-10219 Filed 4-27-89; 8:45 am]

BILLING CODE 4510-43-M

Occupational Safety and Health Administration

Bloodborne Diseases; Survey

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

SUMMARY: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35; 5 CFR Part 1320 (53 FR 16618 to 16632, May 10, 1988)), is submitting this survey to the Office of Management and Budget (OMB) for that Agency's approval. OSHA is developing a standard to protect workers from occupational exposure to bloodborne diseases, particularly the hepatitis B virus and the human immunodeficiency virus (HIV). The survey will support an assessment of the economic and technological feasibility of a standard by providing data on the population at risk, the extent of exposure, and the extent to which facilities have adopted measures to protect workers. This will be a one time only telephone survey. OSHA estimates that there will be 2669 non-response or screening only respondents requiring 5 minutes per response and 2245 completed surveys from respondents requiring an average of 30 minutes per response for an average of 16 minutes per total responses.

DATE: OSHA has requested an expedited review of this submission under the Paperwork Reduction Act to be completed by May 30, 1989.

FOR FURTHER INFORMATION CONTACT: Comments and questions about this survey or the reporting burden should be directed to Paul E. Larson, Departmental Clearance Officer, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue NW., Room N-1301, Washington DC 20210 (telephone (202) 523-6331). Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for OSHA, Office of Management and Budget, Room 3001, Washington, DC 20503 (telephone (202) 395-6880). Any member of the public who wants to comment on the information collection clearance package which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

SUPPLEMENTARY INFORMATION: OSHA has requested expedited review of this submission because of the high priority the Agency has assigned the completion of the standard for bloodborne diseases. To collect the data necessary for the economic and technological assessment of the final standard, OSHA must adhere to the schedule set forth below. As a first step, OSHA is submitting the following clearance package to OMB in a request for approval of the survey contained in Appendix I.

Supporting Statement for Survey and Related Data Gathering to Support OSHA Rulemaking on Bloodborne Diseases

A. Justification

1. Necessity of Data Collection

The Office of Regulatory Analysis of the Occupational Safety and Health Administration (OSHA) is collecting data to support an assessment of the technological and economic feasibility of a standard to protect workers from occupational exposure to certain bloodborne diseases, primarily the hepatitis B virus (HBV) and the human immunodeficiency virus (HIV). Health care and certain other workers are at increased risk for certain infectious diseases due to their exposure to blood and other potentially infectious body fluids. Occupational exposure takes place in a variety of ways, the most common being injuries from needles and other sharp instruments and the contamination of open wounds from blood splash. These exposures are common, not just in medical personnel but in workers indirectly involved in the handling of potentially infectious body fluids.

OSHA has at this time no specific standard regulating exposure to biological hazards such as viruses. In 1983 the agency issued guidelines in conjunction with the Department of Health and Human Services for reducing the risks of occupational exposure to HBV. In 1988 the agency issued enforcement procedures providing uniform inspection procedures and guidelines to be followed when conducting inspections and issuing citations under section 5(a)(1) of the Act for occupational exposure to both HBV and HIV.

OSHA has developed a proposed section 6(b) rule to protect workers from bloodborne diseases. The proposal includes provisions for safe work practices, personal protective equipment, training, post-exposure protocol and, in the case of HBV, a vaccination program.

OSHA's Congressional mandate stipulates that the agency carefully design and study its regulatory proposals. Section 6(b)(5) of the OSHA Act 2d U.S.C. 655 (b)(5) mandates that regulations promulgated by the Agency shall most adequately assure worker safety and health "to the extent feasible on the basis of the best available evidence." They are to be based on "research and the latest available scientific data." Section 6(f) of the Act requires regulations to be justified by "substantial evidence in the record" and authorizes the Secretary of Labor "to enter into contracts, agreements or other arrangements with appropriate public agencies or private organizations for the purposes of conducting studies related to his responsibility under the Act." The courts have endorsed the view that technological and economic factors affect the feasibility of proposed regulations. Thus, OSHA is obligated to gather data on the technological feasibility, cost of compliance, and economic consequences of future standards.

Executive Order 12291 reiterates this obligation by requiring the preparation of preliminary and final Regulatory Impact Analyses for each major rule. The Agency must analyze the potential benefits and costs of the rule and alternative approaches. The Regulatory Impact Analysis may be combined with the analysis required by the Regulatory Flexibility Act. This Act specifically requires an analysis that describes the "impact of the proposed rule on small entities" and significant regulatory alternatives that "take into account the resources available to small entities."

In order to fulfill the Congressional and Presidential mandates and to better evaluate the economic and technological feasibility of the final OSHA standard, OSHA requires a data base that describes current industry practices and

identifies situations where potential hazards exist. Thus, in accordance with section 6 of the Occupational Safety and Health Act of 1970, 29 U.S.C. 655, OSHA is planning to gather statistically accurate data through a survey to assess the extent to which the various types of facilities affected have already implemented infection control measures to protect workers from these infectious diseases and the direct and indirect costs associated with each of these measures. As discussed below, none of the available data sources are adequate for this purpose.

To estimate accurately the cost of the standard, data are needed on baseline compliance rates by facility for specific provisions of the standard. OSHA also needs an estimate of the proportion of each type of facility that is at various levels of compliance for each provision of the standard. Currently the data available for estimating the extent to which facilities have adopted measures to protect workers from bloodborne pathogens is extremely limited or outdated. In addition, most of the data available to OSHA are not based on a random sample, and thus their accuracy cannot be judged. The data that do exist are for the most part over a year old, and are mostly from large, urban hospitals in areas which report a high incidence of HBV and HIV infection. In some facility types, notably physicians' offices, there are almost no data on current compliance levels. Moreover, those on compliance that exist do not allow an estimate of the extent to which a facility may have adopted measures which would, at least in part, meet the requirements of the proposed standards.

In addition to estimates of compliance rates, data are needed on a variety of specific aspects of a facility's operation. For example, data on the number of incidents of employee exposure to blood or materials contaminated with blood are needed to estimate the cost of the post-exposure protocol. All existing data on exposure rates are for hospitals or atypical facilities. Similarly, facility-specific data are needed to estimate the number of workers that are at risk.

A timetable for the survey is presented in Figure A–1. The timetable shows that OSHA is attempting to complete the survey within a short period of time in order to permit completion of the final regulatory analysis in conjunction with the final rule. The schedule currently calls for completion of the bulk of the survey effort within a 10-week period. Therefore, we request that an expedited review be performed by OMB.

2. Uses of the Information

The data gathered through this survey will be used by OSHA to make estimates of the direct and indirect costs of the various provisions for safe work practices, personal protective equipment, training, post-exposure follow up and HBV vaccination. The information gathered from all of the data collection efforts will be used by OSHA to prepare a final Regulatory Impact Analysis (RIA) for the final rule. Executive Order 12291 requires preparation of an RIA for each major rule. In an RIA, the Agency must assess the potential benefits and costs of the rule and of alternative approaches.

The discussion below describes in detail the data uses for responses to each set of questions in the survey instrument.

A. *Introduction and Collection of Identification Data.* The first elements of the survey instrument describe the telephone survey in general and determine whether the respondent is in the facility type anticipated by the survey design. If the respondent is not in the anticipated facility type, the survey will be concluded.

Figure A–1—*Schedule for Design and Completion*

Complete design of survey instrument and submit information collection plan to OMB.	April 15, 1989.
Publish Federal Register notice of survey submission to OMB.	April 15, 1989.
Obtain sampling frames for each sample stratum.	April 15, 1989.
Receive OMB approval of survey (expedited).	May 15, 1989.
Mail notification letters to survey targets.	May 16, 1989.
Begin telephone interviewing.	June 1, 1989.
Complete telephone interviewing.	July 1, 1989.
Perform data tabulations.....	July 15, 1989.
Integrate survey results into a draft final report.	August 1, 1989.
Respond to comments and submit final report.	August 15, 1989.

B. *Data Collection on Types of Activities and Employment.* The next questions identify the size of the facility in terms of revenue, specific services performed and employment. This section also collects information on the rate of job turnover and growth in employment in the facilities. These factors have an important effect on the cost of the training and the HBV vaccination program aspects of the proposal.

C. *Questions on Infection Control Policies.* This set of questions identifies whether the facility has written infection control policies and the general nature of those policies. The type of policy will provide a general indication of the facility's compliance level and a quality control check on later responses.

D. *Data on Rates of Employee Exposure.* The next questions ask for estimates of the proportion of workers that are potentially exposed to blood or materials contaminated with blood. In addition, information is solicited on the number of exposed workers employed by subcontractors. The information on these workers and persons not covered by the standard, self employed workers and volunteers, will provide a more complete understanding of the distribution of exposure within facilities.

E. *Questions on Personal Protective Equipment.* The industries covered by this data collection were not included in the OSHA survey on personal protective equipment. Questions are asked here regarding the quantity of various gloves used and the extent to which this use would increase if the facility adopted a policy that followed the elements of the proposed standard. Where appropriate, additional questions are asked regarding the use of masks, goggles, shields and gowns.

F. *Questions on Medical Surveillance.* Questions are asked to determine the percentage of exposed workers who have received the HBV vaccination, the extent to which these workers are offered the HBV vaccine free of charge, and when appropriate, the proportion of workers that accept the vaccine. In addition to the vaccination program, data are collected on the facility's protocol to respond to exposure incidents. To estimate the cost of the post-exposure protocol in the proposed standard, data are collected on the number of incidents in 1988, and the types of tests the facility administers for the source patient and the exposed worker.

G. *Questions Concerning Housekeeping.* The largest potential cost associated with the housekeeping provisions of the proposal concerns the disposal of infectious waste, and needles and other sharp instruments (known in the affected industries as "sharps"). Consequently, data are collected on the quantity of potentially infectious waste now generated and the quantity of waste that would be considered potentially infectious under a policy consistent with the proposal. Data are also collected on the quantity of sharps disposal containers that are

now used and that would be used under a policy consistent with the proposal.

H. *Questions Concerning Training.* Data are collected on the length and frequency of infection control training provided by the facility. To minimize the burden on the respondent, OSHA will estimate from other sources the reasonable length of time necessary for a training program to cover all the elements called for in the standard.

Because OSHA has not regulated infectious diseases before this time and does not have a substantial amount of experience with the types of workplaces that would be affected, the Agency needs the information that this survey would provide in order to refine the proposed standard.

3. Use of Technology to Reduce Burden

Information for this survey will be collected using a Computer Assisted Telephone Interviewing (CATI) system. Such a procedure will improve the quality and efficiency of the survey in a number of ways and will also reduce respondent burden. First, since the survey is done via telephone, there is no need for scheduling on-site visits to gather the information. This is expected to increase both the response rate and reduce the cost and time of completing interviews. Respondents are also not being asked to fill out a long questionnaire form on their operations.

Further, CATI system responses are entered directly into the computer, eliminating the need for separate recording and coding operations. Also, the computer ensures that the proper sequence of questions is followed automatically. For example, if the response to one question suggests that a follow-up question can be skipped, the computer will automatically move on. The interviewer simply reads the questions as they appear on the screen. In addition, the use of CATI allows the interviewer to omit questions that would not be relevant for the particular industry being questioned. For example, the questions regarding work with concentrated amounts of the hepatitis-B or the AIDS virus would not be asked of establishments such as corrections facilities or police departments. This system produces a smoothly flowing interview and eliminates any pauses or delays by the interviewer to enter responses by hand or to find the next question. In essence, the computer produces a questionnaire tailored to each industry sector. There are no technical or legal obstacles to these plans for reducing the burden.

4. Efforts to Identify Duplication

OSHA and its contractor, Jack Faucett Associates, Inc., have conducted an extensive literature review and have explored sources within governmental and private agencies for data that are to be collected from these surveys. The findings indicate that there are no attempts to gather, in a systematic fashion, data on the work practices and the costs of control measures to protect workers from occupationally related exposures to bloodborne diseases in the various industries and facility types affected by the rule.

5. Availability of the Data from Existing Sources

The Centers for Disease Control (CDC) is preparing a survey of hospital practices in this area. As a consequence, the sample frame proposed in this survey excludes hospitals. Instead, OSHA has suggested to CDC questions that would be useful for the Agency's analysis.

There have been several surveys estimating the level of compliance with some aspects of the standard. The Academy of General Dentistry conducted a survey in September of 1987 of practices regarding infectious disease control in private dental practices. This survey, while useful in developing the preliminary RIA, did not collect data on the usage *rate* of various personal protective equipment and other important information. Most important, it is very likely that compliance rates in dental offices have increased significantly since the AGD survey was conducted.

The Service Employees International Union (SEUI) surveyed workers at a variety of facilities to estimate compliance with various infection control practices. Like the AGD survey, the SEIU data were useful in developing the preliminary RIA but do not cover all the areas of interest. In addition, the small sample size and non-random selection of facilities limits the usefulness of these date.

There have been a number of surveys and studies analyzing the cost effectiveness of HBV vaccination programs, but these studies are limited to specific, non-randomly selected sets of hospitals.

CDC collects information regarding the incidence of bloodborne diseases in their national medial surveillance, but these data lack information regarding occupationally related exposures to these infections, and do not address current work practices or control costs.

6. Minimizing Small Employer Burden

Over 90 percent of the establishments surveyed will be small. To reduce the burden on these facilities, both the total number of facilities surveyed and the number of questions asked have been kept to a minimum.

7. Consequence of Less Frequent Collection

This is a one time only data collection. No plans exist for subsequent periodic follow up of this survey.

8. Consistency with 5 CFR 1320.6

There are no special circumstances that require the collection of information in any manner inconsistent with the guidelines in 5 CFR 1320.6.

9. Expert Review of the Survey Questionnaire

The survey design team has had discussions with industry experts in order to assess the substance of the survey questions. The clarity of instructions and other specific survey design elements have been reviewed by contractor survey experts, OSHA personnel and expert safety consultants in industry.

A. The survey instrument has been reviewed in March of 1989 by:

Dr. Hugh Conway, Office of Regulatory Analysis, OSHA 202–523–7283;
Mr. Larry Braslow, Office of Regulatory Analysis, OSHA 202–523–7283;
Mr. Robert Andrei, Office of Regulatory Analysis, OSHA 202–523–7283;
Mr. Michael Lawrence, Jack Faucett Associates, 301–961–8800;
Mr. Jack Smalligan, Jack Faucett Associates, 301–961–8800;
Dr. Arnold Greenland, Washington Consulting Group, Inc., 202–457–0233;
Mr. Richard Gruberg, Washington Consulting Group, Inc., 202–457–0233;
Dr. Robert Hiett, KCA Research, Inc., 703–642–5220.

B. No major problems arose during this review.

C. Public comment will be solicited through the Federal Register notice for the study, and through notification to the trade associations for the affected industries.

10. Confidentiality

Procedures have been developed to protect the confidentiality of the collected data. These measures are summarized below:

A. All contractor and subcontractor personnel will be given instructions regarding the importance of keeping all information they obtain from respondents confidential.

B. The data will be collected using a Computer Assisted Telephone Interviewing (CATI) system. This technology enables the survey responses to be automatically written to a computer data file. Neither the name of the company nor the respondent will appear in the data file. A listing of respondents will be kept separately in a locked file cabinet at the contractor's office, and will be destroyed when no longer needed. The respondents' names will be linked to the data base through a unique number assigned at the time of the interview.

D. Publication of study results will be of a statistical nature only. Respondents will never be identified in any publication or presentation, nor will their names be made available to other individuals or groups.

11. Senstitive Questions

The proposed survey instrument contains no questions of a sensitive nature.

12. Costs

The total one-time cost to the government of the proposed data collection is $225,000. This estimate includes costs incurred by contractors for administration and operation of the data collection, tabulation of survey results, and subsequent analyses. The total one-time cost to industry is estimated to be $27,505 (using 30 minutes per facility for complete responses and 5 minutes/facility for screening or refusals)].

13. Estimate of Respondent Reporting Burden

The survey instruments have been designed to allow the respondent to provide estimates and approximations. It is not the intent of the survey to require respondents to compile new data. Where data are requested, the survey instruments note that reference is being made to data which the respondent should be able to estimate readily or access easily.

It is estimated that 30 minutes will be required for the completion of the survey. Based on 2,245 respondents, the respondent burden for completed surveys will be approximately 1,123 hours. For non-complete responses (screening or refusals), the burden will be 222 hours. The total respondent burden will be 1,345 hours. The respondent burden is summarized below.

Type of respondent	Number of respondents	Average completion time (min.)	Total burden (hrs.)	Respondent cost [1]
Non-response or screening only	2,669	5	222	$4,540
Complete	2,245	30	1,123	22,965
Total	4,914		1,345	27,505

[1] Based on an administrative wage rate of $20.45 per hour including fringe benefits.

OSHA's 1989 information collection budget (ICB) allocated 1,500 hours to this survey. Because the survey is only expected to require 1,345 hours, the survey will not exceed the hours approved in the ICB.

15. Tabulation/Publication Timetable

The survey results will be placed in the relevant OSHA docket in whole or in part by OSHA as deemed appropriate as soon as complete computer files are finalized. Analysis of the data will appear in the final Regulatory Impact Analysis.

B. Statistical Methods

1. Characterization of the Universe and Sample

To collect data sufficient for the development of a Regulatory Impact Analysis, a probability sample will be taken from each of the 18 industries listed in Table 1.

TABLE 1—SAMPLE STRATIFICATION

Description	SIC [1]
Offices of MD's, Osteopaths, Podiatrists	8011, 8031, 8043
Offices of Dentists	8021
Nursing Homes	805
Medical and Dental Labs	807
Outpatient Care	8082, 8092, 8093
Home Health Care.	
Kidney Dialysis Centers.	
Hospices.	
Drug Treatment Centers.	
Blood Banks and Blood Plasma Centers	8099
Residential Care	8361
Personal Services	7363
Funeral Services	7261
Health Units in Industry	20–48
Research Labs	283, 8221, 8731, 8733
Non-Volunteer Fire and Rescue Services	9224
Correctional Institutions	9223
Police	9221
Medical Equipment Repair	384

[1] Based on 1987 edition of SIC manual.

This universe was reviewed carefully from the perspective of the proposed standard. OSHA considers workers in these industries to have a significant probability of exposure to bloodborne diseases. Hospitals are not included in this data collection effort since the Centers for Disease Control are planning to conduct a similar survey for this particular industry. Company health units are limited to those existing in establishments having 500 employees or more as it is believed that such facilities are most likely to have doctors and nurses employed on the premises.

Universe establishment counts and proposed sample sizes are presented in Table 2. The sources to be used for the sampling of this universe are given in Table 3. Much of this universe is derived from the Dun and Bradstreet database. For those particular industries where the Dun and Bradstreet database is weak (eg., fire and police protection) or does not allow for sampling of highly specialized establishments without extensive screening (eg., bloodbanks), alternative sources are used. During the data collection effort, OSHA intends to contact approximately 4914 firms (of which approximately 3740 are estimated to be "affected") to produce 2245 useable responses. This response rate is based on OSHA's experience with previous surveys of industry employing similar collection methodologies.

TABLE 2.—NUMBER OF FIRMS AND SAMPLE SIZES FOR INDUSTRIES TO BE SURVEYED

Description	Cell	Total facilities	Precision (RSE)	Required completes	Total No. of solicitations
Offices of MD's & DO's	01	179,405	.050	195	325
Offices of dentists	02	94,994	.050	206	343
Nursing homes	03	18,274	.050	196	327
Medical and dental labs	04	12,195	.100	124	207
Outpatient care:					
Home health care	05	7,000	.100	123	205
Hospices	06	812	.100	108	180

TABLE 2.—NUMBER OF FIRMS AND SAMPLE SIZES FOR INDUSTRIES TO BE SURVEYED—Continued

Description	Cell	Total facilities	Precision (RSE)	Required completes	Total No. of solicitations
Drug treatment	07	3,887	.100	109	182
Dialysis clinic	08	861	.100	109	182
Blood banks and others	09	672	.075	102	170
Residential care	10	20,537	.075	123	205
Personnel services	11	1,615	.075	112	709
Funeral services	12	15,051	.100	67	112
Health units in industry	13	85,350	.075	132	293
Research labs	14	2,146	.075	120	590
Fire and rescue	15	3,174	.100	117	195
Corrections	16	2,333	.100	113	188
Police	17	6,205	.100	123	205
Medical equipment repair	18	2,967	.100	66	296
Total		457,478		2,245	4,914

Note: The total number of solicitation attempts takes into account the anticipated nonresponse rate as well as screening for out of scope units.

TABLE 3.—BLOOD BORNE DISEASES SURVEY—SAMPLING FRAMES

Industry	Source
Physicians	D&B, 1977 SIC definition for 8011 and 8031; 1987 SIC definition for 8043.
Dentists	D&B SIC 8021.
Nursing homes	NCSH 1986 Inventory of Long Term Care Places.
Medical/dental labs.	D&B SICs 8701 and 8072.
Outpatient care:	
Home health care.	D&B SIC 8082 (1987 definition).
Kidney dialysis center.	Health Care Financing Administration Directory.
Hospices	National Hospice Organization.
Durg treatment centers.	National Institute of Drug Abuse Directory.
Blood/plasma/ tissue center:	
Blood banks	National Association for Community Blood Banks List.
Plasma banks	American Blood Resources Association List.
Tissue banks	American Association of Tissue Banks Lists.
Residential care	NCHS 1986 Inventory of Long Term Care Places.
Personnel services	D&B SIC 7361 with screen.
Funeral services	D&B SIC 7261.
Research labs:	
Independent labs.	D&B SIC 7391 with screen.
Drug company labs.	D&B SIC 283 with screen.
Medical schools labs.	
Fire and rescue	National Fire Protection Association.
Corrections	American Corrections Association Directory.
Police	National Association of Police Chiefs.
Health units in industry.	D&B SICS 20–48 (>500 employees).
Medical equipment repair:	
Manufacturers	D&B SIC 384 with screen.
Repair companies.	Health Devices Source Book.

Note: Unless otherwise stated all SIC codes are according to the 1977 definitions.

The estimated total number of solicitations required to achieve the target number of completed interviews in Table 2 is based both upon the expected response rate, as well as upon the anticipated screening process required to reach an affected establishment in each particular industry. For the screening, it is anticipated that 1 in 3.8 establishments in Personnel Services (7361) has employees working with or exposed to blood products (i.e., those providing nursing services); 1 in 3.6 private research labs; 1 in 1.3 establishments for health units in industry; and 1 in 2.9 medical equipment manufacturers.

2. Information Collection Procedures

As described above, independent random samples will be selected from each industry, allowing statistical estimates to be made at levels of precision indicated by Table 2. The precision levels are expressed in terms of relative standard error (RSE), defined as the standard error of the estimate divided by the estimate. All sample sizes have been derived to achieve a confidence level of 95 percent that cost estimates as described below are within plus or minus (1.96 × RSE) of actual values. In general, smaller RSE values were assigned to industries where the expected cost of compliance to the proposed standard constitutes a large fraction of the total cost borne by all affected establishments in all industries. Conversely, larger RSE values were selected for those industries which are not expected to contribute as much to this overall compliance cost.

Sample sizes were derived as follows. The actual (i.e., incremental) cost incurred by a given establishment as a result of the proposed standard may be modeled as the product of two independent random variables. The first variable relates to the *total* compliance cost for the establishment. This includes its baseline costs (costs it currently experiences as a result of its current health safety policies) plus incremental costs (additional costs stemming from new policies it may have to implement based upon the new standard). This total cost is independent of any establishment policy or practice and derives solely from the characteristics of each facility (numbers of employees, numbers of people treated, etc.). The second variable varies between 0 and 1, and measures the establishment's current rate of non-compliance with the proposed standard. Hence, the cost to each establishment as a result of the standard may be modeled as,

$$COST_i + Y_i \times P_i;$$

where,

$COST_i$ = Incremental Cost to Establishment
Y_i = Total Compliance Cost to Establishment
P_i = Establishment's Current Percent Non-compliance to New Standard

and the variance may be expressed as,

$$\text{Var (COST)} = (E(Y))^2 \text{ var (P)} + (E(P))^2 \text{ var(Y)} + \text{var(P)var(Y)}.$$

Having split the total variability in cost into two *independent* components, one stemming from the variability in facility characteristics and the other stemming from variability in policy (i.e., current compliance), sample requirements may be estimated based upon various assumptions about the distributions of each.

For the total cost variable, Y, a gamma distribution was assumed. For cells 4 through 18 the alpha (shape) parameter of the distribution was set to a value equal to 2, resulting in a coefficient of variation (CV) of 70 percent. With this value, the distribution is highly skewed and has high variability. For cells 1 through 3 (Doctors' Offices, Dental Offices, and Nursing Homes), OSHA has assumed less variability in the population, using a value equal to 3 for the shape parameter (slightly skewed with moderate variability), resulting in a CV of 57 percent.

For the non-compliance variable, P, a triangular distribution was assumed with endpoints at zero and one. The mean of the distribution (expected non-compliance rate) was determined for each industry based on expert opinion obtained by OSHA. It was assumed here that mean non-compliance would not be lower than 33 percent and would not be higher than 67 percent.

Survey estimators will be self weighting, and will take the form,

$$Y=\Sigma\{WGT_i \times NRAF_i \times Response_i\},$$

where, WGT is the cell's sampling weight, and NRAF is the cell's non-response adjustment factor based on a mean imputation.

Because the Dunn and Bradstreet universe counts for Physicians' and Dental Offices are approximately 25 to 30 percent lower than similar counts obtained from BLS data, estimates for cells 1 and 2 will be benchmarked to BLS 202 employment data. Such estimates will take the form of a ratio estimator:

$$Y=BLS202_{EMP} \times \Sigma\{WGT_i \times NRAF_i \times Response_i\}/\Sigma\{WGT_i \times NRAF_i \times E_i\};$$

where, $BLS202_{emp}$ is the BLS 202 total employment estimate for the industry, and E_i is establishment employment.

The data from the survey will be collected via a Computer Assisted Telephone Interviewing (CATI) procedure. This methodology allows data to be both edited and entered into a computer database as the survey information is being collected over the telephone. Such a procedure greatly helps to reduce nonsampling error by (1) ensuring that the data for each interview are internally consistent; (2) eliminating the risk of key-punch errors arising from the transcription of hard-copy survey data into machine readable form; and by (3) ensuring that the interviewer follows the correct set of questionnaire skip patterns for each respondent.

3. Methods to Maximize Response Rates

This survey is voluntary and is expected to yield a response rate equal to 75 percent for in scope cases. The CATI collection process will help to improve the overall response rate by:

1. Allowing the direct telephone contact with the respondent.

2. Scheduling and maintaining a detailed record of all necessary call-backs.

Establishments will not be classified as non-responses until five attempts to make contact have been made. Efforts will be made to distinguish between those units that do not respond because they are out of business and those that are "refusals." Non-response adjustment procedures to be used during estimation are discussed in section B.2.

4. Testing

A pretest of nine sample units will be conducted. The information from this procedure will be used to fine-tune the survey instrument.

5. Reviewers

The statistical aspects of the survey have been reviewed by:

Dr. Hugh Conway, Office of Regulatory Analysis, Occupational Safety and Health Administration, (202) 523–9690.

Dr. Arnold Greenland, Mr. Richard Gruberg, The Washington Consulting Group, Inc., 1625 Eye Street, NW., Suite 214, Washington, DC, 20006, (202) 457–02331.

Signed at Washington, DC, this 24th day of April, 1989.

Paul E. Larson,

Departmental Clearance Officer.

BILLING CODE 4510–26–M

OMB Approval #_____
Expires_____
Sector:
OSHA Contact: Robert Andrei
(202) 523-7283

May 16, 1989

Dear _____:

The Occupational Safety and Health Administration (OSHA) is collecting data to support an assessment of the technological and economic feasibility of a standard to protect workers from occupational exposure to certain bloodborne diseases, primarily the hepatitis B virus (HBV) and the human immunodeficiency virus (HIV). Health care and certain other workers are at increased risk for certain infectious diseases due to their exposure to blood and other materials contaminated with blood.

OSHA has developed a preliminary rule to protect workers from bloodborne diseases and is conducting a survey to further refine its Preliminary Regulatory Impact Analysis. Your facility has been selected to participate in this survey, and an interviewer will be calling you in a few weeks to ask some questions about practices at your facility which provide workers with protection against bloodborne diseases. Participation in the survey is voluntary and all responses will be kept strictly confidential.

We estimate that it will take an average of 30 minutes per complete response for this survey including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information. If you have any comments regarding this estimate or any other aspect of this survey, including suggestions for reducing this burden, send them to the Office of Information Management, Department of Labor, Room N1301, 200 Constitution Avenue, NW, Washington, DC 20210; and to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503.

Will you help us to expedite our survey process by deciding who at your facility is best qualified to answer questions regarding worker protection from blood and other body fluids? Your cooperation and information will help OSHA to develop the most feasible and effective final standard.

We look forward to talking with you.

Sincerely,

_____
Assistant Secretary

OSHA, BLOODQ, APRIL 18, 1989 COMBINED

[INTERVIEWER INSTRUCTIONS: RECORD THE FOLLOWING INFORMATION]

Interviewer Number
Sequence Number
ZIP Code
Sector Code

INTRODUCTION

Hello. My name is _____ and I'm calling from KCA Research in Virginia/California. We are conducting a survey on behalf of the Occupational Safety and Health Administration of the U.S. Department of Labor to assess current practices regarding handling of potentially infectious materials.

A letter was sent to your organization explaining the project. As the letter indicated, we are interested in obtaining information about the potential for exposure to bloodborne diseases such as hepatitis-B and AIDS in organizations such as yours as well as methods of protection which are commonly used. I would like to emphasize that all responses will be kept strictly confidential and respondents will not be identified by name in any reports or data compilations submitted to OSHA.

We are interested in collecting information for your organization at (list address). Should I direct my questions to you or is there someone in the facility with whom you would prefer that I speak?

[NOTE: This introduction and the wording of the individual questions may vary with industry sector.]

1. Our records show that your firm is a [give name of sampling sector]. Is that correct?

Yes	1------GO TO Q.3
No	2

2. What type of organization are you?

Physician's office	01
Dentist's office	02
Nursing home	03
Home health care	04
Hospice	05
Drug treatment	06
Kidney dialysis	07
Medical laboratory	08
Dental laboratory	09
Research laboratory	10
Blood/plasma/tissue center	11
Residential care elderly	12
Residential care mentally handicapped	13
Temporary agency/health workers	14
Industry health center/infirmary	15

[OMIT Q.3,4, and 5 for fire or police/corrections]

3. Which of the following best describes the type of ownership of your organization? Is it a sole proprietorship, a partnership, or an incorporated unit?

Sole proprietorship	1-------GO TO Q.5
Partnership	2-------GO TO Q.5
Government	3-------GO TO Q.8
Incorporated	4
Other	5-------GO TO Q.5
Don't know	6-------GO TO Q.5
Refused	7-------GO TO Q.5

4. Are you a for-profit corporation, not for profit, or nonprofit?

For profit	1
Not for profit	2
Non profit	3
Other (specify)	4
Don't know	5
Refused	6

5. Is your organization independent or is it affiliated with other establishments?

Independent	1-------GO TO Q.7
Affiliated	2
Don't know	3-------GO TO Q.7
Refused	4-------GO TO Q.7

[Omit Q.6 for corrections]

6. How many other establishments that are part of your organization, and that are in the same line of business, operate at other locations?

7. Which of the following best describes the total annual revenue at your establishment? Is it less than $250,000 to less than $1,000,000, $1,000,000 to less than $3,500,000, or $3,500,000 or more?

Less than $250,000	1
$250,000 to $1,000,000	2
$1,000,000 to $3,500,000	3
More than $3,500,000	4
Don't know	5
Refused	6

8. Approximately how many patient visits were there at that location in the past 12 months?

9. Are any of the persons working at your establishment, either fulltime or parttime, ever exposed to human blood or other materials contaminated with human blood as part of the performance of their assigned duties either directly, or indirectly through such things as laundry or waste?

Yes	1
No	2-------TERMINATE

10. Are there policies at your establishment regarding infection control?

Yes	1
No	2
Don't know	3-------GO TO Q.15
Refused	4

11. Are these policies written?

Yes	1
No	2
Don't know	3
Refused	4

12. Does your infection control policy require that all bodily fluids, including blood, saliva, and urine, from all patients be handled as if they were infectious?

Yes	1-------GO TO Q.15
No	2
Don't know	3
Refused	4

13. Does your infection control policy require that blood from all patients be handled as if it were infectious?

Yes	1-------GO TO Q.15
No	2
Don't know	3
Refused	4

14. Does your infection control policy require that only the blood of patients known or suspected of being infected with a bloodborne disease be handled as if it were infectious?

Yes	1
No	2
Don't know	3
Refused	4

15. Are there situations in which the face or body of any of your workers could be splashed or splattered with blood?

Yes	1
No	2
Don't know	3
Refused	4

16. I'm going to read a list of protective equipment often used by organizations such as yours for the purpose of infection control. I'd like you to tell me whether you use any of the following: (Read and check all that apply)

Disposable latex gloves	01
Disposable vinyl gloves	02
Reusable gloves	03
Face protection (masks, goggles, shields)	04
Gowns	05
None of these	06
Don't know	07
Refused	08

(For each type of equipment used, ask Q.17)

17. How many (type of equipment) are purchased by your establishment each month for the purposes of infection control?

18. How many total employees, including full and parttime employees, are presently employed at your establishment?

I'm going to read you a list of separate employee categories and then ask you questions about those categories you have at your establishment.

a. Health care
b. Laboratory
c. Housekeeping
d. Laundry

[NOTE: Specialized categories will be listed for industry sectors other than health care.]

[OMIT Q.19 for fire or police/corrections/funeral homes]

19. How many of the employees would you consider to be health care staff, including doctors, nurses, therapists, and other health care staff?

[IF NONE, GO TO Q.22]

20. Of this number of health care employees, how many only work part time?

21. How many of these health care workers, including full and part time, have been hired within the past 12 months?

[OMIT Q.22 through Q.24 for corrections/funeral homes/fire or police]

22. How many of the total employees would you consider to be laboratory staff?

[IF NONE, GO TO Q.25]

23. Of this number of laboratory employees, how many only work part time?

24. How many of these laboratory workers, including full and part time, have been hired within the past 12 months?

[OMIT Q. 25 through 27 for fire or police/funeral homes]

25. How many of the total employees would you consider to be housekeeping staff?

[IF NONE, GO TO Q.28]

26. Of this number of housekeeping employees, how many only work part time?

27. How many of these housekeeping workers, including full and part time, have been hired within the past 12 months?

[OMIT Q.28 through Q.30 for fire or police/corrections/funeral homes]

28. How many of the total employees would you consider to be laundry staff?

[IF NONE, GO TO Q.31]

29. Of this number of laundry employees, how many only work part time?

30. How many of these laundry workers, including full and part time, have been hired within the past 12 months?

31. Are there any other employed staff members performing duties which would involve the potential for contact with blood or other materials contaminated with blood?

Yes	1
No	2
Don't know	3 ------GO TO Q.35
Refused	4

32. How many of these other staff members are there?

33. Of this number of other employees, how many only work part time?

34. How many of these other employees, including full and part time, have been hired within the past 12 months?

35. Are there additional workers, other than those directly employed by your facility who face potential exposure to blood or other materials contaminated with blood while at work at your facility?

Yes	1
No	2
Don't know	3 ------GO TO Q.40
Refused	4

36. Are these additional workers employed by another company but work on site, self employed, volunteers, or other? (Accept all that apply)

Another company	1
Self employed	2
Volunteer	3
Other (specify)	4
Don't know	5
Refused	6

37. How many of these additional workers are there?

38. Of this number of additional workers, how many only work part time?

39. How many of these additional workers, including full and part time, have been added within the past 12 months?

[NOTE TO INTERVIEWER: RESPONDENT MUST HAVE AT LEAST ONE EMPLOYEE WITH POTENTIAL EXPOSURE AS A RESULT OF THE POSITIVE RESPONSE TO Q.9]

(For each of the employee categories listed before Q.19, and those volunteered in Q.31 and Q.35 for which there were one or more employees, repeat the following sequence of questions.)

40. How many (type of employee) face potential exposure to blood or other material contaminated with blood as part of the performance of their assigned duties?

[IF NONE, GO TO NEXT EMPLOYEE TYPE AND REPEAT Q.40. FURTHER, IF "NONE" FOR LABORATORY WORKERS, OMIT Q. 102 TO Q.112.]

41. What proportion of these workers are potentially exposed on average at least once a month?

42. Of the disposable latex gloves used, what proportion are used by (type of employee)?

43. Of the disposable vinyl gloves, what proportion are used by (type of emplcyee)?

44. Of the reusable gloves used, what proportion are used by (type of employees)?

45. Of the face protectors such as masks, goggles, or shields, what proportion are used by (type of employees)?

46. Of the gowns, what proportion are used by (type of employees)?

Some organizations have a policy to insure that protective equipment is used in all situations that could potentially lead to exposure to blood or other materials contaminated with blood. If your organization implemented such a policy and it required replacement of equipment whenever visibly contaminated, torn or punctured, would you increase your use of any of the following:

47. disposable latex gloves
48. disposable vinyl gloves
49. reusable gloves
50. face protection
51. gowns

Yes	1
No	2
Don't know	3
Refused	4

(For each type of equipment which would be increased)

52. - 56. How many additional pairs of gloves or pieces of protective equipment per month would you need if you implemented such a policy?

57. What percentage of the (type of employee) who face potential exposure to blood or material contaminated with blood have been vaccinated against Hepatitis-B?

58. Does your organization offer the Hepatitis-B vaccine to any (type of employee) free of charge?

Yes	1
No	2
Don't know	3-------GO TO Q.62
Refused	4

59. Of the (number of workers of this type) what percentage are offered the hepatitis-B vaccine free of charge?

60. Of the (number of workers of this type) what percentage have accepted the offer of free hepatitis-B vaccination?

61. Are (type of employees) screened for the hepatitis-B antibody prior to vaccination?

62. Do you offer training regarding the characteristics of bloodborne diseases and acceptable practices to prevent occupational exposure to (type of employee?)

Yes	1
No	2
Don't know	3 ------GO TO Q.66
Refused	4

63. How frequently is the training provided to (type of employee)?

64. What is the length of the average training sessions for this type of employee?

65. Does the initial training for new employees take place prior to assignment to tasks involving potential exposure to blood or other materials contaminated with blood?

Yes	1
No	2
Don't know	3
Refused	4

66. If an exposure incident is defined as any skin, eye, mucous membrane, or puncture-caused contact with blood or other materials contaminated with blood, how many exposure incidents were reported during 1988 by your (type of employee)?

67. What proportion of these exposure incidents were the result of needle sticks or cuts from other sharp objects?

68. How many (type of employee) were exposed in these incidents?

[REPEAT Q.40 - 68 FOR EACH TYPE OF EMPLOYEE REPORTED IN Q.19 - 39]

69. Does your facility have a policy or protocol to be followed in the event of an exposure incident?

Yes	1
No	2
Don't know	3
Refused	4

70. If an employee who is not known to have antibody to hepatitis-B is involved in an exposure incident, is an attempt made to test the patient for the hepatitis-B virus?

Yes	1
No	2
Don't know	3-------GO TO Q.73
Refused	4

71. Is that with the patient's permission?

Yes	1
No	2
Don't know	3-------GO TO Q.73
Refused	4

72. What percent of the patients involved in such incidents agree to be tested for hepatitis-B?

73. If an employee is involved in an exposure incident, do you always offer to test the exposed employee for antibody to hepatitis-B virus?

Yes	1-------GO TO Q.75
No	2
Don't know	3
Refused	4

74. Do you offer the test for the exposed employee if the patient is known or suspected of being positive for the hepatitis-B virus?

Yes	1
No	2
Don't know	3-------GO TO Q.76
Refused	4

75. What percent of the employees involved in such incidents agree to be tested for hepatitis-B?

76. If an employee who is not known to have antibody to Hepatitis-B is involved in an exposure incident, is the employee offered Hepatitis-B immune globulin?

Yes	1	
No	2	
Don't know	3	------GO TO Q.78
Refused	4	

77. What percent accept?

78. If an employee is involved in an exposure incident with blood from a known source, is an attempt made to test the source patient for the AIDS virus?

Yes	1	
No	2	
Don't know	3	------GO TO Q.81
Refused	4	

79. Is that with the patient's permission?

Yes	1	
No	2	
Don't know	3	------GO TO Q.81
Refused	4	

80. What percent of the patients involved in such incidents agree to [be tested for the AIDS virus?

81. If an employee is involved in an exposure incident, do you always offer followup testing of the exposed employee for the AIDS virus?

Yes	1	------GO TO Q.83
No	2	
Don't know	3	
Refused	4	

82. Do you offer the followup testing for the employee if the patient is known or suspected of being positive for the AIDS virus?

Yes	1
No	2
Don't know	3 ------GO TO Q.84
Refused	4

83. What percent of the employees involved in such incidents agree to be tested for the AIDS virus?

84. If an employee is involved in an exposure incident, do you always provide post-exposure counseling?

Yes	1 ------GO TO Q.86
No	2
Don't know	3
Refused	4

85. If an employee is involved in an exposure incident with blood from someone known or suspected of being infected with the AIDS virus, do you provide post exposure counseling?

Yes	1
No	2
Don't know	3
Refused	4

86. Do you have a separate procedure for disposal of infectious wastes?

Yes	1
No	2 ------GO TO Q.90
Don't know	3 ------GO TO Q.91
Refused	4

87. Do you dispose of infectious waste in color coded, leak-proof containers?

Yes	1
No	2
Don't know	3 ------GO TO Q.89
Refused	4

88. Please estimate the amount of waste that is red bagged or treated as infectious per month?

[Pounds/month]
[Boxes/month]

89. Do you treat as infectious all waste that is known to be contaminated by blood?

Yes	1-------GO TO Q.91
No	2
Don't know	3-------GO TO Q.91
Refused	4

90. If your organization adopted a policy that treated all waste contaminated by blood as though it were infected, by how much would the total volume of waste treated as infectious increase?

[Pounds/month]
[Boxes/month]

91. Does your facility use needles or other sharp items for procedures that would result in the items becoming contaminated with human blood?

Yes	1
No	2
Don't know	3------GO TO Q.102
Refused	4

92. Do you have a policy prohibiting needle recapping?

Yes	1
No	2
Don't know	3
Refused	4

I'm going to read a list of types of needles and I'd like you to tell me how many of each you purchase in your facility each month. How many _____ do your purchase each month?

93. disposable needles
94. phlebotomy needles
95. acupuncture needles
96. IV catheters
97. other types of needles

98. A Sharps Disposal Container is defined as a closable, leakproof on the sides and bottom, puncture resistant, disposable container that is labeled or color coded. Are such containers available in your [facility/organization]?

99. How many of these containers are replaced each month?

100. Are these containers available at every reasonably immediate point of use?

Yes	1	-------GO TO Q.102
No	2	
Don't know	3	
Refused	4	

101. Would you estimate how many additional Sharps Disposal Containers would be replaced each month if they were installed at every reasonably immediate point of use?

[OMIT Q.102 through Q.111 for those who responded "NONE" for laboratory workers in Q.40.]

102. Does your facility contain a laboratory or an area where laboratory procedures are performed?

Yes	1	
No	2	
Don't know	3	-------GO TO Q.112
Refused	4	

103. Do you operate a centrifuge on the premises?

Yes	1	
No	2	
Don't know	3	-------GO TO Q.107
Refused	4	

104. Are safety cups used in centrifuge operation for all material?

Yes	1	-------GO TO Q.107
No	2	
Don't know	3	
Refused	4	

105. Are safety cups used in centrifuge operation for handling blood, body fluid, and other potentially infectious material?

Yes	1	-------GO TO Q.107
No	2	
Don't know	3	
Refused	4	

106. Are safety cups used when handling materials which are known to be infectious?

Yes	1
No	2
Don't know	3
Refused	4

107. Do you work with concentrated amounts of the hepatitis-B or the AIDS virus?

Yes	1
No	2
Don't know	3-------GO TO Q.111
Refused	4

108. Is there a potential for aerosolization of fluid containing these viruses?

Yes	1
No	2
Don't know	3
Refused	4

109. Are hazard warning signs incorporating the universal biohazard symbol posted on all access doors of work areas and all rooms containing these concentrated viruses?

Yes	1
No	2
Don't know	3
Refused	4

110. Is there a sink in the laboratory for hand washing?

Yes	1
No	2
Don't know	3
Refused	4

111. Does the laboratory contain an autoclave?

Yes	1
No	2
Don't know	3
Refused	4

112. For our records, what is your title?

Thank you for your time.

[FR Doc. 89-10247 Filed 4-27-89; 8:45 am]
BILLING CODE 4510-26-C

MONITORED RETRIEVABLE STORAGE REVIEW COMMISSION

Meeting

The Monitored Retrievable Storage (MRS) Review Commission, pursuant to its authority under Subtitle A of Pub. L. 100–203, the Nuclear Waste Policy Amendments Act of 1987, will hold a meeting on May 25, 1989 from 9:00 a.m.–4:30 p.m. in the Potomac Rooms at the Wyndham-Bristol Hotel, 2430 Pennsylvania Avenue NW., Washington, DC 20037.

From 9:00 a.m.–12:00 p.m., U.S. Department of Energy staff will brief the Commission concerning the Department's position on whether a monitored retrievable storage facility should be part of the nation's plan to dispose of high-level radioactive waste. From 1:00 p.m.–4:00 p.m., U.S. Nuclear Regulatory Commission staff will brief the Commission on safguards issues associated with a potential monitored retrievable storage facility.

Members of the public are permitted to attend the meeting only as observers. The meeting will be transcribed and the transcripts will be placed in the MRS Review Commission's Public Document Room.

Persons planning to attend, or who need further information, should contact Ms. Paula N. Alford, Director, External Affairs, by Monday, May 22, 1989 at the Monitored Retrievable Storage Review Commission, 1825 K Street NW., Suite 318, Washington, DC 20006, 202–653–5361.

Jane A. Axelrad,

Executive Director and General Counsel, April 25, 1989.

[FR Doc. 89–10210 Filed 4–27–89; 8:45 am]

BILLING CODE 6820–BE–M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Humanities, NFA&H.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this information collection must be submitted on or before May 30, 1989.

ADDRESSES: Send comments to Ms. Susan Daisey, National Endowment for the Humanities, Grants Office, Room 310, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202) 786–0494 and Mr. Jim Houser, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3208, Washington, DC 20503 (202) 395–7316.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Daisey, National Endowment for the Humanities, Grants Office, Room 310, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202) 786–0494 from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, or extensions. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what form will be used for; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to fill out the form. None of these entries are subject to 44 U.S.C. 3504(h).

Title: Younger Scholars Guidelines and Application Forms, Panelist's Review Comments Form, and Final Performance Report Form

Form Number: 3136–0090

Frequency of Collection: Annual

Respondents: Individuals

Use: Application for funding, form for use by reviewers, and form for use by grantees to report accomplishments and evaluation

Estimated Number of Respondents: 951

Frequency of Response: (Once)

Estimated Hours for Respondents to Provide Information:

10 hours per respondent for Application Forms

.6 hour per respondent for Panelist's Review Comments Form

1 hour per respondent for Final Performance Report Form

Estimated Total Annual Reporting and Recording Burden: 9,581

Susan Metts,

Assistant Chairman for Administration.

[FR Doc. 89–10165 Filed 4–27–89; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Cell Biology "Sub A"; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Cell Biology.

Date and Time: May 15, 16, 17, 1989—8:30 a.m. to 5 p.m. each day.

Place: Room 536, National Science Foundation, 1800 G St., NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Maryanna P. Henkart, Program Director, Special Activities, (202) 357–7377, Room 321, National Science Foundation, Washington, DC 20550.

Minutes: May be obtained from contact person listed above.

Purpose of Advisory Panel: To provide advice and recommendations concerning support for research in Cell Biology.

Agenda: Closed—To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management.

April 24, 1989.

[FR Doc. 89–10167 Filed 4–27–89; 8:45 am]

BILLING CODE 7555–01–M

Directorate for Engineering, Division of Mechanical and Structural Systems; Advisory Committee Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Committee for the Division of Mechanical and Structural Systems.

Date & Time: May 17, 1989 8:30 a.m. to 5:00 p.m. May 18, 1989 8:30 a.m. to 4:00 p.m.

Place: National Science Foundation, 1800 G St., NW., Washington, DC Room 540.

Type of Meeting: Open.

Contact Person: Ms. Hope Duckett, National Science Foundation, Room 1108, Washington, DC 20550, Telephone (202) 357–9542.

Summary Minutes: May be obtained from Contact Person.

Purpose of Meeting: To provide advice and recommendations concerning support for research in the Division.

Agenda:

Wednesday, May 17, 1989

8:40–9:15 a.m. Opening Remarks and Introductions.
9:15–10:00 a.m. Status and Recent Changes in MSS.
10:00–10:15 a.m. Break.
10:15–Noon p.m. Organizational and Strategic Directions.
12:00–1:30 p.m. Lunch.
1:30–5:00 p.m. Discussion of Program Status and Plans.

Thursday, May 18, 1989

8:30–10:15 a.m. Task Group Reports.
10:30–12:00. Discussion and Closing Remarks by Assistant Director for Engineering.
12:00–1:30 p.m. Lunch.
1:30–4:00 p.m. Drafting of Meeting Report and Summary Remarks.
3:00 Adjourn.

M. Rebecca Winkler,
Committee Management Officer.
April 24, 1989.
[FR Doc. 89–10168 Filed 4–27–89; 8:45 am]
BILLING CODE 7555–01–M

Advisory Panel for Ethics and Values Studies; Meeting

The National Science Foundation announces the following:

Name: Advisory Panel for Ethics & Values Studies.
Date/Time: May 15, 1989, 8:30 a.m. to 5:00 p.m., May 16, 1989, 8:30 a.m. to 5:00 p.m.
Place: National Science Fouindation, 1800 "G" Street, NW., Room 642.
Type of Meeting: Part Open—Open May 15, 8:30 a.m. to 10:30 a.m. and May 16, 12:30 p.m. to 1:30 p.m. Closed Remainder.
Contact Person: Rachelle Hollander, Program Director, Ethics & Values Studies, National Science Foundation, Washington, DC 20550, Telephone (202) 357–9894, Room 312.
Summary Minutes: May be obtained from the contact person at the above address.
Purpose of Panel Meeting: To provide advice and recommendations concerning support for research in Ethics & Values Studies in Science, Technology, and Society.
Agenda: Open—General discussion of status and plans for Ethics and Values Studies. Lunch Seminar—Film on Engineering Ethics. Closed—To review and evaluate research proposals and projects as part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b (c), Government in the Sunshine Act.

M. Rebecca Winkler,
Committee Management Officer.
April 24, 1989.
[FR Doc. 89–10169 Filed 4–27–89; 8:45 am]
BILLING CODE 7555–01–M

Advisory Committee for Information, Robotics and Intelligent Systems; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463 as amended, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Information, Robotics, and Intelligent Systems.
Date and Time: May 18–19, 1989, 9:00 to 5:00 daily.
Place: Room 543, National Science Foundation, 1800 G Street, NW., Washington, DC 20550
Type of Meeting: All Open.
Contact Person: Dr. Y.T. Chien, Division Director, Division of Information, Robotics, and Intelligent Systems, Room 310, National Science Foundation, 1800 G Street, NW., Washington, DC 20550. Telephone: (202) 357–9572. Anyone planning to attend this meeting should notify Dr. Chien no later than May 15, 1989.
Minutes: May be obtained from contact person listed above.
Purpose of Committee: To provide advice and recommendations concerning support of research in Information, Robotics, and Intelligent Systems.
Agenda: May 18—Overview of Programs, Discusions Focusing on Specific Program Aspects; May 19—Discuss Future Strategy for Programs and Divisonal Initiatives, Committee Business Discussion.

M. Rebecca Winkler,
Committee Management Officer.
April 24, 1989.
[FR Doc. 89–10170 Filed 4–27–89; 8:45 am]
BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–313]

Arkansas Power and Light Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–51, issued to Arkansas Power and Light Company (AP&L or the licensee), for operation of the Arkansas Nuclear One. Unit 1 (ANO–1) located in Russellville, Arkansas.

The amendment would change the ANO–1 license condition to increase the authorized steady state reactor core power levels to a maximum of 2054 megawatts thermal (80% of full power).

Recently, the licensee informed the NRC of a newly postulated small break in the High Pressure Injection (HPI) System which had not been bounded by existing small break loss of cooling accident (LOCA) analyses. In response to a subsequent AP&L request, the Commission issued emergency Amendment No. 119 authorizing operation for ANO–1 up to an authorized power level of 50% of full power (1284 megawatts thermal), and informed the licensee that a full 10 CFR Part 50 Appendix K analysis of the postulated HPI LOCA would be required as part of an amendment request to increase power above the 50% level. AP&L is currently having Babcock & Wilcox perform such an analysis for an 80% power level and plans to provide the results to the Commisson by May 8, 1989. AP&L has requested exigent processing of this amendment for the following reasons.

AP&L was unaware of the consequences of this new limiting break before March 18, 1989 and could not avoid the current situation. Prior to that time, previous LOCA analyses were considering bounding. Further, AP&L quickly undertook measures to respond to this condition and promptly requested the previous and the current amendment. Exigent processing would facilitate the amendment of this ANO–1 operating license to reflect 80% maximum power promptly following conformation of the results of the Babcock & Wilcox LOCA analysis by the Commission. This would permit a timely increase in power level to minimize the impact of continued derated operation. The staff agrees with

the licensee's justification for exigent processing and believes the amendment should be issued promptly.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Under the Commission's regulations in 10 CFR 50.92, an amendment request 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 consequence 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.

In accordance with 10 CFR 50.92, AP&L has assessed whether the proposed change involves no significant hazards considerations. AP&L has concluded that the proposed change to limit operation to 80% of full power involves no significant hazards considerations because operation of Arkansas Nuclear One, Unit 1 in accordance with this change would not:

(1) Involve a significant increase in the probability or consequences of an accident previously analyzed.

First, this change does not alter the probability of any previously analyzed accident occuring. The change merely addresses a particular accident scenario without impacting accident-initiating events. Further, this proposed change will not adversely affect the consequences of accidents which have been previously analyzed. Any effect on previously analyzed accidents will remain positive as the reactor will still trip from a lower maximum power level than for accidents previously considered.

Further, the proposed change does not adversely affect the probability of consequences of the postulated HPI small break at issue here. Because an ANO–1 specific ECCS analysis per 10 CFR Part 50 Appendix K has been performed, it has been demonstrated that this break will be fully addressed by available emergency core cooling system (ECCS) mechanisms consistent with applicable ECCS requirements.

Overall, therefore, this change will neither reduce nor adversely impact the probability or consequences of accidents previously analyzed.

(2) Create the possibility of a new or different kind of accident from any previously analyzed.

First, the ECCS response to other previously postulated accidents remains unchanged and within previously assessed limits of flow paths and flow distributions. Further, all systems and ECCS coolant delivery mechanisms remain, respectively, within their applicable performance limits and flow delivery capabilities. Thus, system and component performance is not adversely affected by this change, thereby assuring that design capabilities of those systems are not challenged in a manner not previously assessed so as to create the possibility of a new or different kind of accident. The increase in maximum allowable power level would not create the possibility of a new or different kind of accident from any previously analyzed as the possibility of reactor trips at lower power levels had already be considered in previous accident analyses.

(3) Involves a significant margin of safety.

The proposed change to the maximum operating power level would increase the maximum power level at which any transient could occur. However, this proposed power level is still below the level at whch ANO–1 was originally licensed. The response to transients terminated at lower power levels is typically milder and more easily controlled than the response to transients terminated at the higher power level at which ANO–1 was originally evaluated. Therefore, this increase of the maximum permissible power level would not involve a significant reduction in the margin of safety previously provided. With respect to the HPI break at issue, the margin of safety provided by the proposed maximum power level now reflects the margins provided by specific application of the conservative assumptions and analytical approaches of 10 CFR 50.46 and 10 CFR Part 50 Appendix K to ANO–1. Thus the inherent margins of safety provided by those criteria are provided for this postulated break.

The staff has reviewed the licensee's assessment and agrees that the proposed amendment involves no significant hazards considerations.

The Commission is seeking public comments on this proposed determination. Any comments received within 15 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 Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and should cite the publication date and page number of the FEDERAL REGISTER notice.

Written comments may also be delivered to Room P–223, 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, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By May 15, 1989, 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 request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rule 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 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 that 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 the amendment is issued before the expiration of 30-days, the Commission will make a final determination on the issue of no significant hazards considerations. If a hearing is requested, 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 considerations, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves significant hazards considerations, 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 15-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 15-day notice period, provided that its final determination is that the amendment involves no significant hazards considerations. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of 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, the Gelman Building, 2120 L 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 Jose A. Calvo: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Nicholas S. Reynolds, Esq., Bishop, Cook, Purcell & Reynolds, 1400 L Street, NW., Washington, DC 20005-3502

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated April 24, 1989, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Local Public Document Room, Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Dated at Rockville, Maryland, this 25th day of April 1989.

For the Nuclear Regulatory Commission.

Chester Poslusny, Jr.,

Project Manager, Project Directorate—IV, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-10233 Filed 4-27-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-295 and 50-304]

Commonwealth Edison Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards, Conseration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission [the Commission] is considering issuance of an amendment to Operating License Nos. DPR-39 and DPR-48, issued to Commonwealth Edison Company (the licensee), for operation of Zion Station, Units 1 and 2 located in Lake County, Illinois.

This amendment request dated April 17, 1989, is being made in accordance with Generic Letter 85-09, entitled "Technical Specifications for Generic Letter 83-28, Items 4.3," to change Tables 3.1-1 and 4.1-1 of Technical Specifications for Zion Station. The proposed changes involve addition and/or clarifications to the operability and surveillance requirements for: (1) Manual Reactor Trip; (2) Automatic Reactor Trip Logic; and (3) Reactor Trip and Bypass Breakers.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facilities 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 Commonwealth Edison has evaluated the proposed amendment and determined that it involves no significant hazards consideration. The licensee's evaluation is provided below.

The proposed amendment involves revisions to the operability and surveillance requirements given in Technical Specification Tables 3.1-1 and 4.1-1 for Zion Station. The changes clarify the operability requirements for Automatic Reactor Trip Logic to include the Reactor Trip Breakers. The changes to Table 4.1-1 clarify the surveillance requirements for the Manual Reactor Trip function to require independent verification of the operability of the Undervoltage and Shunt Trip circuits

and the operability of the Bypass Breaker circuit; the Monthly Functional Test for the Automatic Reactor Trip Logic has been clarified to require testing each train on alternate months (at a 62-day interval) and to explicitly state where operability of circuit contacts may be verified by the use of indication circuitry. Monthly and Refueling Surveillance Requirements have been defined for Reactor Trip Breakers and Bypass Breakers.

All of the proposed changes have been worded in accordance with the guidelines of NRC Generic Letter 85–09, and are consistent with Technical Specifications in effect for other Pressurized Water Reactors of similar vintage. The clarification notes for the Automatic Reactor Trip Logic Surveillance and the use of the alternate month testing interval are similar to the specifications currently in effect at [other plants.]

(1) *The proposed changes do not involve a significant increase to the probability or consequences of an accident previously evaluated.*

The addition of the requirement for automatic actuation of the shunt trip device provides an alternate method to open the reactor trip breakers. Therefore, when a reactor trip signal is generated, there are diverse mechanisms to provide a reactor breaker trip which should minimize the possibility of an Anticipated Transient Without Scram (ATWS). The proposed changes revise the surveillances to require independent testing of the undervoltage and shunt trip devices for the manual reactor trip and the reactor trip breakers. These surveillances ensure reactor trip breaker operability when required and thus do not involve a significant increase to the probability or consequences of an accident that was previously evaluated.

(2) *The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.*

The proposed changes do not change the manner in which the reactor protection system provides plant protection. The addition of the shunt trip attachment provides an alternate method to open the breakers when a reactor trip signal is generated. Therefore, if one trip mechanism fails, the other trip mechanism is available, which increases the reliability of the reactor protection system and decreases the possibility of an ATWS event and therefore does not create the possibility of a new or different kind of accident that was previously evaluated.

(3) *The proposed changes do not involve a significant reduction in a margin of safety.*

The proposed changes are expected to increase the overall margin of safety because they provide an alternate method to trip the reactor trip breakers, thereby limiting the potential for an ATWS event. The proposed surveillance changes are designed to verify operability of the reactor trip and bypass breakers and therefore do not involve a significant reduction in the margin of safety.

Based upon the above evaluation, Commonwealth Edison concluded that the proposed changes to the Technical Specifications do not involve a significant hazards consideration.

The staff has reviewed the licensee's evaluation and agrees with the licensee that these proposed amendments involve no significant hazards consideration.

Before issuance of Generic Letter 85–09, by letter dated March 25, 1985, the licensee originally requested similar changes to clarify the automatic reactor trip logic testing in accordance with Generic Letter 83–28. The staff issued no significant hazard consideration notice on May 21, 1985 (50 FR 20973). The April 17, 1989, submittal substantially revised the previous submittal dated March 25, 1985. This notice supersedes the previous notice.

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 Regulatory Publications Branch Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of the **Federal Register** notice. Written comments may also be delivered to P 223, 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, 2120 L Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By May 30, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subjct facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene 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 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 of 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 to 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 indentify the specific aspect(s) of the subject matter of the proceedings 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 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. Contention 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 effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed wtih 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, 2120 L 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 1–800–432–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Daniel R. Muller; petitioner's name and telephone number; date petition was mailed; plant number; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel—Rockville, Maryland, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Michael Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603, 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 2.174(a)(1)(i)–(v) and 2.714(d).

For futher details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC., and for Zion Station, the Waukegan Public Library, 128 N. County Street, Waukegan Illinois 60085.

Dated at Rockville, Maryland, this 24th day of April 1989.

For the Nuclear Regulatory Commission.

Daniel R. Miller,

Director, Project Directorate III–2, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 89–10234 Filed 4–27–89; 8:45 am]

BILLING CODE 7590–01–M

[Dockets Nos. 50–315 and 50–316]

Indiana Michigan Power Co., Donald C. Cook Nuclear Plant, Units Nos. 1 and 2; Withdrawal of Application for Amendment to Facility Operating Licenses Nos. DPR–58 and DPR–74

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Indiana Michigan Power Company (the licensee), to withdraw its February 28, 1986, application for proposed amendment to Facility Operating License Nos. DPR–58 and DPR–74, Donald C. Cook Nuclear Plant, Units Nos. 1 and 2 respectively, located in Berrien County, Michigan.

The proposed amendment would have revised the facility Technical Specifications pertaining to the spray additive system.

The Commission has previously issued a Notice of Consideration of Issuance of Amendment published in the Federal Register on April 23, 1986 (51 FR 15400). However, by letter dated December 29, 1988, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated February 28, 1986, and the licensee's letter dated December 29, 1988, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and the Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Dated at Rockville, Maryland this 24th day of April.

For the Nuclear Regulatory Commission.

John F. Stang,

Project Manager, Project Directorate III–1, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89–10237 Filed 4–27–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–206]

Southern California Edison Co. et al.; San Onofre Nuclear Generating Station, Unit No. 1; Consideration of Issuance of Amendment to Provisional Operating License and Proposed No Significant Hazards, Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Provisional Operating License No. DPR–13 issued to Southern California Edison Company and San Diego Gas and Electric Company (the licensees), for operation of San Onofre Nuclear Generating Station, Unit No. 1, located in San Diego County, California. The request for amendments was submitted April 11, 1989.

The proposed amendment would revise Technical Specification 3.5.1, "Reactor Trip System Instrumentation." The revision, if approved, would revise Table 3.5.1–1 to include a footnote relating to Mode 2 of the Applicable Modes column for Item 4, the Intermediate Range, Neutron Flux. The footnote will indicate the startup rate circuit for the intermediate range channels will be enabled at 10^{-4}% of full reactor power instead at 10^{-7}% of full reactor power as presently implied but not specified in the Technical Specifications.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment

request involves no significant hazards consideration, Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

As required by 10 CFR 50.91(a), the licensee has provided its analysis about the issue of no significant hazards consideration which is discussed below:

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. Operation of the facility has no effect on the accidents analyzed in the UFSAR. The modification of the startup rate reactor trip functions by enabling them at a higher point in the intermediate neutron flux range. Although this enabling at a higher flux level will cause the functions to be actuated at a later time, the delay does not impact accident probabilities as these functions are of a mitigative nature providing reactor core control and protection during transients and accidents. This proposed modification also has no effect on the accident analysis, particularly the Control Rod Withdrawal from Subcritical, since these functions are not credited. These functions will still be acutated sooner than the reactor trip on overpower, the credited trip for the Control Rod Withdrawal from Subcritical accident. Therefore, the accident probabilities and consequences are not affected by this change.

Operating of the facility in accordance with the proposed amendment would not: (2) Create the possibility of a new or different kind of accident from any accident previously evaluated. The modification associated with this proposed change revises the startup rate circuit for the intermediate range channels such that the protective functions are enabled at 10^{-4}% of full reactor power versus 10^{-3}% of full power. The protective functions, high startup rate rode stop and high startup rate power trip, provided by the intermediate range channels are still available and will function as they did previously. Only their time of actuation will be delayed. This modification does not result in a new accident because these functions are of a mitigative nature providing reactor core protection and control. A different kind of accident is not created since these functions are not credited in any of the accident analyses. In the case of Control Rod Withdrawal from Subcritical, these functions are a back-up to the reactor overpower trip. They will still actuate well before the overpower trip occurrence at 118% of full reactor power providing reactor core protection. Therefore, a new or different kind of accident from any previously evaluated is not created.

Operation of the facility in accordance with the proposed amendment would not: (3) Involve a significant reduction in a margin of safety. The modification associated with this change revises the startup rate circuit for the intermediate neutron flux range by moving the enabling setpoint to 10^{-4}% of full reactor power. This change affects the operational margin to some extent because the protective functions provided by the intermediate range channels are actuated at a later time. As previously indicated, this delay has no effect on the accident analysis because there protective functions are not credited. Therefore, the safety margins associated with the accident analyses are not affected. As indicated in Figure 15.8–1 of the Updated Final Safety Analysis Report, the protective function, overpower trip, for the Control Rod Withdrawal from Subcritical, occurs at 17.5 seconds. This timing is not affected by the change because the high startup rate rod stop or the high startup rate trip would have been actuated well before that time. Therefore, the margin of safety is not affected by this proposed change.

The NRC staff has reviewed the analysis and, based on that review, it appears that the three criteria are satisfied. There, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources 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 7:30 a.m. to 4:15 p.m. Copies of written comments may be examined at the NRC Public Document Room, 2120 L Street NW., Washington, DC 20555. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By May 30, 1989, the licensees may file a request for a hearing with respect to issuance of the amendment to the subject provisional 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 request for hearing and a 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 hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene must set forth with particularity the interest of the petitioner in the proceeding; and (3) the possible effect of any order which may be entered 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 aspects of the subject matter of the proceeding as to which petitioner wished 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 as 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 in 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 may 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 effective, not withstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene shall 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, 2120 L Street NW., Washington, DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for 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 George W. Knighton: 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-White Flint, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Charles R. Kocher, Assistant General Counsel and James Beoletto, Esq., Southern California Edison Company, P.O. Box 800, Rosemead, California 91770, attorneys for the licensees.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the General Library, University of California, P.O. Box 19557, Irvine, California 92713.

Dated at Rockville, Maryland, this 21st day of April, 1989.

For the Nuclear Regulatory Commission.

Charles M. Trammell,

Senior Project Manager, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-10235 Filed 4-27-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-322]

Long Island Lighting Co., Shoreham Nuclear Power Station, Unit 1; Issuance of Facility Operating License

Notice is hereby given that the Nuclear Regulatory Commission (the Commission) has issued Facility Operating License No. NPF-82 to the Long Island Lighting Company (the licensee), for the Shoreham Nuclear Power Station (the facility). The license authorizes the operation of the reactor at power levels not in excess of 2,436 megawatts thermal (100 percent rated power).

The Shoreham Nuclear Power Station is a boiling water reactor located in the town of Brookhaven, Suffolk County, New York. The license is effective as of its date of issuance.

The application for the license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations. Issuance of this license has been authorized by: Partial Initial Decision, LBP-83-57, September 21, 1983; ALAB-788, October 31, 1984; Commission Memorandum and Order, CLI-84-21, November 21, 1984; Memorandum and Order Ruling on Remand Issues, LBP-84-53, November 30, 1984; Partial Initial Decision on Emergency Diesel Generators, LBP-85-18, June 14, 1985; Partial Initial Decision on Emergency Planning (EP), LBP-85-12, April 17, 1985; Concluding Partial Initial Decision on EP, LBP-85-31, August 26, 1985; LBP-87-30, November 6, 1987; CLI-87-12, November 5, 1987; Partial Initial Decision (EP), LBP-88-12, May 5, 1988; Concluding Initial Decision on EP, LBP-88-24, September 23, 1988; CLI-89-02, March 3, 1989. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which are set forth in the License. Prior public notice of the overall action involving the proposed issuance of an operating license was published in the **Federal Register** on March 18, 1976 (41 FR 11367).

The Commission has determined that the issuance of this license will not result in any environmental impacts other than those evaluated in the Final Environmental Statement since the activity authorized by the license is encompassed by the overall action evaluation in the Final Environmental Statement.

Pursuant to 10 CFR 51.32 the Commission has determined that the granting of the exemptions included in this license will have no significant impact on the environment. These determinations were published in the **Federal Register** on December 10, 1984 (49 FR 48118); December 10, 1984 (49 FR 48120); December 10, 1984 (49 FR 48119); December 10, 1984 (49 FR 48119; October 3, 1988 (53 FR 38812); October 7, 1988 (53

FR 39549); and April 17, 1989 (54 FR 15277).

For further details in respect to this action, see (1) Facility Operating License NPF–82 complete with Technical Specifications and Environmental Protection Plan; (2) the report of the Advisory Committee on Reactor Safeguards, dated October 14, 1981; (3) the Commission's Safety Evaluation Report, dated April 1981 (NUREG–0420), and Supplements 1 through 10 thereto; (4) the Updated Safety Analysis Report and Amendments thereto; (5) the Final Environmental Statement, dated October 1977 (NUREG–0285); (6) the Environmental Report and supplements thereto; (7) the Licensing Board Orders; (8) the Appeal Board Orders; and (9) the Commission Memoranda and Orders.

These items are available at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and Shoreham Wading River Public Library, Route 25A, Shoreham, New York 11786. A copy of Facility Operating License NPF–82 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects I/II. Copies of the Safety Evaluation Report and its Supplements (NUREG–0420) and the Final Environmental Statement (NUREG–0285) may be purchased at the current rates from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161, and through the NRC GPO sales program by writing to the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082.

Dated at Rockville, Maryland, this 21st day of April 1989.

For the Nuclear Regulatory Commission.

Walter R. Butler,

Director, Project Directorate I–2, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89–10236 Filed 4–27–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–341]

Detroit Edison Co. and Wolverine Power Supply Cooperative Inc.; Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–43, issued to Detroit Edison Company and Wolverine Power Supply Cooperative (the licensees), for operation of the Fermi-2 plant, located in Monroe County, Michigan.

The amendment would revise the Technical Specifications sections 3/4.6.5.1 SECONDARY CONTAINMENT and DEFINITION 1.36 to reflect design modifications to the reactor building's railroad bay air lock doors in accordance with the licensees application for amendment dated April 21, 1989. The design change is a result of a concern with the reliability of secondary containment integrity barriers that depend on non-safety related air supply systems.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequencs 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 licensees have evaluated the proposed changes to the TS against the above standards as required by 10 CFR 50.92. The licensees concluded that:

(1) The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated because the capability and reliability of SECONDARY CONTAINMENT INTEGRITY has been increased. Two railroad bay air lock doors will be required to be closed and sealed during normal operation as opposed to one railroad bay air lock door which is currently required by the existing Technical Specifications. The subject door's seals will be supplied from a safety related, seismically qualified and fully redundant non-interruptible air suppy system. The existing air supply for these door seals is not safety related, not seismically qualified and not redundant. The proposed system will be single failure proof provided both railroad bay air lock doors are closed.

The proposal includes ACTIONS of one of the two railroad bay air lock doors inoperable; in this case, the railroad bay secondary containment penetration is still isolated by the other railroad bay air lock door. The existing ACTIONS are based upon situations where SECONDARY CONTAINMENT INTEGRITY is completely compromised. The 7 day out-of-service time limit on proposed ACTION "b.1." is consistent with Technical Specification 3.6.5.3, Standby Gas Treatment System (SGTS) and the General Electric Standard Technical Specification (GESTS) for the SGTS. The SGTS configuration and function, and the proposed modifications configuration are similar in that both systems support SECONDARY CONTAINMENT INTEGRITY, both systems have 100% redundant capabilities and both systems are safety related. Proposed ACTION "b.2" is consistent with existing ACTION "b" and the GESTS for SECONDARY CONTAINMENT INTEGRITY.

The proposed footnote that will allow ingress and egress through one railroad bay air lock door or routine testing of the doors' alarm/indication instrumentation is based on engineering judgement considering the low probability of a single failure on the closed door, the frequency of a door being open and the low probability of an accident requiring SECONDARY CONTAINMENT INTEGRITY. If within the four or 12 hour time period allowed for one railroad bay air lock door to be open, the closed becomes inoperable because of a loss of door seal pressure (the only component dependent on an active system) control room personnel would immediately receive the low seal pressure alarm. Secondary containment functionality could then be restored by closing the door that was open. The existing Technical Specification allows four hours to recover from a complete loss of SECONDARY CONTAINMENT INTEGRITY before a reactor shut down is required. The footnote's 12 hour time period is only applicable when fuel is received onsite which is only expected to consist of approximately eight shipments in 18 months. The existing 31-day surveillance requirement, 4.6.5.1.b.1, has been modified so that both railroad bay doors are required to be verified closed every 31-days. Therefore, the proposed changes do not significantly increase the probability or consequences of an accident previously evaluated because two railroad bay doors are required OPERABLE and closed and the door seals will be supplied by a safety related and redundant air system. The proposed ACTIONS are consistent with accepted industry standards for related systems or similar redundancy and safety

classification which are also required to support SECONDARY CONTAINMENT INTEGRITY.

(2) The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated because the capabilities of the railroad bay air lock door system have been increased and the railroad bay air lock door seals will be supplied with safety related air from the existing NIAS System. The NIAS System is safety related, fully redundant and seismically supported. The NIAS System's air compressors are automatically loaded on to the EDGs upon the loss of offsite power to the air compressor(s) electrical bus(es). An engineering evaluation has determined that sufficient capacity exists in the NIAS System to supply the railroad bay door seals concurrent with the system's existing loads. The design modification will provide restrictive orifices and receiver tanks such that a rupture of the railroad bay air lock seals will not affect the function of other equipment which depend on the NIAS System. Control room alarms for low railroad bay air lock door seal pressure will be installed for each door. This will allow continous monitoring by control room personnel of the railroad bay air lock door's SECONDARY CONTAINMENT INTEGRITY. The door seal's pressure provides an excellent indication of the railroad bay air lock's SECONDARY CONTAINMENT INTEGRITY because the seals are the only active component on the doors which rely on active equipment for their OPERABILITY. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated because the railroad bay air lock door seals will be supplied from a fully qualified air system and the new design will enhance the system's capability and not degrade any related systems or equipment functions.

(3) The proposed changes do not involve a significant reduction in the margin of safety because the previously stated design modifications and proposed Technical Specifications increase the capability and reliability of SECONDARY CONTAINMENT INTEGRITY compared to the existing configuration. The design modification and proposed Technical Specification changes effectively add an "additional barrier" between secondary containment and the environment for the railroad bay air lock. Additionally, the only active component utilized for these redundant barriers will be supported from a fully qualified safety related system.

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 request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources 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 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By May 30, 1989, 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. Request 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 satifies 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 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 request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the

facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW. Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John Stefano, Acting Project Director, Project Directorate III–1, Division of Reactor Projects III, IV, V, & Special Projects: 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, D.C. 20555, and to John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226, attorney for Detroit Edison Company.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C. 20555, and at the Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Dated at Rockville, Maryland, this 25th day of April 1989.

For the Nuclear Regulatory Commission.

John Stefano,

Acting Director, Project Directorate III–1, Division of Reactor Projects III, IV, V, & Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89–10340 Filed 4–27–89; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–26755; File No. SR–CBOE–89–5]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change Relating to Risk Analysis Procedures

On February 24, 1989, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish minimum risk analysis standards for market maker clearing firms.[3]

The proposed rule change was published for comment in Securities Exchange Act Release No. 26610 (March 8, 1989), 54 FR 10600 (March 14, 1989). No comments were received on the proposed rule change.

As a result of the October, 1987 market break, the CBOE established a task force to review procedures and practices of options market-maker clearing firms. One result of this review was a determination that minimum risk analysis standards should be established to enable all CBOE market maker clearing firms to project their potential losses for all accounts given specific market movements and/or changes in market volatility.

The proposed rule change will require each CBOE market maker clearing firm to file with the Exchange's Department of Financial Compliance ("Department") written procedures for assessing and monitoring the risk to the clearing firm's capital from the positions in its own market maker accounts and from the positions of independent market makers for whom it performs clearance and guarantee functions. These procedures will include, but not be limited to, an Exchange-approved computerized risk analysis program that would, given certain parameters, enable the clearing firm to generate exception reports that will be used to assess and monitor its potential risk of loss from options market-maker accounts over a specified range of possible market movements.[4]

The rule will require risk analysis to be conducted daily based on positions as of the close of business the prior day, and will provide for the submission to the CBOE of certain risk analysis documentation as requested by the Department on a routine or "as needed" basis.

The CBOE believes that the majority of the 18 Exchange member organizations that clear and guarantee the accounts of options market makers currently are in a position to comply with the proposed rule. The CBOE has recommended, however, an effective date for the rule four months from the date of this approval order to allow all affected members time to prepare adequately to comply with the rule.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, section 6(b)(5) of the Act,[5] which provides, in pertinent part, that the rules of the exchange must be designed to protect investors and the public interest and to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in, securities.

The Commission believes that the CBOE's proposed risk analysis standards will allow the Exchange to monitor the potential risk to each options market-maker clearing firm's capital over a range of possible market movements. The CBOE will be able to review the exception reports generated

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1988).

[3] The CBOE provided additional information about the proposal in a letter from Mary L. Bender, First Vice President, Division of Regulatory Services, CBOE, to Mary Revell, Division of Market Regulation, Commission, dated April 17, 1989.

[4] The computerized risk analysis program must comply with the following minimum standards:

(1) The estimated loss to the clearing member organization for each market-maker account must be determined over a specified range of possible market movements.

(2) Volatility must be calculated using an Exchange-approved method and updated at least weekly.

(3) Options prices must be estimated through use of recognized options pricing models.

(4) Written exception reports must be generated that describe for the range of market movements the projected loss from concentrated positions in particular options classes and the projected deficits per market maker account and for all accounts.

[5] 15 U.S.C. 78f(b)(5) (1982).

by the firms and require from a firm detailed explanations concerning its intended actions to resolve certain problems. The Commission believes that the exception reports should provide the CBOE and the clearing firms with information that can be used to assess market exposure and take the necessary action in connection with the exposure. This is particularly important given the clearing firms' responsibilities in the CBOE market-maker system.

The Commission believes that the CBOE's proposed risk analysis standards may provide more financial protection to the securities industry at a time of increased market volatility. The Commission believes that ensuring that both the CBOE and the options market-maker clearing firms are aware of the potential risk to each clearing firm's capital for any or all of its options market-maker accounts may lessen the impact of adverse market movements by allowing the CBOE to require a firm to take corrective action before a net capital problem occurs. In addition, the proposal addresses concerns raised in the Commission staff's Report on the October 1987 Market Break regarding liquidity problems of options market-maker clearing firms during the October 1987 market break.[6]

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89-10232 Filed 4-27-89; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Areas #6665, #6747 & #6748; Amdt. 3]

Wyoming and Contiguous Counties in Nebraska and Colorado; Declaration of Disaster Loan Area

The above-numbered Declaration (53 FR 40819), as amended (53 FR 3893) and (54 FR 6227), is hereby amended to include Laramie County, and the contiguous county of Goshen, in the State of Wyoming; Banner and Kimball Counties in the State of Nebraska; and Larimer and Weld Counties in the State of Colorado, as a result of damages from forest fires which started on July 5, 1988.

Any other Wyoming counties contiguous to Laramie County and not listed above have been previously declared.

The number assigned to the State of Nebraska for economic injury is 674700 and for the State of Colorado the number for economic injury is 674800.

All other information remains the same; i.e., the termination date for filing applications for economic injury assistance is the close of business on July 6, 1989.

(Catalog of Federal Domestic Assistance Program No. 59002.)

Date: April 7, 1989.

James Abdnor,

Administrator.

[FR Doc. 89-10178 Filed 4-27-89; 8:45 am]

BILLING CODE 8025-01-M

Region IV Advisory Council Meeting; Alabama Regional Advisory Council

The U.S. Small Business Administration, Region IV Advisory Council located in the geographical area of Birmingham, Alabama will hold a public meeting 11:00 a.m.–12:30 p.m., on Friday, May 12, 1989, at the Mobile Area Chamber of Commerce, 451 Government Street, Mobile, Alabama 36652, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call James C. Barksdale, District Director, U.S. Small Business Administration, 2121 8th Avenue, North, Suite 200, Birmingham, Alabama 35203, Phone (205) 731–1341.

April 17, 1989.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 89-10183 Filed 4-27-89; 8:45 am]

BILLING CODE 8025-01-M

Region I Advisory Council; Public Meeting

The U.S. Small Business Administration, Region I Advisory Council, located in the geographical area of Hartford, will hold a public meeting at 8:00 a.m. on Monday, May 1, 1989, at the Yale Inn, 900 East Main Street, Meriden, Connecticut 06450, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Henry A. Povinelli, District Director, U.S. Small Business Administration, 330 Main Street, Hartford, Connecticut, phone (203) 240–4670.

April 17, 1989.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 89-10182 Filed 4-27-89; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2343; Amdt. 5]

Kentucky and Contiguous Counties in the States of Indiana, Ohio, West Virginia, Virginia, Illinois, Missouri & Tennessee; Declaration of Disaster Loan Area

The above-numbered Declaration (54 FR 9584), as amended (54 FR 11602), (54 FR 13283), (54 FR 14723), and (54 FR 16034), is hereby further amended in accordance with the Notice of Amendment to the President's declaration, dated March 24, 1989, to include the counties of Ballard, Hickman, and Hopkins, in the Commonwealth of Kentucky, as a result of damages from severe storms and flooding between February 13 and March 8, 1989.

In addition, applications for economic injury from small businesses located in the contiguous county of Alexander, Illinois, may be filed until the specified date at the previously designated location.

All other counties contiguous to the above-named primary counties and not listed above have been previously declared as primary or adjacent counties for the same storms and flooding and are, therefore, eligible.

All other information remains the same; i.e., the termination date for filing applications for physical damage is the close of business on April 27, 1989, and for economic injury until the close of business on November 24, 1989.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Date: April 5, 1989.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 89-10188 Filed 4-27-89; 8:45 am]

BILLING CODE 8025-01-M

Region I Advisory Council; Public Meeting

The U.S. Small Business Administration, Region I Advisory Council, located in the geographical area of Montpelier will hold a public meeting at 4:00 p.m., Thursday, May 18, 1989, at the Holiday Inn, White River Junction, Vermont to discuss such matters as may

[6] *See, e.g., The October 1987 Market Break* at 5-32 to 5-48.

[7] 15 U.S.C. 78s(b)(2) (1982).

[8] 17 CFR 200.30-3(a) (1988).

be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Ora H. Paul, District Director, U.S. Small Business Administration, Federal Building, 87 State Street, P.O. Box 605, Montpelier, Vermont 05602, phone (802) 828-4422.

April 17, 1989.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 89-10184 Filed 4-27-89; 8:45 am]

BILLING CODE 8025-01-M

Region III—Advisory Council; Public Meeting

The U.S. Small Business Administration, Region III Advisory Council, located in the geographical area of Richmond, Virginia, will hold a public meeting from 1:00 p.m. to 5:00 p.m. on Thursday, June 8, 1989, and from 8:30 a.m. on June 9 until 12:00 Noon, at the Holiday Inn Conference Center, 1021 Koger Center Boulevard, Richmond, Virginia 23235, to discuss such business as may be presented by members, and staff of the U.S. Small Business Administration, or others present.

For further information, write or call Catherine S. Marschall, District Director, U.S. Small Business Administraion, P.O. Box 10126, Federal Building, Richmond, Virginia 23240, (804) 771-1741.

April 17, 1989.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 89-10181 Filed 4-27-89; 8:45am]

BILLING CODE 8025-01-M

[Application No. 05/05-5210]

Cactus Capital Co.; Application for a Small Business Investment Company License

An application for a license to operate as a small business investment company under the provisions of the Small Business Investment Act of 1958, as amended, section 301(d) (15 U.S.C. 661, *et seq.* (1989)) (the Act) has been filed by Cactus Capital Company (the Applicant), 870 High Street, Suite 216, Worthington, Ohio 43085, with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1989).

The officers, directors and stockholders of the Applicant are as follows:

Name and address	Title	Percent of capital stock
Edward C. Liu, 6461 Meadow Brook Cir., Worthington, Ohio 43085	President and Diretor	23.73
Willard J. Mayfield, 2908 Kerrowood Drive, Columbus, Ohio 43231	Investment Consultant	0
Chung Lang Chang, 550 Weldwood Lane, Sylvania, Ohio 43560	Treasurer and Director	18.18
Hsien Jer Hsu, 2437 Sandover Road, Columbus, Ohio 43220	Secretary	04.55
Tson-Kuang Wu, 1399 Timberlane Drive, Lima, Ohio 43805	V.P. and Director	09.09
Strong C. Chuang, 429 Bruce Hills, Cincinnati, Ohio 45224	V.P. and Director	09.09
Mark T. Tsuang, 7416 Ayers Road, Cincinnati, Ohio 45255	Director	09.09
Duane Jeng, 8963 Tanglewood Ct., Springboro, Ohio 45066	Director	09.09
Andy Jeng, 7755 Parkcreek Drive, Centerville, Ohio 45459	Director	09.09
Chin-Ying Lin, 1617 Leist Ave., Lima, Ohio 45805	Director	09.09

The Applicant, an Ohio Corporation, will begin operations with $1,000,000 of paid-in capital and paid-in surplus. The Applicant will conduct its activities primarily in the State of Ohio but will consider investments in businesses in other areas of the United States.

As an SBIC under section 301(d) of the Act, the Applicant has been organized and chartered solely for the purpose of performing the functions and conducting the activities contemplated under the Small Business Investment Act of 1958, as amended, from time to time, and will provide assistance solely to small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons who participation in the free enterprise system is hampered because of social or economic disadvantage.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owner and management, and the probability of successful operations of the company under their management including adequate profitability and financial soundness, in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed Application. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, DC 20416.

A copy of this Notice shall be published in a newspaper of general circulation in the Columbus, Ohio area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: April 19, 1989.

Robert G. Lineberry,

Deputy Associate Administrator For Investment.

[FR Doc. 89-10185 Filed 4-27-89; 8:45 am]

BILLING CODE 8025-01-M

[License No. 02/02-5369]

Ibero-American Investors Corp.; Filing of an Application for Approval of a Conflict of Interest Transaction

Notice is hereby given that Ibero-American Investors Corporation (Ibero-American), 38 Scio Street, Rochester, New York, 14604, a Federal licensee under the Small Business Investment Act of 1958, as amended (the Act), has filed an application with the Small Business Administration (SBA) pursuant to section 312 of the Act and covered by § 107.903 of the SBA Rules and Regulations (the Regulations) governing Small Business Investment Companies (13 CFR 107.903 (1988)) for approval of a conflict of interest transaction falling within the scope of the above Sections of the Act and the Regulations.

Subject to such approval, Ibero-American proposes to provide funds to Best Broadcasting Company, L.P., 234 Roslyn Street, Rochester, New York 14619, for the purpose of obtaining a

lower power FM radio station in the city of Rochester, New York.

The proposed financing is brought within the purview of § 107.903(b)(1) of the Regulations because Ms. Wyoma Best is the general partner in Best Broadcasting Company, L.P., and is a member of the Board of Directors of Ibero-American. Best Broadcasting Company, L.P., is considered to be an associate of Ibero-American as defined by § 107.3 of the Regulations.

Notice is further given that any person may, not later than 15 days from the date of the publication of the Notice, submit written comments on the proposed transaction to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, DC 20416.

A copy of this Notice shall be published, in accordance with § 107.903(e) of the Regulations, in a newspaper of general circulation in Rochester, New York.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator

Dated: April 17, 1989.

[FR Doc. 89-10189 Filed 4-27-89; 8:45 am]

BILLING CODE 8025-01-M

[License No. 02/02-5519]

Zenia Capital Corp.; Issuance of a Small Business Investment Company License

On January 13, 1989, a notice was published in the **Federal Register** (54 FR 1466) stating that an application has been filed by Zenia Capital Corporation, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1989)) for a license as a small business investment company.

Interested parties were given until close of business February 12, 1989, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(d) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 02/02-5519 on March 31, 1989, to Zenia Capital Corporation to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Dated: April 21, 1989.

[FR Doc. 89-10186 Filed 4-27-89; 8:45 am]

BILLING CODE 8025-01-M

[License No. 04/04-0247]

Sigma Capital Corp.; Issuance of a Small Business Investment Company License

On November 25, 1988, a notice was published in the **Federal Register** (53 FR 47788) stating that an application had been filed by Sigma Capital Corp., Boca Raton, Florida, with the Small Business Administration (SBA), pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1988)), for a license to operate as a small business investment company.

Interested parties were given until the close of business December 24, 1988, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 04/04-0297 on April 11, 1989, to Sigma Capital Corp. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: April 19, 1989.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 89-10187 Filed 4-27-89; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended April 21, 1989

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No.: 46250.

Date Filed: April 17, 1989.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 15, 1989.

Description: Application of American Airlines, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations applies for amendment of its certificate of public convenience and necessity for Route 137 so as to authorize foreign air transportation of persons, property and mail between a point or points in the United States, on the one hand, and Quito and Quayaquil, Ecuador, on the other hand. American also requests that it be allocated seven of the frequencies available to U.S. Ecuador Air Transport Agreement for Miami-Ecuador services, in order to permit it to institute daily Boeing 727 service between Miami and Guayaquil.

Docket No.: 46252.

Date Filed: April 18, 1989.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 16, 1989.

Description: Application of Pacific Interstate Airlines, Inc. d/b/a Carnival Air, pursuant to section 401(d)(1) of the Act, and Subpart Q of the Regulations, requests the issuance of a certificate of public convenience and necessity to authorize it to engage in scheduled foreign air transportation.

Docket No.: 46255.

Date Filed: April 20, 1989.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 18, 1989.

Description: Application of United Air Lines, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations resubmits request for an amendment of its certificate of public convenience and necessity for Route 130 in order to authorize United to operate (1) nonstop service between Chicago, Illinois, and points in Japan, and (2) between Chicago, Illinois, and points in Asia on Route 130 via Japan.

Docket No.: 46258.

Date Filed: April 20, 1989.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 18, 1989.

Description: Application of Air Atlantis, S.A. pursuant to section 402 of the Act and Subpart Q of the Regulations, requests a foreign air

carrier permit to provide charter air transportation of persons and property, separately or in combination, in (1) between points in Portugal and a point or points in the United States (i.e., Third and Fourth Freedom flights) and (2) between points in the United States and a point or points outside the United States (i.e., Fifth Freedom flights) as may be authorized by the Department.

Docket No.: 41894.

Date Filed: April 21, 1989.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 19, 1989.

Description: Application of The Flying Tiger Lines Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations requests renewal of its certificate of public convenience and necessity authorizing scheduled all-cargo service between the United States and Venezuela, Route 451, for a period of at least five years.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 89-10253 Filed 4-27-89; 8:45 am]

BILLING CODE 4910-62-M

Aviation Proceedings; Agreements Filed During the Week Ending—April 21, 1989

The following agreement was filed with the Department of Transportation under the provisions of 49 U.S.C. 408, 409, 412, and 414. Answers may be filed within 21 days of date of filing.

Docket No. 46248

Parties: Pan American World Airways, Inc.; Aeroflot Soviet Airlines.

Date Filed: April 17, 1989.

Subject: Joint Application of Pan American World Airways, Inc. and Aeroflot Soviet Airlines apply for approval of blocked space agreement, pursuant to Section 412 of the Act.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 89-10252 Filed 4-27-89; 8:45 am]

BILLING CODE 5920-62-M

Coast Guard

[CGD 89-036]

Meeting of the Subcommittee on Marine Occupational Safety and Health, Chemical Transportation Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: Notice is given here of a meeting of the Subcommittee on Marine Occupational Safety and Health of the Chemical Transportation Advisory Committee (CTAC). The meeting will be held on Thursday, June 15, 1989, in Room 4234, U.S. Department of Transportation, Nassif Building, 400 7th Street, SW., Washington, DC. The meeting is scheduled to begin at 9:00 a.m. and end by 3:30 p.m. During their meeting in December, 1988 the Subcommittee divided into four working groups to begin drafting proposed recommendations in four major subject areas. The working group subjects are: Recognition and evaluation of maritime hazards; control of exposures; training; and program audits and surveys. The purpose of the meeting in June will be to introduce and discuss the first drafts from these four working groups.

FOR FURTHER INFORMATION CONTACT: Lieutenant Joseph Ocken, U.S. Coast Guard Headquarters (G-MTH-1), 2100 Second Street, SW., Washington, DC 20593, (202) 267-1577.

Dated: April 21, 1989.

M. J. Schiro,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 89-10161 Filed 4-27-89; 8:45 am]

BILLING CODE 4910-14-M

[CGD 89-035]

Towing Safety Advisory Committee; Meeting of Subcommittee

AGENCY: Coast Guard, Department of Transportation.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Act (Pub. L. 92-463; U.S.C. App. I), notice is hereby given of a meeting of the following subcommittee of the Towing Safety Advisory Committee (TSAC):

1. The subcommittee on Personnel Manning and Licensing will meet on May 17, 1989 in room 6303, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC. The meeting is scheduled to begin at 1:00 p.m. and end at 4:00 p.m. The agenda for the meeting follows:

(a) Navigation and Vessel Inspection Circular Regarding Interpretations of Various Issues Regarding Pilots and the Pilot Regulations. Attendance is open to the public.

Members of the public may present oral or written statements at the meeting. Additional information may be obtained from the Executive Director of TSAC at U.S. Coast Guard Headquarters, G-MP-3, Room 2420, 2100 Second Street, SW., Washington, DC 20593-0001 or by calling (202) 267-0449.

Dated: April 19, 1989.

J. D. Sipes,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 89-10162 Filed 4-27-89; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA) (Utilized as an Advisory Committee); Reestablishment

Notice is hereby given of the reestablishment of the Radio Technical Commission for Aeronautics (RTCA) as an advisory committee utilized by the Federal Aviation Administration and other Government agencies. The Associate Administrator for Advanced Design and Management Control, Federal Aviation Administration, is the sponsor.

The membership of RTCA comprises over 140 Government and industry organizations. At this time, eight Government agencies, the Departments of State, Commerce, Army, Navy, and Air Force; the Federal Aviation Administration and U.S. Coast Guard of the Department of Transportation; and the National Aeronautics and Space Administration, participate in RTCA. Private sector members include Aeronautical Radio, Incorporated; Air Line Pilots Association; Air Transport Association of America; Aircraft Owners and Pilots Association; General Aviation Manufacturers Association; National Business Aircaft Association; Electronics Industries Association members; and affiliated independent members.

The objective of RTGA is to advance the science of aeronautics through the investigation of all available or potential applications of telecommunications and the adaptation thereof to recognized operational requirements. To achieve this objective, RTCA, through its special committees, seeks solutions to problems involving the application of electronics and telecommunications to aeronautical operations, and frequently recommends technical performance standards and operational requirements for consideration by Government, industry, and aviation users.

The Secretary of Transportation has determined that the utilization of RTCA is necessary in the public interest in connection with the performance of duties imposed on the Federal Aviation

Administration by law. Except as provided in section 10(d) of the Federal Advisory Committee Act (86 Stat. 770), meetings of all RTCA committees, when utilized as an advisory committee, will be open to the public.

Issued in Washington, DC, on March 14, 1989.

John E. Turner,

Associate Administrator for Advanced Design and Management Control.

[FR Doc. 89-10202 Filed 4-27-89; 8:45 am]

BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA), Special Committee 163, Unitentional or Simultaneous Transmissions That Adversely Affect Two-Way Radio Communication; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given for the ninth meeting of RTCA Special Committee 163 on Unitentional or Simultaneous Transmissions That Adversely Affect Two-Way Radio Communication to be held May 15-17, 1989, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Chairman's remarks; (2) approval of the minutes of the eighth meeting, RTCA Paper No. 77-88/SC163-77; (3) review task assignments; (4) review the sixth draft of the MOPS, RTCA Paper No. 79-89/SC163-78; (5) assignment of tasks; (6) other business; and (7) date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on April 18, 1989.

Geoffrey R. McIntyre,

Designated Officer.

[FR Doc. 89-10203 Filed 4-27-89; 8:45 am]

BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA); Executive Committee Meeting; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given for the Executive Committee Meeting to be held May 19, 1989, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Chairman's remarks and introductions; (2) approval of the minutes of the meeting; (3) Executive Director's Report; (4) Special Committee Activities Report; (5) Fiscal and Management Subcommittee Report; (6) Search Committee for Executive Director Successor Report; (7) consideration of proposals to establish new Special Committees; (8) consideration of draft letter on Senate Bill S. 444; (9) consideration of proposal to establish "The RTCA Institute"; (10) other business: and (11) date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC., on April 20, 1989.

Geoffrey R. McIntyre,

Designated Officer.

[FR Doc. 89-10204 Filed 4-27-89; 8:45 am]

BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA); Special Committee 162 Aviation Systems Design Guidelines for Open Systems Interconnection (OSI); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given for the seventh meeting of RTCA Special Committee 162 on Aviation Systems Design Guidelines for Open Systems Interconnection (OSI) to be held May 23-24, 1989, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Chairman's introductory remarks; (2) approval of the minutes of the sixth meeting, RTCA Paper No. 443-88/SC162-39; (3) Working Group Activity Reports; (4) reports of related activities being conducted by other organizations; (5) report of the draft guidelines technical editor; (6) review of first part of guidelines document; (7) preparation of plan for completing the guidelines document; (8) other business; and (9) date and location of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson, Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on April 18, 1989.

Geoffrey R. McIntyre,

Designated Officer.

[FR Doc. 89-10205 Filed 4-27-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: April 24, 1989.

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: 1545-0068.

Form Number: 2441.

Type of Review: Revision.

Title: Child and Dependent Care Expenses.

Description: Internal Revenue Code section 21 allows a credit for certain child and dependent care expense to be claimed on Form 1040 (reduced by employer-provided day care excluded under section 129). Day care provider must be reported to IRS for both the credit and exclusion. Form 2441 is used to verify that the credit and exclusion are properly figured, and that provider information is reported.

Respondents: Individuals or households.

Estimated Number of Respondents: 6,729,251.

Estimated Burden Hours Per Response/Recordkeeping: Recordkeeping 20 minutes. Learning about the law or the form 12 minutes. Preparing the form 32 minutes. Copying, assembling, and sending the form to IRS 25 minutes.

Frequency of Response: Annually.

Estimated Total Recordkeeping/ Reporting Burden: 9,959,291 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. 89–10209 Filed 4–27–89; 8:45 am]

BILLING CODE 4810–25–M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 81
Friday, April 28, 1989

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, May 2, 1989, 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.

* * * * *

By direction of the Federal Election Commission, the Open Meeting scheduled for May 5, 1989, is cancelled.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202–376–3155.

Marjorie W. Emmons,
Secretary of the Commission.

[FR Doc. 89–10307 Filed 4–26–89; 9:50 am]
BILLING CODE 6715–01–M

FEDERAL HOME LOAN MORTGAGE CORPORATION

DATE AND TIME: Wednesday, May 3, 1989, 2:00 p.m.

PLACE: 1776 G Street NW., Board Room, Third Floor, Washington, DC 20006.

STATUS: Closed.

CONTACT PERSON FOR MORE INFORMATION: Keith Earley, 1759 Business Center Drive, P.O. Box 4115, Reston, Virginia 22090, (703) 759–8414.

MATTERS TO BE CONSIDERED:

Closed—Minutes of the March 27, 1989 Board of Directors' Meeting
Closed—President's Report
Closed—Risk Management Update
Closed—Financial Authorities
Closed—Various Compensation Matters

Date: April 26, 1989.

Maud Mater,
Secretary.

[FR Doc. 89–10425 Filed 4–26–89; 2:32 pm]
BILLING CODE 6719–01–M

BOARD OF GOVERNORS FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, May 3, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: April 25, 1989.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 89–10297 Filed 4–25–89; 4:45 pm]
BILLING CODE 6210–01–M

Corrections

Federal Register
Vol. 54, No. 81
Friday, April 28, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 89-042]

Varroa Mite Regulations

Correction

In proposed rule document 89-9263 beginning on page 15217 in the issue of Monday, April 17, 1989, make the following correction:

On page 15217, in the third column, in the **SUMMARY**, in the fifth line, "guarantined" should read "quarantined".

BILLING CODE 1505-01-D

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 89-044]

U.S. Veterinary Biological Product and Establishment Licenses Issued, Suspended, Revoked, or Terminated

Correction

In notice document 89-8203 beginning on page 14124 in the issue of Friday, April 7, 1989, make the following correction:

On page 14124, in the table, under "Product", in the fifth entry, in the second line, "Parain-fluenza" should read "Parain-fluenza$_3$"#

BILLING CODE 1505-01-D

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1989; Additions

Correction

In notice document 89-8301 beginning on page 14129 in the issue of Friday, April 7, 1989, make the following correction:

On page 14130, in the first column, under the heading **Commodities**, add "7105-00-496-9866" as a final entry under the sub-heading "Mirror, Glass".

BILLING CODE 1505-01-D

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1989; Proposed Additions

Correction

In notice document 89-9633 appearing on page 16148 in the issue of Friday, April 21, 1989, make the following correction:

In the second column under **SUPPLEMENTARY INFORMATION**, immediately following the third paragraph, under "Compress and Bandage, Camouflaged", the first entry should read "6510-00-200-3075".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP89-88-001]

ANR Pipeline Co.; Proposed Changes in FERC Gas Tariff

Correction

In notice document 89-9581 appearing on page 16401 in the issue of Monday, April 24, 1989, the docket number was omitted from the heading and should have read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 184

[Docket No. 78N-0349]

Certain Glycerides; Affirmation of Gras Status; Correction

Correction

In rule document 89-7600 appearing on page 13168 in the issue of Friday, March 31, 1989, make the following corrections:

On page 13168, in the first column, under **EFFECTIVE DATE**, the date should read "May 1, 1989."

On the same page, in the third column, in amendatory instruction 2., in the first line, "Section 184-1101" should read "Section 184.1101".

§ 184.1101 [Corrected]

On the same page, in the same column, in § 184.1101(e), in the fifth line, "diglycerides" was misspelled.

BILLING CODE 1505-01-D

Federal Register

Friday
April 28, 1989

Part II

Department of Transportation

Coast Guard

33 CFR Parts 151, 155, and 158
46 CFR Part 25
Regulations Implementing the Pollution Prevention Requirements of Annex V of MARPOL 73/78; Interim Rule With Request for Comments

DEPARTMENT OF TRANSPORTATION

33 CFR Parts 151, 155, and 158

46 CFR Part 25

[CGD 88-002]
RIN 2115-AC89

Regulations Implementing the Pollution Prevention Requirements of Annex V of MARPOL 73/78

AGENCY: Coast Guard, DOT.

ACTION: Interim rule with request for comments.

SUMMARY: The Coast Guard is publishing an interim rule to implement the requirements of the "Act to Prevent Pollution from Ships," as recently amended by Congress. This rule applies to marine craft of any size or type, including commercially operated ships and fishing vessels, uninspected vessels, recreational boats, and oil drilling rigs and platforms. The rule also requires ports or terminals, including recreational boating facilities, commercial fishing facilities, and mineral and oil industry shorebases, to ensure the availability of facilities to receive ship-generated garbage. This rule implements Annex V of the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL 73/78). The Coast Guard expects that this rule will reduce the amount of plastics, including synthetic fishing nets, and other ship-generated garbage intentionally discharged into the marine environment.

DATES: 1. This interim rule becomes effective on May 30, 1989. 2. The Coast Guard will accept written comments on this interim rule until December 31, 1989.

ADDRESSES:

1. Written comments should be submitted to the Executive Secretary, Marine Safety Council (G-LRA-2/3600), U.S. Coast Guard Headquarters, Room 3600, 2100 Second Street, SW., Washington, DC, 20593-0001 Attention: CGD 88-002. A Final Regulatory Evaluation, Environmental Assessment and copies of the comments received on the Advance Notice and Notice of Proposed Rulemaking are available for inspection and copying at the same address. Normal office hours are between 8:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

2. Persons desiring to receive a copy of the International Maritime Organization's Report of the Working Group on Optional Annexes (MEPC 26/WP.6 dated September 8, 1988), including the "Guidelines for the Implementation of Annex V, Regulations for the Prevention of Pollution by Garbage from Ships" may obtain one by sending a self-addressed 8½" x 11" envelope with postage paid for three ounces to Commandant (G-MPS-3), U.S Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC, 20593-0001 Attention: Annex V Guidelines.

3. Persons desiring to learn about the specific requirements of the U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) certification process should write: U.S. Department of Agriculture—APHIS, PPQ, Federal Building—Room 656, 6501 Belcrest Road, Hyattsville, MD 20782 Attention: Dr. Ronald Caffey, or they may contact the local APHIS inspector at the address or telephone number listed in the blue government pages of the local telephone listings under the U.S. Department of Agriculture, Animal and Plant Health Inspection Service.

4. Persons desiring to comment on the information collection requirements in this interim rule should submit their comments to: Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, Attention: Desk Officer, U.S Coast Guard.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Joel R. Whitehead, Project Manager, Office of Marine Safety, Security and Environmental Protection (G-MPS-3), (202) 267-0491, between 7:00 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: For the convenience of the reader, the Supplementary Information explaining this rulemaking is organized as indicated below:

I. Preliminary Information
II. Background
III. Regulatory Approach
IV. Enforcement
V. Section by Section Analysis of the Interim Rule and Public Comments
VI. Regulatory Evaluation and Environmental Impact

I. Preliminary Information

The Coast Guard published an Advance Notice of Proposed Rulemaking in the **Federal Register** on June 24, 1988 (53 FR 23884) and a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on October 27, 1988 (53 FR 43622). In addition, two minor correction notices were published on November 4, 1988 (53 FR 44617) and November 21, 1988 (53 FR 46977).

Three public hearings were conducted by the Coast Guard to give interested persons an opportunity to express their views on the Notice of Proposed Rulemaking. These hearings were held in Washington, DC (November 10, 1988), Houston, Texas (November 14, 1988) and in Seattle, Washington (November 15, 1988).

Drafting Information

The principal persons involved in drafting this interim rule are: Lieutenant Commander Joel R. Whitehead, Project Manager, Office of Marine Safety, Security and Environmental Protection and Mr. Stanley Colby, Project Counsel, Office of the Chief Counsel.

II. Background

The Act to Prevent Pollution from Ships (33 U.S.C. 1901 *et seq.*), hereafter referred to as The Act, requires the Secretary of the Department in which the Coast Guard is operating to administer and enforce Annex V of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78), done at London on February 17, 1978. Annex V of MARPOL 73/78 is entitled "Regulations for the Prevention of Pollution by Garbage from Ships" and was designed to reduce the introduction of ship-generated garbage into the marine environment. Garbage is defined as "all kinds of victual, domestic and operational waste, excluding fresh fish and parts thereof, generated during the normal operation of the ship and liable to be disposed of continually or periodically." A particular focus of Annex V is to prevent the discharge of plastics, including synthetic fishing nets, and other debris which persists in the marine environment.

The International Convention for the Prevention of Pollution from Ships, 1973, was adopted by the International Conference on Marine Pollution convened by the Intergovernmental Maritime Consultative Organization (IMCO), in November 1973. IMCO is now known as the International Maritime Organization (IMO). The Convention was subsequently modified by the Protocol of 1978 and adopted by the International Conference on Tanker Safety and Pollution Prevention, held in February 1978. The Convention, as modified by the 1978 Protocol, is known as MARPOL 73/78.

MARPOL 73/78 was designed to address the problem of marine pollution from ships on a global scale and consists of five annexes, each of which is directed to combat a particular type of marine pollution. States which are parties to MARPOL 73/78 have agreed to implement Annexes I and II which address pollution by oil and noxious liquid substances (bulk liquid chemicals), respectively. Annexes I and

II are known as the mandatory annexes and are already in force internationally. By the terms of MARPOL 73/78, Annexes III, IV and V are optional to party states, and they need not be accepted by states at the time they ratify MARPOL 73/78. The United States elected not to be bound by the optional annexes at the time it ratified. Each optional annex, including Annex V, enters into force separately one year from the date on which at least 15 nations, representing a minimum of fifty per cent of the world's shipping tonnage, have ratified them. The U.S. Senate gave its advice and consent to U.S. ratification of Annex V on November 5, 1987 and the President signed Pub. L. 100–220, including Title II, known as the "Marine Plastic Pollution Research and Control Act of 1987" on December 29, 1987. The U.S. Government deposited its instrument of ratification of Annex V at IMO Headquarters in London on December 30, 1987. With U.S. ratification, MARPOL's requirements for Annex V entry into force were met. Accordingly, Annex V entered into force internationally on December 31, 1988.

III. Regulatory Approach

These regulations amend existing regulations in 33 CFR Parts 151, 155, and 158, and 46 CFR Part 25. 33 CFR Part 151 is concerned with the shipboard requirements to prevent pollution and Part 158 concerns the reception facility requirements for ports or terminals. This interim rule adds new subparts and revises the general sections of Parts 151 and 158 to implement the requirements of Annex V, as directed by Pub. L. 100–220. There are no new requirements in these regulations which change Annex I or Annex II requirements, although minor editorial or typographical errors found in those regulations have been corrected. Minor revisions to 33 CFR Part 155 change references in 33 CFR Part 151 which were redesignated. In 46 CFR Part 25, the interim rule requires uninspected vessels to retain garbage generated on board when it cannot be discharged in accordance with these regulations. Although it is duplicative of the requirements in 33 CFR Part 151, this requirement was included in Title 46 because most uninspected vessel operators are more likely to be familiar with Title 46 than Title 33.

In drafting this rule, the Coast Guard considered the comments received and discussions held over the last year with numerous industry representatives, environmental organizations and federal agencies. The Coast Guard also considered the international guidance provided in the Report of the Working Group on Optional Annexes which convened at the 26th Session of the Marine Environment Protection Committee (MEPC) of the International Maritime Organization (IMO) in London in September 1988. The Working Group's report contains the "Guidelines for the Implementation of Annex V, Regulations for the Prevention of Pollution by Garbage from Ships" which were approved at that meeting. Persons who desire to obtain a copy of that report may obtain one by writing to the address in the second paragraph of **ADDRESSES** above.

Section 1905(a) of the Act also requires the Coast Guard to consult with appropriate federal agencies in establishing regulations which set the criteria for determining the adequacy of reception facilities. Accordingly, the Coast Guard has consulted with many federal agencies, including the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA), the National Marine Fisheries Service of the National Oceanographic and Atmospheric Administration (NOAA), the Environmental Protection Agency (EPA) and the Minerals Management Service (MMS) of the Department of the Interior. In addition, the Coast Guard advised numerous federal agencies of the ongoing status of these regulations through its active participation on the Interagency Task Force on Persistent Marine Debris, which was chaired by NOAA.

The Coast Guard believes that the regulatory approach it has taken to implement Annex V and the recent amendments to the Act, is a reasonable and prudent one, which recognizes the difficulty of the task at hand. The Coast Guard received numerous comments from both public and private sectors which requested the Coast Guard to reflect in a final rule the lessons learned during the first year of implementation. For this reason, the Coast Guard is publishing an interim rule which will be in effect until a final rule is issued, in early 1990. The Coast Guard expects that the final rule will fine tune this interim rule and will reflect the lessons learned by both ship operators and port or terminal operators during the interim period.

IV. Enforcement

The Coast Guard plans an enforcement scheme which will phase in the most difficult requirements of this rule over the next several months and which is realistic, satisfactorily meets the concerns of the public and industry, and will fulfill our international commitments under Annex V of MARPOL 73/78.

To date, the Coast Guard has enjoyed superb cooperation among all segments of the marine industry and government in developing policy to implement the goals of Annex V of MARPOL 73/78. Despite this cooperation, the Coast Guard is aware that some ports and terminals will have difficulty in immediately providing shoreside reception facilities for garbage which meet APHIS requirements. To account for this, this interim rule allows until August 28, 1989 to acquire APHIS facilities for those ports or terminals which do not already have them. However, the Coast Guard expects that those ports or terminals which do have these facilities available earlier than this date will make them available. Availability of APHIS facilities will, in all likelihood, place these ports in a more competitive position than those nearby which lack them, since those ports or terminals with APHIS facilities will be able to serve the full range of ship's garbage reception needs. Because of this phased-in approach to requiring APHIS reception facilities, until August 28, 1989 some ships will have to retain contaminated plastics regulated by APHIS until they reach a subsequent port or terminal which has APHIS approved facilities. Coast Guard Captains of the Port (COTP's) will work with local ports and terminals, local APHIS field offices, and shipping companies to ensure the availability of APHIS facilities at all ports and terminals which need them by August 28, 1989.

Although the Coast Guard is phasing in certain requirements of these regulations, Annex V of MARPOL 73/78 and the Act are now effective and the Coast Guard will implement them through a variety of enforcement tools. These tools range from on-the-spot corrections, to COTP Letters of Warning, and the assessment of civil penalties. The Coast Guard may also deny ships permission to enter ports or terminals which do not have adequate reception facilities for garbage or do not have Certificate of Adequacy (COA), if required. For gross or willful violations of the law, the Coast Guard will seek the prosecution of violators through criminal sanctions which could include fines of up to $50,000 and imprisonment. The Coast Guard's enforcement strategy will be to cooperatively work with all members of the marine community in an equitable manner, but with the clear expectation that ports, terminals and shipping companies will take action now to achieve full compliance with Annex V. Local COTPs will decide which enforcement strategy is best suited to

encourage compliance, based upon the progress made by individual ports, terminals, and ships to achieve compliance with these regulations and the intent of Annex V of MARPOL 73/78. Persons who believe a requirement of these regulations is impracticable or unreasonable may submit a waiver request. Waivers are allowed by 33 CFR 158.150 which requires the requestor to state an alternative which provides equivalent compliance with MARPOL 73/78, Annex V.

V. Section-by-Section Analysis of the Interim Rule and Discussion of Comments Received Concerning the Proposed Rules

The rule which was proposed in the Coast Guard's NPRM of October 27, 1988 was changed based upon remarks that were received during the comment period which expired November 28, 1988 and upon oral comments made at three public hearings conducted by the Coast Guard. Each section of the interim rule is described below and is accompanied by a discussion of how and why the regulations proposed in the NPRM were amended.

33 CFR 151.03 Applicability

This section was revised to indicate that the waters and ships to which each annex of MARPOL 73/78 apply are now specified in separate applicability sections, one for each annex of MARPOL 73/78. Before the entry into force of Annex V, one applicability section was sufficient for all ships to which MARPOL 73/78 applied. However, the Coast Guard decided that separate applicability sections for each subpart were appropriate with the entry into force of Annex V, because of the great expansion in the waters to which Annex V applies and the number of additional ships, ports and terminals which will be required to comply with these regulations.

33 CFR 151.04 Penalties for Violation

This section was added as a clear statement of the civil penalties and criminal fines authorized for violations of the regulations in this part, the Act or Annexes I, II or V of MARPOL 73/78. The Coast Guard has added a new § 151.04(b) which did not appear in the NPRM This new section provides notification of the $5,000 civil penalty authorized under the Act for persons who make false or fictitious statements or representations in any matter required to be made to the Coast Guard. This penalty was referred to in the Application for a Certificate of Adequacy for a Reception Facility for Garbage (Form C), but was not specifically mentioned in the penalty section as proposed in the NPRM.

The Coast Guard received four comments relative to this section. One commenter suggested that this section should be located in Subpart A of Part 151 since the penalties and fines apply to all Annexes of MARPOL 73/78, and not just Annex V. The Coast Guard agreed and moved this section from the location proposed in the NPRM (Subpart D) to this section. Another commenter correctly noted that the references to fines and penalties in § 151.181(c) of the NPRM were reversed. The Coast Guard has corrected this error in this interim rule. A third commenter questioned whether the criminal fines as listed in the proposed rule apply per day or per violation. The criminal fines allowed for in the Act apply to each violation, with no additional penalty for each day of a continuing violation, as is the case with civil penalties. The fourth commenter recommended that the Coast Guard remove what appears in this interim rule as § 151.04(d). This section authorizes the Coast Guard to seek criminal fines or civil penalties against a ship *in rem*. This commenter stated that it would be unfair for the Coast Guard to penalize a shipowner, if an individual on board the ship failed to comply with the shipowner's stated policies, provided they were consistent with Annex V. The Coast Guard has retained the wording of the proposed rule, since the statute clearly authorizes *in rem* proceedings. In appropriate cases, the Coast Guard will seek payment of fines or penalties against the ship *in rem*.

33 CFR 151.05 Definitions

This section adds several new definitions relevant to Annex V of MARPOL 73/78 and makes slight revisions in existing definitions. Because of comments received from the public and definitions recently approved by the IMO in the "Guidelines for the Implementation of Annex V," several definitions were added in this interim rule which did not appear in the NPRM "Cargo associated waste," "Dishwater," "Domestic waste," "Garbage," "Graywater," "Harmful substance," "Maintenance waste," "Medical waste," "Operational waste," "Plastic," and "Victual waste" were added to this part in the proper alphabetical sequence and the definitions of "Discharge," "Special Area" and "Terminal" were revised. All are discussed below:

1. "Cargo associated wastes," "Domestic wastes," "Maintenance waste," and "Operational waste." One commenter requested that the Coast Guard further define the three components of the term "garbage" as defined in the NPRM. By that definition, garbage consists of "victual, domestic and operational wastes," of which only "victual waste" had been defined in the NPRM. The Coast Guard agrees that addition of the definitions of "domestic waste" and "operational waste" will clarify what is meant by "garbage" under these regulations. In addition, the definition of "maintenance waste" was added since this term is referred to within the definition of the three major components of garbage. With only minor changes, the Coast Guard has adopted the definitions of these terms as found in IMO's "Guidelines for the Implementation of Annex V, Regulations for the Prevention of Pollution by Garbage from Ships." Persons wishing to receive a copy of these Guidelines should write to the address indicated in paragraph two in **ADDRESSES** above.

Within the definition of "operational waste," the Coast Guard has included "ashes and clinkers" from shipboard incinerators and coal burning boilers. The IMO's "Guidelines for the Implementation of Annex V" specifically note that "ash and clinkers" from incineration of ship-generated garbage and ship boilers are considered "garbage" within the meaning of Annex V since they are "operational wastes." Under this interim rule, ashes and non-plastic clinkers may be discharged at sea (except in a Special Area) outside of 12 nautical miles from "nearest land" in accordance with 33 CFR 151.69(a)(2). Further, those ashes and non-plastic clinkers which can pass through a 25 millimeter (1 inch) screen may be discharged beyond 3 nautical miles from land. "Cargo residues" are also considered to be garbage, since they are "operational wastes" as defined herein.

2. "Discharge." This definition is identical to that found in MARPOL 73/78 and includes any intentional or unintentional discharge of garbage.

3. "Dishwater" and "graywater." The definitions of dishwater and graywater were added to define two important exceptions to the definition of garbage within the meaning of Annex V.

4. "Garbage" is defined as it appears in Annex V of MARPOL 73/78 with the two exclusions for "graywater" and "dishwater," as noted above. The most important concept in this definition is that "garbage," for the purposes of these regulations, must be "generated during the normal operation of the ship" and is liable to be disposed of continuously or periodically.

Two commenters supported the exclusion of the words "fresh fish and parts thereof" from the definition of garbage. This exclusion was provided

for in MARPOL 73/78 and is consistent with existing exemptions granted by the EPA in their ocean dumping regulations in 40 CFR 220.1(c). One commenter requested the Coast Guard to apply the Annex V regulations to all garbage, whether ship-generated or not. The Coast Guard disagrees and has retained the existing definition of garbage because the commenter's proposal goes far beyond the scope of MARPOL 73/78 and the Act, which was intended to address only ship-generated sources of pollution Other laws, such as the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1401 *et seq.*) (MPRSA) and the Refuse Act (33 U.S.C. 407), prohibit the disposal of other material and refuse in general. One commenter requested the Coast Guard to specify in this section that garbage entrained in fishing nets should be considered an exception to this definition and is not required to be retained. Congress clearly indicated in House Report 100–360 (the report of the Merchant Marine and Fisheries Committee on H.R. 940, which became Title II of Pub. L. 100–220) at page 101, that fishermen are not obligated to retain refuse not generated by them but which becomes entrained in their fishing nets. The Coast Guard believes that the definition of "garbage" is sufficient to express this viewpoint and a further regulatory statement is unnecessary.

5. "Harmful substance." As defined by MARPOL 73/78, garbage, including, but not limited to plastics, is considered to be a "harmful substance" since it is liable to "create hazards to human health, to harm living resources and marine life, (or) to damage amenities." One person suggested redefining this term so that plastic fishing nets and traps (which are "harmful substances" under MARPOL 73/78) could be intentionally placed into the ocean as artificial reefs. The Coast Guard has retained the definition as it appeared in the NPRM, since construction of artificial reefs is not within the scope of the Act. Depending on location, these activities are regulated by some states and the U.S. Army Corps of Engineers, which generally requires issuance of a permit for artificial reef construction under 33 CFR Part 322.

6. "Medical waste." This definition was added to clarify those substances for which a ship operator must provide 24-hour advance notice that it desires to discharge to a port or terminal. The definition which appears here is the same as that in the recent amendments to section 502 of the Federal Water Pollution Control Act (33 U.S.C. 1362), as enacted by Title III of Pub L. 100–688.

7. "Plastic." This definition is included to provide a technically acceptable and very broad definition of those materials which are totally prohibited from discharge by ships, except to a port or terminal's reception facility. An explanatory note follows this definition and describes, for the nonscientific layman, the types of plastic items which are commonly found on ships which would be included in this definition. The definition is meant to include plastic products, raw resin pellets and composite products in which the plastic component may be a minor, but essential element in its functioning, for example, a plastic-lined paper cup. This definition excludes glass, paints, varnishes, and waxes, all of which might be considered "plastics" by other definitions.

Two commenters, including the EPA, supported the Coast Guard's decision to include the so-called "degradeable" plastics within the meaning of plastic in this rule. "Degradeable" plastics generally consist of synthetic polymers connected by starches. After varying periods of time, often more than six months, the starches degrade and leave smaller pieces of plastic in the marine environment. The Coast Guard specifically intends for these "degradeable" plastics to be included within the meaning of plastic and by this to restrict their discharge, since there could be an undesirable transfer of entanglement related marine deaths to ingestion related ones, especially during a lengthy period of starch degradation. To clarify the status of degradeable plastics, one commenter suggested adding the terms "biodegradeable" and "photodegradeable" plastics to the note following the definition of plastic. While there is no widely accepted definition of either of these terms, the Coast Guard agrees that the addition of the word "degradeable" in the regulation would further clarify the Coast Guard's intent to prohibit their discharge from ships. Accordingly, the Coast Guard has added a statement to this effect in the note following the definition of plastic.

Two commenters objected to the Coast Guard's description in the NPRM's preamble which excluded naturally produced polymers such as chitin from the meaning of plastic. Some plastic materials are produced naturally in the marine environment by living organisms. For example, chitin is a primary component of the shells of crabs, shrimp and lobsters, among others. The Coast Guard's broad definition of plastic is intended to regulate synthetically produced plastics, including chitin-derived and other plastics which have been harvested and adapted for use by man. Several European nations are now manufacturing packaging materials for personal hygiene products which are primarily chitin-derived. While this rule is intended to prohibit the discharge from ships of synthetically produced plastics, it is not intended to regulate the discharge of naturally produced plastics during fishery activities, such as crabshells and others which appear in the marine environment. In the absence of any evidence to indicate that synthetic plastics degrade so quickly in the marine environment that they do not cause environmental harm, these regulations prohibit the discharge of such plastics by ships at sea and in the navigable waters of the United States.

One commenter requested that the Coast Guard revise the definition of plastics to address not only the physical properties of plastics, but also those harmful characteristics which make them dangerous in the marine environment. Because the Coast Guard cannot identify plastics which are discharged into the ocean and which possess characteristics not harmful, or potentially harmful, to the marine environment, this definition has not been changed

8. "Port." The Coast Guard has retained the definition of this term as it appeared before the NPRM. The Coast Guard received one comment stating that the proposed revision to the definition as it appeared in the NPRM would destroy what was previously a clear distinction between the definitions of "port" and "terminal." Under Annexes I and II, a terminal was a single entity, such as a loading terminal, and a port was either a geographic "port" or a cooperative of terminals which wished to be considered a "port" for the purposes of the regulations, allowing them to share reception facilities. The proposed definition of port would have meant that certain individual entities, such as "commercial fishing facilities," "recreational boating facilities" and "mineral and oil shorebases" would be considered ports. The Coast Guard agrees that the definition as proposed in the NPRM needlessly confused this distinction and has therefore retained without change the existing definition of "port" found in 33 CFR 151.05.

9. "Special area." This definition is almost identical to that which appears in MARPOL 73/78 and a new phrase has been added to it indicating the sections in 33 CFR Part 151 which specifically define the Special Areas for each annex. Although Annexes I and II currently

have the same special areas, the Coast Guard felt that a separate listing in each Subpart would be more clear to the reader and would allow for the addition of new special areas for individual annexes.

10. "Terminal." The definition of this term has not been changed; however, the Coast Guard added an interpretive note to indicate that "commercial fishing facilities," "recreational boating facilities" and "mineral and oil shorebases" are considered "terminals" under these regulations. See the discussion above under the definition "Port" for further explanation.

11. "Victual waste." This term is defined to mean "food wastes;" since this latter term is used throughout Annex V but is not defined therein. "Victual wastes" and "food wastes" are interchangeable terms within the meaning of Annex V, however, the interim rule refers only to the term "victual wastes" for consistency.

33 CFR 151.07 Delegations

This section remains substantively unchanged, however it was reorganized for clarity. Paragraph (b), which had been reserved, and an out of date legal citation were removed.

33 CFR 151.08 Denial of Entry

The Coast Guard added a new paragraph (b) to indicate that the Captain of the Port (COTP) may deny ships entry to ports and terminals which do not provide or ensure the availability of adequate reception facilities for garbage or hold a Certificate of Adequacy if required under § 158.135.

One commenter mistakenly believed that this section would automatically deny entry to any ship entering a port or terminal which does not meet this section's requirements. The new § 151.08(b) merely grants the Coast Guard authority to deny entry when the COTP believes this would be the most effective enforcement tool.

33 CFR 151.09 Applicability

A new applicability section was added to describe which ships must comply with Subpart B, which implements the oil pollution regulations of Annex I of MARPOL 73/78. This applicability section was extracted from the old 33 CFR 151.03 and makes no changes in applicability of ships which must comply with Annex I of MARPOL 73/78. Separate applicability sections for each annex are intended to make it more clear to industry and enforcement personnel exactly which annexes apply to which ships.

33 CFR 151.10 Control of Discharge of Oil

This section was redesignated from its former section, § 151.09. This redesignation was necessary in order to make room for the insertion of the new applicability section for Annex I, which now appears as 33 CFR 151.09.

33 CFR 151.11 Exceptions for Emergencies

This section refers to exceptions for emergencies under Annex I of MARPOL 73/78. The reference to 33 CFR 151.09 in the introductory paragraph was changed to 33 CFR 151.10 to account for the redesignation of 33 CFR 151.09.

33 CFR 151.13 Special Areas for Annex I of MARPOL 73/78

The section title was changed by adding the words "for Annex I of MARPOL 73/78" to clearly indicate that these special areas are for this specific annex of MARPOL. Paragraph (g) was revised by changing the reference to § 151.09 to its new designation, § 151.10. In addition, there were some typographical errors which appeared in the CFR which have been corrected in this revision.

33 CFR 151.30 Applicability

A new applicability section was added to describe which ships must comply with Subpart C, which implements the noxious liquid substance regulations of Annex II of MARPOL 73/78. This section makes no changes in applicability for those ships required to comply with Annex II, since it was extracted from the old 33 CFR 151.03.

33 CFR 151 Subpart D—Garbage Pollution

This new subpart forms the body of the regulatory changes necessary to implement Annex V of MARPOL 73/78 and the recent amendments to the Act. The rule in Subpart D of Part 151 delineates shipboard requirements only.

33 CFR 151.51 Applicability

This section defines the ships that are subject to regulations implementing Annex V of MARPOL 73/78. This subpart applies to all U.S. ships (except certain government owned or operated ships) wherever located, and to foreign flag ships (whether party to MARPOL 73/78 or not) when in the navigable waters of the U.S. or within the 200 mile Exclusive Economic Zone (EEZ) of the U.S. Readers should understand that "ship," as defined in § 151.05, is very broad and includes "all marine craft operating in the marine environment." This definition includes among others, privately owned recreational vessels, uninspected vessels, cargo ships, tankships and barges, passenger vessels, oil drilling rigs and platforms and associated vessels such as derrick barges and pipelaying barges.

Two commenters requested a revision in these regulations to state that recreational vessels must also comply, since they are not specifically mentioned. Although most of these vessels are "operated under the jurisdiction of the United States" since they must be numbered under the requirements of 46 U.S.C. Chapter 123, the Coast Guard agrees that this intent was not made clear in the NPRM. Section 151.51(a)(1) has been changed to specifically indicate that recreational vessels and uninspected vessels must also comply with Annex V.

Five commenters objected to the exemption in § 151.51(b)(1) granted to warships, naval auxiliaries and other ships owned or operated by the United States when engaged in noncommercial service, and requested the Coast Guard to require them to comply with these regulations. The Coast Guard has retained this exemption because it is provided for both in MARPOL 73/78 and in the recent amendments to the Act. As authorized in Section 3(a) of the Act, these vessels have five years to achieve full compliance with Annex V.

33 CFR 151.53 Special Areas for Annex V of MARPOL 73/78

This section spells out the special areas for Annex V. Special areas are waterbodies which require additional protections beyond the normal discharge requirements of Annex V found in 33 CFR 151.69. Currently, the special areas for Annex V are the same as for Annex I of MARPOL 73/78 and include the Mediterranean Sea, Black Sea, Red Sea, Baltic Sea and Gulfs Area (Persian Gulf). In this section, the special areas for Annex V are listed and described by navigational coordinates as an aid to the reader. An explanatory note has been added below this section to advise the reader that while these waterbodies are defined as special areas, the discharge restrictions in 33 CFR 151.71 do not apply in these waters until a sufficient number of party states bordering each special area have notified IMO that adequate reception facilities are available. The IMO must also provide one year's notice to party states as to the effective date. On October 1, 1989, the Baltic Sea will become the first special area under Annex V in which the discharge restrictions of § 151.71 apply.

33 CFR 151.55–151.59 Recordkeeping Requirements, Waste Management Plans, Placards [Reserved]

These sections have been reserved for a separate rulemaking in which the Coast Guard will propose specific requirements for these three items. Congress allowed the Coast Guard until December 31, 1989 to publish a rule to implement these requirements for domestic ships.

Seven commenters urged the Coast Guard to include specific requirements for these three sections in this interim rule. These sections remain reserved; however, the Coast Guard has completed a preliminary study concerning future U.S. regulatory requirements and expects to initiate a proposed rulemaking in 1989 for domestic vessels.

Two commenters requested the Coast Guard to initiate a fishing gear marking. registration and identification system and to develop a monetary bounty system to aid in the recovery of fishing gear. The Coast Guard has determined it does not have the authority to accomplish either of these under Title II of Pub. L. 100.220. As discussed above, however, the Coast Guard is actively considering what recordkeeping requirements would be appropriate for commercial fishing vessels to achieve the goals of Annex V.

33 CFR 151.61 Inspection for Compliance and Enforcement

This section allows the Coast Guard or other authorized federal agencies to inspect vessels to determine if they are operating in accordance with these regulations, the Act and Annex V of MARPOL 73/78.

One commenter recommended that the Coast Guard require all grinders and comminuters to be inspected annually or biennially to determine if they are capable of reducing garbage to a size which will pass through a 25 millimeter (1 inch) mesh screen. The Coast Guard considered this, but determined that a mandatory inspection schedule was not necessary since this section already authorizes inspections to determine the continuing satisfactory service of grinders and comminuters.

33 CFR 151.63 Shipboard Control of Garbage

This section contains the substantive requirements to control garbage on board ships and, in paragraph 151.63(b), contains a partial listing of the factors which are considered by enforcement personnel in evaluating compliance with these regulations. Section 151.63(c) contains a requirement that if shipboard personnel transfer garbage to a port or terminal, it must be properly deposited in the port or terminal's reception facility.

Four commenters objected to the wording of § 151.63(b) as proposed in the NPRM, saying that the presumption of guilt therein placed the master in a position of being guilty until proven innocent. The Coast Guard agrees that the wording of this section was too harsh and has removed it in this interim rule.

Two commenters requested that the Coast Guard define the means by which the master could avoid the presumption of guilt proposed in the NPRM. Although this presumption has been removed in this interim rule, the Coast Guard believes this recommendation has great merit and would promote compliance. Accordingly, a partial listing of the factors which are considered by enforcement personnel in evaluating compliance with these regulations has been added in § 151.63(b).

Two commenters were concerned that ship operators might dump garbage on a pier, or on shore, and requested this rule to prohibit such actions. While the Coast Guard believes such instances would be rare, it recognizes that for these regulations to be effective, they must clearly state the individual responsibilities of both ship operators and port or terminal operators. The Coast Guard is aware that in many ports or terminals, existing contractual arrangements with labor unions will dictate who transports garbage from ships. But in other areas, port or terminal operators will have little control over ensuring that the garbage goes into a reception facility. Because of this, the Coast Guard has added a new § 151.63(c) which states that if ship personnel discharge garbage ashore, they must ensure that the garbage is properly discharged in the reception facilities provided.

Three commenters recommended that the Coast Guard require ships to separate various categories of garbage, to specify that foreign victual waste may be carried ashore only in sealed leakproof containers, and to label the type of ship's garbage coming ashore. Because these suggestions are basically required under the existing regulations enforced by APHIS, the Coast Guard did not incorporate these suggestions in this interim rule.

33 CFR 151.65 Reporting Requirements

This section would require ship operators to advise the port or terminal of its intent to discharge APHIS regulated garbage, medical wastes, or hazardous wastes to a port or terminal's reception facility 24 hours before entering the port. The types of garbage for which an advance report is required have been expanded since the NPRM to include medical wastes and hazardous wastes, as defined by the EPA in 40 CFR 261.3. The Coast Guard believes these reporting requirements are necessary in order to prevent undue delay to ships, which is a requirement of MARPOL 73/78. The reporting requirement of this section would lessen the possibility that ships would be delayed, since port or terminal operators would be given advance notice of the need for these facilities and would then be able to arrange for outside contractor's availability, if necessary.

Three persons commented upon this 24 hour advance reporting requirement. One shipping company representative favored this as a means of preventing delay to ships and two others expressed the concern that in remote areas, more than 24 hours notice may be required. The Coast Guard believes that a 24 hour notice is generally reasonable and that within a short period of time, demand for these services will encourage other waste management firms to enter the marketplace with the ability to remove APHIS regulated wastes within the 24 hours specified in § 158.410.

One commenter requested the Coast Guard to revise what appeared in the NPRM as § 151.65(b) by requiring tonnage or weight instead of "volume." The Coast Guard does not feel this is necessary since volume, expressed in cubic feet or cubic yards, is a familiar concept to waste management firms.

33 CFR 151.66 Operating Requirements: Discharge of Garbage in Navigable Waters Prohibited

This section specifically states that garbage, as defined in this part, may not be discharged from any ship into the navigable waters of the United States. Two commenters and numerous persons at the public hearings indicated that while it was generally understood that the disposal of garbage in navigable waters was prohibited under the Act, the proposed regulations did not clearly state this. The Coast Guard agrees that this was not clearly expressed and has added this new section to clarify this point.

Section 3(b) of the Act applies the discharge restrictions of Annex V of MARPOL 73/78 to the navigable waters of the United States. This section implements Regulation 3 of Annex V which states that a garbage discharge at sea shall be "made as far as practicable from the nearest land but in any case is prohibited if the distance from the

nearest land is less than 3 nautical miles." This section implements the requirement of Congress to apply the discharge restrictions of Annex V to the navigable waters of the United States.

The use of galley equipment such as garbage disposals in the navigable waters has been raised within the context of Annex V of MARPOL 73/78 and these regulations. A garbage disposal is essentially a grinder or comminuter for victual waste. Because Congress intended to apply the discharge restrictions of the Annex to the navigable waters, victual waste may not be discharged into the navigable waters of the United States through a grinder, comminuter or garbage disposal. However, the Coast Guard does not intend to require the removal of garbage disposals from ships operating on inland waters, since garbage disposals are allowed as a grinder or comminuter described in § 151.75, if used outside 3 miles from nearest land.

One commenter questioned whether "cargo residues" may be discharged into the navigable waters of the U.S., particularly in the Great Lakes. At the 26th Session of Marine Environment Protection Committee (MEPC) in September 1988, it was generally agreed that cargo residues are garbage since they are defined as an "operational waste" in IMO's Guidelines. The Coast Guard concurs with this position. However, the manner in which Annex V would be applied to cargo residues was not fully resolved, and was a source of some disagreement among party states. With respect to the application of Annex V restrictions to the Great Lakes, Canada is not signatory to MARPOL 73/78 and the Coast Guard has been advised that Canada has no laws or regulations which prohibit the discharge of cargo residues into the Great Lakes. Under the revised Great Lakes Water Quality Agreement of 1978, the United States and Canada are obliged to seek compatible regulations for the prevention of pollution on those waters. To resolve the issue of cargo residue discharges on the Great Lakes, the Coast Guard plans to discuss this issue with its Canadian counterparts, toward a goal of achieving compatible U.S.-Canadian pollution prevention regulations.

33 CFR 151.67 Operating Requirements: Disposal of Plastic

This section contains the shipboard operating procedures for disposal of plastics. No person onboard U.S. ships, wherever located, may discharge plastics into the sea or navigable waters of the United States. Also, no person onboard foreign flag ships, either party or non-party to MARPOL 73/78, may discharge plastics into the navigable waters or 200 mile EEZ of the United States. In order to be consistent with MARPOL 73/78, this section indicates that if garbage containing plastic is mixed with non-plastic garbage, then the entire mixture must be treated as though it were all plastic. Plastic which has been incompletely incinerated so that "clinkers," or small lumps of melted plastic, remain, may not be discharged at sea.

One commenter correctly pointed out that this section, as proposed in the NPRM, only prohibited discharge of plastics "at sea." Although Congress has indicated that "sea" includes the navigable waters, the Coast Guard agrees that this was unclear in the proposed regulation and has added the words "or into the navigable waters" for clarification.

One commenter suggested that the Coast Guard should define the term "incinerate" as referred to in §§ 151.67 through 151.73. The Coast Guard did not feel this was necessary in the interim rule because the term has no special meaning beyond the normal dictionary definition, which means to reduce to an ash.

33 CFR 151.69 Operating Requirements: Disposal of Garbage Outside Special Areas.

This section implements Regulation 3 of Annex V of MARPOL 73/78. It establishes three sea zones (measured seaward from the baseline of the territorial sea) where certain types of garbage may be legally discharged from ships, provided the ship is outside the special areas defined in § 151.53. These regulations allow ships to incinerate ship-generated garbage at sea and to dispose of the ash residues outside three miles, provided the ash does not contain incompletely burned plastic, and that the residue can pass through the 25 millimeter (1 inch) mesh screen described in § 151.75.

Eight persons commented on various aspects of incineration of ship-generated garbage at sea. Five commenters recommended that the Coast Guard ban or restrict its use, develop standards for shipboard incinerators, or require incinerator ash to be disposed of at port reception facilities. Two commenters supported the Coast Guard's proposed rule allowing incineration, and another felt the Coast Guard was premature in banning the discharge of incinerator ash within three miles from land and on the navigable waters. The Coast Guard has been advised by the EPA that disposal of incinerator ash and use of incinerators outside the territorial sea is not prohibited by either the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). While the EPA has expressed reservations about the discharge of incinerator residues at sea and of resulting incinerator emissions, it also stated that it was unaware of any data describing the characteristics, either safe or harmful, of ship's incinerator ash or the environmental effects of discharging ash at sea. The Coast Guard is aware that the Minerals Management Service (MMS) of the Department of Interior currently has airborne emissions regulations in force which apply to fixed and floating rigs on the federal Outer Continental Shelf (OCS). Incinerators on these types of facilities already must be in compliance with these MMS regulations.

The Coast Guard has retained those sections allowing the incineration of ship-generated garbage and the discharge of incinerator ash at sea. The Coast Guard believes that the provisions to allow the incineration of ship-generated garbage at sea are realistic since (1) they are not in conflict with the Clean Air Act, Clean Water Act, and the Act to Prevent Pollution from Ships; (2) the IMO's "Guidelines for the Implementation of Annex V" specifically recognize that incinerator ash and clinkers are considered as "garbage" under the Annex and can be discharged at sea; and (3) Congress clearly intended for incineration of ship-generated garbage at sea to be one option available to ship operators and it even encouraged the U S. Navy to consider the use of incineration among other methods of garbage disposal.

However, in the absence of information relating to the characteristics of incinerator ash from ship-generated garbage, the Coast Guard is presently chairing an industry working group of the American Society for Testing and Materials (ASTM) whose goal is to develop an acceptable industry standard for shipboard incinerators. In addition, the Coast Guard has actively participated in two workshops of Panel M–17 (Disposal of Shipboard Wastes) of the Society of Naval Architects and Marine Engineers (SNAME). This Panel has recently focused its activities on shipboard incinerators and other means by which ships may comply with the discharge restrictions of Annex V of MARPOL 73/78. Finally, the Coast Guard raised the issue of the use of shipboard incinerators at the 26th Session of the MEPC in September 1988 and had it placed on the agenda for discussion at the 27th Session in March 1989.

Two commenters requested that the Coast Guard require the offloading of all garbage on board a ship upon arrival at a port or terminal, indicating that the subsequent discharge at sea of this garbage might conflict with the ocean dumping prohibitions of the Marine Protection, Research and Sanctuaries Act of 1972 (MPRSA). The MPRSA prohibits the transportation of materials from the United States for the specific purpose of dumping them into ocean waters, unless authorized by permit from the EPA. House Report 100–360 discusses the relationship of the MPRSA and the Act to Prevent Pollution from Ships (APPS), as amended. The Report states at page fourteen that the MPRSA also "prohibits the transport of any material from the United States for the purpose of dumping it into ocean waters" and noted that this provision does not conflict with the provisions of MARPOL, since MARPOL addresses garbage that is generated during the normal operation of a ship and is hence not transported for the purpose of dumping. See also Senate Report 100–266 (the report of the Committee on Commerce, Science and Transportation on H.R. 940) at page seven. The Coast Guard agrees that if garbage, as defined in the Act, is transported for the exclusive purpose of dumping at sea, the prohibitions of the MPRSA would apply. This would include transfers of garbage from ship to ship, if the intent was to dump at sea. However, the Coast Guard does not have the authority under the Act to require the offloading of ship-generated garbage while in port. While the present rulemaking does not deal with the MPRSA, the Coast Guard does enforce its ocean dumping requirements. Ships which intend to transport garbage to sea for the purpose of dumping would be obligated to first obtain an ocean dumping permit from the EPA.

33 CFR 151.71 Operating Requirements: Disposal of Garbage Within Special Areas

This section implements Regulation 5 of Annex V of MARPOL 73/78. In these areas, only victual wastes may be discharged at sea, and then only by a ship which is located at least 12 nautical miles from the nearest land. No other discharge of garbage will be permitted. A statement was added indicating that these strict requirements are effective in each special area only after (1) the government of each party to the Convention, the coastline of which borders the special area, have assured IMO that reception facilities for garbage are available, and (2) IMO has announced an effective date for each area.

33 CFR 151.73 Operating Requirements: Disposal of Garbage From Fixed or Floating Platforms

This section implements Regulation 4 of MARPOL 73/78. It prohibits the discharge of garbage from all fixed or floating platforms which are engaged in the exploration, exploitation or associated offshore processing of seabed mineral resources, if located within twelve nautical miles from land. Beyond 12 nautical miles, only comminuted or ground victual wastes could be discharged into the sea from platforms or from ships alongside or within 500 meters of the platforms. These prohibitions also extend to all ships, including recreational vessels, alongside or within 500 meters of these platforms. The intent of these stringent requirements is to prevent the seabed beneath stationary vessels such as mobile offshore drilling units (MODU's), fixed or floating platforms, drillships, etc., from being inundated with ship-generated garbage. The Coast Guard interprets the phrase "exploration" to have the same meaning as the definition found in 33 CFR 140.10 and that "exploitation" is intended to mean the actual taking of seabed mineral resources.

Two commenters questioned the wisdom of applying such a restrictive rule to fixed or floating platforms. One commenter suggested this section was unnecessary because fixed or floating platforms are, by definition, "ships" under Annex V, and they should therefore be regulated by the same rules applicable to all ships. The Coast Guard agrees that fixed or floating platforms are ships, but believes this section is very necessary and has retained the wording of this section as proposed in the NPRM. Fixed or floating platforms are a special category of "ship" which have unique garbage discharge problems, as was recognized when Regulation 4 of Annex V was adopted. Ships routinely discharge garbage while underway, but the garbage from those fixed or floating platforms which discharge directly to the sea would be likely to build up in one location. A second commenter stated that garbage from a ship underway is no less dangerous to the environment than the same garbage from a fixed or floating platform, and requested the Coast Guard to reconsider this section. The Coast Guard agrees that the garbage from platforms is no different than that from ships. In absence of special requirements such as those found in this section, the Coast Guard believes that garbage from a fixed or floating platform poses a greater risk to the quality of the marine environment than does garbage from transiting ships because of its accumulation in one location. For this reason, the Coast Guard has retained the restrictions as originally proposed in the NPRM.

Four persons raised the issue of whether the Coast Guard should grant an exemption to fixed or floating platforms which possess a valid EPA National Pollution Discharge Elimination System (NPDES) permit issued pursuant to regulations authorized under the Clean Water Act. NPDES permits issued to fixed or floating platforms prohibit the discharge of floating solid wastes and garbage, but allow sinkable wastes and food to be discharged. Two of the commenters favored and two opposed the idea of waiving these requirements for rigs and platforms which hold a valid EPA NPDES permit. Annex V requires a higher standard for fixed or floating platforms than that allowed by those in possession of an NPDES permit, since no discharge of garbage (except comminuted food wastes beyond 12 nautical miles) is allowed. Therefore, if the Coast Guard granted an exemption to NPDES permit holders, this would in effect authorize discharges of garbage in violation of Annex V of MARPOL 73/78. For this reason, the Coast Guard has not exempted holders of NPDES permits from the restrictions of this section.

One commenter mistakenly thought that all ships associated with the exploration, exploitation or associated offshore processing of seabed mineral resources would be under the same discharge restrictions as fixed or floating platforms engaged in these activities. Ships such as tenders, workboats, crewboats, oceangoing tugs, barges, etc., which are employed in the offshore industries fall under the same restrictions as fixed and floating platforms only when they are within 500 meters of fixed or floating platforms as indicated in § 151.73(a)(2).

Two commenters requested that the Coast Guard allow the discharge of small quantities of food from fixed or floating platforms and also stated that offshore operators should not be required to grind food with a grinder or comminuter. The Coast Guard has retained this section as proposed since the no discharge requirement was taken directly from the wording of MARPOL 73/78 and is also required under the Act.

33 CFR 151.75 Grinders or Comminuters

This section specifies a performance standard for grinders or comminuters used by ships which discharge non-

plastic garbage between three and twelve miles from nearest land. While this equipment is not required for discharges outside twelve miles from nearest land, if used for closer inshore discharges, it must be capable of grinding garbage so that it can pass through a 25 millimeter (1 inch) screen. The Coast Guard does not intend that each grinder or comminuter must have the mesh screen attached, but ship operators must be able to demonstrate the satisfactory operation of this equipment if requested by an authorized federal official.

The Coast Guard received two comments concerning this section. One commenter favored this section as a reasonable means of allowing limited discharges of garbage for those vessels which operate for several weeks at a time within twelve miles. The second commenter said that if grinders or comminuters are installed on a ship, then the Coast Guard should require their use wherever the ship discharges garbage at sea, including beyond 12 miles from nearest land. The Coast Guard disagrees and has retained the original wording of this section. The use of grinders or comminuters was intended to provide a practical solution for those ships which operate substantial periods of time within twelve miles of nearest land. By using these devices, ships could discharge some garbage and at the same time hasten the assimilation of the garbage into the marine environment. Implementation of this commenter's recommendation would discourage use of grinders and comminuters and would needlessly penalize operators who choose to install this equipment (through extra labor costs, etc.). In addition, it would require a standard in excess of Regulation 3 of Annex V of MARPOL 73/78 and the Act.

33 CFR 151.77 Exceptions for Emergency

This section implements Regulation 6 of Annex V of MARPOL 73/78 and allows, in certain circumstances, garbage discharges which would not normally be allowed. The Coast Guard received four comments relating to this section. Two commenters favored the exemption provided for in § 151.77(c) for the "accidental loss of synthetic fishing nets or the loss of synthetic material during the repair of nets." The Coast Guard wishes to emphasize that this regulation requires "all reasonable precautions" to be taken to avoid these losses. The Coast Guard recognizes that most fishermen are careful to prevent the accidental loss of fishing nets, because of their cost. Under the Act and MARPOL 73/78, all reasonable care must be taken to retain fishing nets which are no longer usable, as well as net fragments remaining after the repair of nets for proper discharge to reception facilities.

Appendix A to Subpart D of Part 151

Appendix A summarizes the garbage discharge restrictions provided by §§ 151.66–151.75. This appendix is added as an aid to direct the reader to the applicable governing regulation. This appendix appeared in the preamble of both the ANPRM and NPRM and several commenters endorsed its publication in the interim rule.

33 CFR 155.350(a)(2) and 155.400(b)(2)

These sections contain minor revisions due to the redesignation of § 151.09 to § 151.10 to allow the insertion of a new § 151.09 "Applicability." These represent no substantive regulatory change.

33 CFR 158.100 Purpose

This section is revised by adding a new paragraph (b)(3) to indicate that the purpose of the subpart is also to show the procedures for certifying the adequacy of reception facilities for garbage.

33 CFR 158.110 Applicability

This section revises the existing applicability section to show that Subparts B, C, and E of Part 158 apply to ports and terminals that receive Annex I and II ships, as well as to ship repair yards. Paragraph (b) was added to indicate that all ports and terminals within, or subject to the jurisdiction of the United States, must comply with the reception facility criteria of Subpart D. For the purposes of Annex V, ports or terminals include, but are not limited to, those facilities which receive ships subject to Annex I or II, or that are commercial fishing facilities, mineral and oil industry shorebases or recreational boating facilities, as defined in § 158.120. House Committee Report 100–360 discusses Congress' specific intent to require deepwater ports, such as the Louisiana Offshore Oil Port (LOOP), to provide reception facilities for ship-generated garbage.

One commenter suggested removing the phrase "non-self propelled" from the phrase "non-self propelled tank vessel" in the proposed § 158.110(a)(1)(i), since a tank barge is by definition "non-self propelled." This wording was retained from the preexisting exemption for Annex II applicability. Although this comment is not germane to the regulatory change to implement Annex V of MARPOL 73/78, the Coast Guard agrees that the term is redundant (see 46 CFR 30.10–65) and has stricken this phrase in the interim rule.

33 CFR 158.115 Penalties for Violation

This section was added as a clear statement of the penalties authorized under the Act for violations of Annex V or this part. The Coast Guard moved this section from the location proposed in the NPRM (in Subpart D) to the general section of Subpart A, since the penalties apply to all violations of MARPOL 73/78 and these regulations. Paragraph (c) of this section in the NPRM has been removed, because, as written, it applied only to violations by ships and this penalty section describes only penalties for violations by ports or terminals.

33 CFR 158.120 Definitions and Acronyms

This section was revised by adding new definitions of "Certificates of Adequacy," "Commercial fishing facility," "Form C," "Garbage," "Harmful substance," "Medical waste," "Mineral and oil industry shorebases," "Reception facility," "Recreational boating facility" and "The Act". Some of these are identical to their definitions in 33 CFR 151.05. Those not previously addressed are discussed below:

1. "Certificate of Adequacy." This term was revised to clarify that this document is issued by the Coast Guard and indicates that the port or terminal's reception facilities meet the requirements of the appropriate subpart for Annexes I, II or V of MARPOL 73/78.

2. "Commercial fishing facility," "Mineral and oil industry shorebase" and "Recreational boating facility." These definitions were added to indicate that they are specific types of terminals which must comply with the reception facility requirements of Annex V.

3. "Form C." This term was added to indicate the name of the application form for a COA for garbage. The persons in charge of most ports or terminals will be required to meet the reception facility requirements in 33 CFR 158.410 and 158.420, but only those ports and terminals indicated in § 158.135 will have to complete Form C and be issued a COA.

4. "Medical waste." This definition was added to clarify those substances for which a port or terminal must ensure the availability of a reception facility if a ship provides 24 hour notice in accordance with 33 CFR 151.65.

5. "Reception facility." This term was revised to include a description specific to an Annex V reception facility. The

term is broadly defined but connotes the physical containment in which garbage is stored or conveyed. Annex V reception facilities may be "dumpsters" or other garbage containers, or even mobile facilities, such as a modified ship or barge.

6. "The Act." This term refers to the Act to Prevent Pollution from Ships and was revised by removing an inaccurate legal reference (94 Stat. 2297).

33 CFR 158.130 Delegations

This section was revised by adding paragraph (e)(2), which delegates the COTP authority granted in the Act to deny ships entry to ports or terminals which do not have a COA for Annex V if required, or the reception facilities required under § 158.133.

33 CFR 158.133 Which Ports and Terminals Must Have Adequate Reception Facilities?

This section delineates those ports and terminals which must have adequate reception facilities for oil, noxious liquid substances and garbage. It was added because several remarks made at the public hearings indicated that some persons did not understand that all ports or terminals as defined in § 158.120 must provide reception facilities for garbage. One commenter stated that commercial fishing facilities were being unfairly targeted to provide reception facilities and that municipal and private docks which provide services to fishing vessels should also be required to provide them. These regulations require all ports and terminals to provide adequate reception facilities for garbage.

One commenter questioned whether a state could prohibit the offloading of garbage at a port or terminal. This question was raised in comments received during the ANPRM comment period, however the Coast Guard was unable to address this issue in the NPRM. The Coast Guard has completed its research of this question and has found no case in which a state or locality has absolutely prohibited the offloading of garbage. Some states, including California, do require special treatment of garbage in order for it to be received. An absolute prohibition on receiving ship-generated garbage would be contrary to the Act, and no port or terminal can refuse to receive ship-generated garbage in accordance with these regulations.

33 CFR 158.135 Who Must Have a Certificate of Adequacy?

This section was added to specify which ports and terminals must have a COA for each annex of MARPOL 73/78. The Coast Guard felt addition of this section was necessary since only certain ports and terminals subject to Annex V will be required to obtain an Annex V GOA. This is a departure from previous practice relating to Annexes I or II, in which all ports or terminals which received ships subject to these annexes were required to obtain a COA. Under this section, ports and terminals will have to hold Annex V COAs only if they receive oceangoing ships subject to Annex I or II, or if they are commercial fishing facilities which receive more than 500,000 pounds of commercial fishery products from all ships during a calendar year. This last requirement was inadvertently left out of the **Federal Register** of October 27, 1988 (53 FR 43622), due to an administrative error, but was corrected in the **Federal Register** of November 4, 1988 (53 FR 44617).

Six comments were received concerning the Coast Guard's decision to limit the ports and terminals which must actually obtain an Annex V COA. One commenter favored the approach taken by the Coast Guard and five requested the Coast Guard to issue COAs to all ports and terminals which are subject to Annex V of MARPOL 73/78. The Coast Guard has considered these comments, but has decided not to issue COAs to all Annex V ports and terminals. The number of U.S ports and terminals to which Annexes I and II apply is slightly over 2,000. In contrast, the Coast Guard estimates that Annex V of MARPOL 73/78 will apply to about 9 million ships (including privately owned recreational craft) which utilize more than 10,000 ports and terminals. Because of the large numbers of ports or terminals to which Annex V applies, Congress did not require the Coast Guard to issue COAs to Annex V ports or terminals. In these regulations, the Coast Guard has exercised the discretionary authority provided by Congress, and has limited the number of those ports or terminals required to obtain a COA. This decision balances the Coast Guard's commitment to fulfill its international and domestic obligations under MARPOL 73/78 and the Act against the potential burden on the public and Coast Guard resources, if all ports or terminals were required to apply for COAs.

One commenter requested the Coast Guard to amend this section to require ports and terminals which already receive garbage from ships to continue this practice, and to exempt those terminals not currently providing these services from any obligation to do so.

This suggestion was rejected as being inequitable and contrary to the intent of MARPOL 73/78 and the recent amendments to the Act.

Four comments were received concerning the requirement that commercial fishing facilities obtain COAs. Two favored the concept of requiring COAs for commercial fishing facilities, but indicated that the Coast Guard had not adequately explained the reason 500,000 pounds of fishery products had been set as the threshold for requiring a COA. This commenter suggested that additional terminals should be brought in under this regulation. The threshold figure in the NPRM was obtained through consultations with the National Marine Fisheries Service which indicated that commercial fishing facilities which received greater than this quantity of fish annually service a majority of commercial fishing vessels. This cutoff was based upon the best information available at the time the decision was made and no new information has been received by any person which would indicate this to be an inappropriate threshold. The Coast Guard will, however, consider adjusting this figure based upon credible and relevant information it may receive during the period the interim rule is in effect.

Two commenters stated that the 500,000 pound threshold was unnecessary and requested this provision be removed in the final rule. Because commercial fishing facilities receive a substantial number of fishing vessels which generate nets and net fragments as garbage, the Coast Guard believes it is important to target them and has, therefore, retained this provision in this interim rule.

One commenter questioned why ports and terminals receiving large passenger cruise ships were not specifically required to obtain a COA for garbage. The Coast Guard feels it is unnecessary to specify passenger ship terminals as a specific category, since they generally receive ships greater than 400 gross tons and they would already be required to obtain COAs under § 158.135(c)(i).

Two commenters requested the Coast Guard to clarify whether a port or terminal could obtain a waiver from obtaining an Annex V COA. This interim rule will not authorize a total waiver of the requirement for a port or terminal to have a COA for reception facilities for garbage, if required under § 158 135. However, the local COTP may issue a waiver under § 158.150 of any unreasonable or impractical requirement for a port or terminal's operations, provided alternatives which meet the intent of MARPOL 73/78 are provided.

33 CFR 158.140 Applying for a Certificate of Adequacy

This section was revised by adding § 158.140(a)(2). The person-in-charge of a port or terminal required by § 158.135(c) to hold a COA for Annex V must apply on Form C, entitled "Application for a Certificate of Adequacy for a Reception Facility for Garbage," to Commandant (G–MPS–1), U.S Coast Guard Headquarters, by August 28, 1989. Coast Guard Headquarters will review and manage the issuance of Annex V COAs until August 28, 1989 in order to relieve local COTPs of this administrative burden. After August 28, 1989 ports and terminals must apply to the local COTP, who will review and issue COAs to those qualifying.

One commenter said it was unclear who must actually file the Form C application. Section 158.140 states that the "person in charge" of a port or terminal must make this application. "Person in charge" is defined in § 158.120 as the "owner, operator, or a person authorized to act on behalf of the port or terminal." Person in charge is defined broadly here, since a given port or terminal could have a myriad of entities responsible for various aspects of a port's operations. The Coast Guard expects that the person who is responsible for the day to day operation of the port or terminal should logically be the person who should file for a COA.

Form C will be available at the offices of the local COTP in early 1989. A copy of Form C appears below for informational purposes.

BILLING CODE 4910-14-M

15 Min. Per Resp.
OMB No. Approved 2115-0543
Exp. Date 12/31/91

APPLICATION FOR A CERTIFICATE OF ADEQUACY

FOR
GARBAGE RECEPTION FACILITIES

FORM C

The Act to Prevent Pollution From Ships (33 USC 1901) authorizes the Department of Transportation to issue certificates to terminals and ports verifying their adequacy to receive operational garbage from ships. Regulations implementing this program are in 33 Code of Federal Regulations Part 158. To continue to receive ships at a port or terminal, an applicant must hold a Certificate of Adequacy for Garbage if it receives oceangoing tankers, or any other oceangoing ship of 400 gross tons or more, carrying residues and mixtures containing oil; if it receives oceangoing ships carrying noxious liquid substances; or if it receives fishing vessels which offload more than 500,000 pounds of commercial fish products during a calendar year. To recieve a Certificate of Adequacy for Garbage Reception Facilities application is required on this form.

Definitions:

"Terminal": an onshore facility or an offshore structure located in the navigable waters of the United States or subject to the jurisdiction of the United States and used, or intended to be used, as a port or facility for the transfer or other handling of a harmful substance. The definition of "navigable waters" for the purposes of this section may be found in 33 CFR 2.05-25. Garbage is considered a harmful substance under MARPOL 73/78.

"Port": (1) a group of terminals that combines to act as a unit and be considered a port for purposes of this part; or (2) A port authority or other organization that chooses to be considered a port for purposes of this part; and (3) a place (i.e. lightering area) or facility that has been specifically designated as a port by the Captain of the Port.

1 ***Complete this section if you are applying as a single "Terminal."***

A. Terminal Section:

Name of Terminal

Street Address

City State Zip

Name of Terminal Person in charge

( ) -
Phone number area code

Name of reception facility (*if subcontracted*)

Location of reception facility (City, State)

2 Check the following boxes if the terminal receives or discharges any of the following commodities from or to ships visiting the terminal:

- ☐ Oil or petroleum products ☐ Discharge ☐ Receive
- ☐ Bulk dry cargoes ☐ Discharge ☐ Receive
- ☐ Bulk chemicals ☐ Discharge ☐ Receive
- ☐ Fish ☐ Discharge ☐ Receive
- ☐ Liquified gases ☐ Discharge ☐ Receive
- ☐ General cargo ☐ Discharge ☐ Receive
- ☐ Other_____ ☐ Discharge ☐ Receive

3 Check the following boxes if the terminal handles or services any of the following ships:

- ☐ Ships of foreign registry
- ☐ U.S. ships in domestic trade
- ☐ U.S. ships in foreign trade
- ☐ Passenger ships
- ☐ Vessels servicing the offshore mineral and oil industry
- ☐ Unmanned barges
- ☐ Chemical ships
- ☐ Container ships
- ☐ Break bulk ships
- ☐ Ferry boats
- ☐ Fishing vessels

After completing this section go to Section C.

1 ***Complete this section if you are applying as a "Port."***

B. Port Section:

Name of Port

Name of Port Person in charge

Street Address

City State Zip

( ) -
Phone number area code

Name of reception facility (*if subcontracted*)

Location of reception facility (City, State)

Number of Terminals which will be members of this Port?_____

Section B continues on the next page ⇨

B. Port Section: (cont'd)

Ports are to complete the following block entries for each individual terminal which is a member of the Port. If the Port listed in Section B.1. is also one of the terminals which will be using the reception facilities, please complete one of the terminal entries below.

2. Individual Terminal information:

(for terminals who wish to be members of a port)

Name of Terminal

Street Address

City State Zip

Name of Terminal Person in Charge

( ) -

Phone Number area code

Name of Reception Facility (*if subcontracted*)

Location of Reception Facility (City, State)

Signature of Person in Charge of Terminal

Signature indicates person in charge of terminal acknowledges and consents to being considered as a member of the port, described in Section B.1.

3. Check the following boxes if the terminal receives or discharges any of the following commodities from ships visiting the terminal:

☐ Oil or petroleum products	☐ Discharge	☐ Receive
☐ Bulk dry cargoes	☐ Discharge	☐ Receive
☐ Bulk chemicals	☐ Discharge	☐ Receive
☐ Fish	☐ Discharge	☐ Receive
☐ Liquified gases	☐ Discharge	☐ Receive
☐ General cargo	☐ Discharge	☐ Receive
☐ Other_____	☐ Discharge	☐ Receive

4. Check the following boxes if the terminal handles or services any of the following ships:

☐ Ships of foreign registry	☐ Unmanned barges
☐ U.S. ships in domestic trade	☐ Chemical ships
☐ U.S. ships in foreign trade	☐ Container ships
☐ Passenger ships	☐ Break bulk ships
☐ Ships servicing the offshore mineral and oil industry	☐ Ferry boat ships
	☐ Fishing ships

2. Individual Terminal information:

(for terminals who wish to be members of a port)

Name of Terminal

Street Address

City State Zip

Name of Terminal Person in charge

( )

Phone Number area code

Name of Reception Facility (*if subcontracted*)

Location of Reception Facility (City, State)

Signature of Person in Charge of Terminal

Signature indicates person in charge of terminal acknowledges and consents to being considered as a member of the port, described in Section B.1.

3. Check the following boxes if the terminal receives or discharges any of the following commodities from ships visiting the terminal:

☐ Oil or petroleum products	☐ Discharge	☐ Receive
☐ Bulk dry cargoes	☐ Discharge	☐ Receive
☐ Bulk chemicals	☐ Discharge	☐ Receive
☐ Fish	☐ Discharge	☐ Receive
☐ Liquified gases	☐ Discharge	☐ Receive
☐ General cargo	☐ Discharge	☐ Receive
☐ Other_____	☐ Discharge	☐ Receive

4. Check the following boxes if the terminal handles or services any of the following ships:

☐ Ships of foreign registry	☐ Unmanned barges
☐ U.S. ships in domestic trade	☐ Chemical ships
☐ U.S. ships in foreign trade	☐ Container ships
☐ Passenger ships	☐ Break bulk ships
☐ Ships servicing the offshore mineral and oil industry	☐ Ferry boat ships
	☐ Fishing ships

After completing this section go to Section C.

This page may be locally reproduced to accomodate larger Ports

Section C: Circle the location of the USCG Captain of the Port Office which has authority in your area.

Commanding Officer USCG Marine Safety Office	1	Portland, ME
Commanding Officer USCG Marine Safety Office	2	Boston, MA
Commanding Officer USCG Marine Safety Office	3	Providence, RI
Captain of the Port, Long Island Sound	4	Long Island Sound, New Haven, CT
Captain of the Port, New York	5	New York, NY
Commanding Officer USCG Marine Safety Office	6	St. Louis, MO
Commanding Officer USCG Marine Safety Office	7	Huntington, WV
Commanding Officer USCG Marine Safety Office	8	Louisville, KY
Commanding Officer USCG Marine Safety Office	9	Memphis, TN
Commanding Officer USCG Marine Safety Office	10	Paducah, KY
Commanding Officer USCG Marine Safety Office	11	Pittsburgh, PA
Commanding Officer USCG Marine Safety Office	12	Baltimore, MD
Commanding Officer USCG Marine Safety Office	13	Hampton Roads, VA
Commanding Officer USCG Marine Safety Office	14	Philadelphia, PA
Commanding Officer USCG Marine Safety Office	15	Wilmington, NC
Commanding Officer USCG Marine Safety Office	16	Charleston,SC
Commanding Officer USCG Marine Safety Office	17	Jacksonville, FL
Commanding Officer USCG Marine Safety Office	18	San Juan, PR
Commanding Officer USCG Marine Safety Office	19	Savannah, GA
Commanding Officer USCG Marine Safety Office	20	Tampa, FL
Commanding Officer USCG Marine Safety Office	21	Miami, Fl
Commanding Officer USCG Marine Safety Office	22	Mobile, AL
Commanding Officer USCG Marine Safety Office	23	Morgan City, LA
Commanding Officer USCG Marine Safety Office	24	New Orleans, LA
Captain of the Port, Houston	25	Houston , TX
Commanding Officer USCG Marine Safety Office	26	Galveston, TX
Commanding Officer USCG Marine Safety Office	27	Port Arthur, TX
Commanding Officer USCG Marine Safety Office	28	Corpus Christi, TX
Commanding Officer USCG Marine Safety Office	29	Chicago, IL
Commanding Officer USCG Marine Safety Office	30	Buffalo, NY
Commanding Officer USCG Marine Safety Office	31	Cleveland, OH
Commanding Officer USCG Marine Safety Office	32	Detroit, MI.
Captain of the Port, Grand Haven	33	Grand Haven, MI
Captain of the Port, Sault Ste. Marie	34	Sault Ste. Marie, MI
Commanding Officer USCG Marine Safety Office	35	Duluth, MN
Commanding Officer USCG Marine Safety Office	36	Milwaukee, WI
Commanding Officer USCG Marine Safety Office	37	Toledo, OH
Commanding Officer USCG Marine Safety Office	38	Long Beach, CA
Commanding Officer USCG Marine Safety Office	39	San Diego, CA
Commanding Officer USCG Marine Safety Office	40	San Francisco, CA
Commanding Officer USCG Marine Safety Office	41	Portland, OR
Commanding Officer USCG Marine Safety Office	42	Puget Sound, WA
Commanding Officer USCG Marine Safety Office	43	Anchorage, AK
Commanding Officer USCG Marine Safety Office	44	Juneau, AK
Commanding Officer USCG Marine Safety Office	45	Valdez, AK
Commanding Officer USCG Marine Safety Office	46	Honolulu, HI
Commanding Officer USCG Marine Safety Office	47	Guam

After completing this section go to Section D.

Section D:

1. Does the terminal or port receive visits from ships arriving from foreign ports (except Canada).

☐ Yes ☐ No *If the answer is "NO" go to question number 4.*

2. Does the terminal or port have facilities, either onboard or on contract, approved by the Administrator, Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture, for the disposal of garbage from foreign ports (except Canada) in accordance with 7 CFR 330.400 and 9 CFR94.5.

☐ Yes ☐ No *(If the answer is "No" you may attach a waiver request in accordance with 33 CFR 158 on a separate attached sheet.)*

NAME OF APHIS APPROVED DISPOSAL FACILITY TYPE (INCINERATOR, STERILIZER, AUTOCLAVE, ETC.)

( ) -
area code

CITY STATE PHONE NUMBER

3. For those terminal(s)/port(s) requiring the services of an Animal and Plant Health Inspection Service approved facility, is the terminal or port capable of receiving all garbage from these ships visiting the terminal/port within 24 hours of vessel after notification of need for such services is given?

☐ Yes ☐ No *(If the answer is "No" you may attach a waiver request in accordance with 33 CFR 158 on a separate attached sheet.)*

4. Is the terminal or port able to receive all garbage as defined in 33 CFR 158.120 which the master or person in charge of a ship desires to discharge, except:
   (1) large quantities of spoiled or damaged cargoes not usually discharged by a ship; or
   (2) garbage from ships not having commercial transactions with that terminal or port?

☐ Yes ☐ No *(If the answer is "No" you may attach a waiver request in accordance with 33 CFR 158 on a separate attached sheet.)*

The terminal/port person in charge identified in the Application shall notify the U. S. Coast Guard Captain of the Port (COTP) in writing 30 days after any of the terminal/port information identified under 33 CFR 158.165(b)(3) changes.

Civil Penalties. A person who, after notice and an opportunity for a hearing, is found:
a. to have made a false, fictitious or fraudulent statement or representation in any matter in which a statement or representation is required to be made under the Act to Prevent Pollution from Ships, or the regulations thereunder, shall be liable to the United States for a civil penalty, not to exceed $5,000 for each statement or representation; or
b. to have violated the Act to Prevent Pollution from Ships, or the regulations issued therunder, shall be liable to the United States for a civil penalty, not to exceed $25,000, for each violation. Each day of a continuing violation constitutes a separate

CERTIFICATION

I HEREBY CERTIFY THAT THE INFORMATION PROVIDED IN THIS APPLICATION FOR A GARBAGE RECEPTION FACILITY CERTIFICATE OF ADEQUACY FOR GARBAGE RECEPTION FACILITIES IS COMPLETE, TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

SIGNATURE OF TERMINAL/PORT PERSON IN CHARGE _____

PRINTED OR TYPED NAME OF PERSON IN CHARGE _____

DATE SIGNED _____

ON OR BEFORE AUGUST 27, 1989 MAIL APPLICATION TO:
COMMANDANT (G-MPS-1), U.S. COAST GUARD HEADQUARTERS
2100 SECOND STREET S.W.
WASHINGTON, D.C. 20593-0001
ATTENTION: RECEPTION FACILITY DESK

AFTER AUGUST 27, 1989 MAIL APPLICATION TO:

THE LOCAL U.S. COAST GUARD CAPTAIN OF THE PORT (COTP) OFFICE
(SEE PAGE 3 FOR THE LIST OF COTP OFFICES)

BILLING CODE 4910-14-C

33 CFR 158.160 Issuance and Termination of a Certificate of Adequacy

This section was revised to provide for the issuance and termination of Annex V COAs. This section indicates that the COTP is required to physically inspect Annex I or II reception facilities prior to issuing a COA and that he is required only to review an Annex V reception facility application. However, the Coast Guard intends to examine ports or terminals at regularly scheduled surveys and inspections for those requiring inspections by regulation, and at other ports or terminals at such time as the Coast Guard may visit them in the course of other business, such as casualty investigations or oil or chemical spill investigations.

Two commenters suggested that the Coast Guard should inspect all ports and terminals to determine that reception facilities comply with the regulations. As discussed earlier, the Coast Guard is not required under the Act to inspect Annex V reception facilities. The Coast Guard estimates that there will be at least 10,000 ports or terminals which will have to comply with these regulations throughout the United States and inspection of all of these is impractical on a regular basis.

33 CFR 158.163 Reception Facility Operations

Paragraph (b)(2) was revised by adding the word "operator" to indicate that an operator of a ship, in addition to a master, is authorized to examine a port or terminal's COA.

33 CFR 158.165 Certificates of Adequacy: Change of Information

This section was revised for clarity and it lists those sections of Form C which, if changed, require written notification to the local COTP within 30 days.

33 CFR 158.167 Reporting Inadequate Reception Facilities

This section was added at the request of one commenter to provide procedures for persons to report the inadequacy of required reception facilities to receive oil, noxious liquid substances or garbage. A formally stated mechanism for reporting inadequate reception facilities will aid in Coast Guard enforcement efforts within the United States and will also allow U.S. ship operators to report to the Coast Guard the existence of inadequate facilities in foreign ports.

33 CFR 158.400 Purpose

This section describes the criteria for determining the adequacy for Annex V reception facilities. All ports and terminals, whether or not they must have a COA, must comply with the requirements of §§ 158.410 and 158.420.

33 CFR 158.410 Reception Facilities: General

This section contains the general requirements for all Annex V reception facilities. After August 28, 1989 this section requires all ports or terminals to be capable of receiving APHIS regulated garbage within 24 hours of notification under § 151.65, unless it receives only ships which operate exclusively within the navigable waters of the U.S., or which operate exclusively between ports or terminals in the continental U.S. or between continental U.S. ports and Canadian ports. It also requires them to be capable of receiving medical wastes (defined in § 158.120) or hazardous wastes (defined in 40 CFR 261.3), unless the port or terminal operator can provide to the master, operator or person in charge of a ship the names of persons authorized to receive, properly transport and treat such wastes. This section also requires reception facilities to be arranged so that they do not interfere with port or terminal operations and are convenient to mariners. They must also be situated so that ships' garbage will not reenter the water after it has been discharged to the reception facility. Finally, reception facilities for garbage must meet all federal, state and local requirements for garbage handling. Port or terminal operators desiring to learn more about APHIS requirements should contact APHIS at the address listed in paragraph three of **ADDRESSES** above.

The Coast Guard received five comments concerning the requirement that all ports and terminals be capable of receiving APHIS regulated garbage within 24 hours. Two commenters strongly supported the 24 hour advance notice of arrival requirement and stated this requirement was reasonable to prevent delay to ships because daily operating costs of U.S. ships in port are between $20,000–$30,000 per day. Two commenters stated that many small or proprietary ports or terminals in the Great Lakes and in remote areas such as Alaska do not receive ships with APHIS regulated garbage and should not be required to provide facilities which might never be used. The Coast Guard agrees with this comment and has changed the proposed rule in paragraph (a)(1) so that only those ports and terminals which receive ships subject to APHIS inspection are required to provide an APHIS approved reception facility.

Two commenters desired the rule to be changed so that if no APHIS reception facilities were nearby or feasible, then the Coast Guard would not require them, and would allow ships to go to other ports. The Coast Guard did not incorporate this request in this rule, because to do so would discourage ports to take action to acquire these facilities. The Coast Guard believes that the availability of APHIS facilities in areas where they are needed is critical to preventing the undue delay of ships and promoting compliance with Annex V. As discussed in ENFORCEMENT above, the Coast Guard expects that in ports where APHIS facilities are not immediately available, that they will be made available in the near future and that in all cases, ports requiring them will have them available by (insert date 120 days after publication date).

Five commenters requested that this section should require the posting of signs to indicate where port reception facilities are located and to require reception areas specifically for cables, fishing nets, etc. One person commented on the wording of § 158.410(a)(2) in the NPRM and indicated it needed to be strengthened to emphasize that the reception facilities must be convenient to the mariner so that they will be used. The Coast Guard agrees that this section needs strengthening and added § 158.410(a)(4) to require that the reception facilities be convenient to mariners so that they could easily be located by a person unfamiliar with the port, and convenient enough so as not to discourage their use by mariners. The Coast Guard believes this wording strikes a balance between the needs of a ship operator for reception facilities yet allows the flexibility needed for port or terminal operators, given the variety and type of terminals in existence. Port and terminal operators could use a variety of means to ensure ship personnel knew where facilities were located (such as signs, informational brochures, or direct communications provided by ship agents). The Coast Guard does not see a necessity at this time for a mandatory marking requirement, but will consider this during the comment period if experience gained from ship and port operators indicates that reception facilities for garbage have not been generally accessible and convenient.

One commenter requested the Coast Guard to provide in the regulations a method by which ships could directly contract for garbage services, rather than going through a port or terminal. The Coast Guard sees no need for a statement such as this in the regulations. This would seem to be a contractual

arrangement which could be made voluntarily between the ship, port or terminal, or private garbage hauler without specific regulatory authority.

The Coast Guard received four comments from port and terminal operators expressing their concern that some ship operators might mix medical wastes, or hazardous wastes regulated under RCRA, with garbage in reception facilities. The Coast Guard has determined that these materials, if generated by ships, are garbage within the meaning of Annex V and that ports or terminals are obligated under the Act to prevent the undue delay of ships which wish to discharge them. Unlike garbage such as contaminated victual wastes, the Coast Guard believes that most ships do not routinely generate medical or hazardous wastes. However, some passenger liners which have hospitals, and large oceangoing ships which perform extensive maintenance while underway, may generate limited quantities of these wastes and have need to discharge them ashore. The Coast Guard also recognizes that reception of these materials generally requires specialized treatment which is not normally available from most port or terminal operators. For this reason, the Coast Guard has added a new § 158.410(a)(2) which provides ports or terminals flexibility by either providing facilities to receive medical and hazardous wastes when called upon, or alternatively, providing the names of persons approved to transport and treat these wastes. The Coast Guard believes this is a reasonable solution which will prevent unnecessary expenses on the part of ports or terminals. Further, based upon discussions with EPA, the Coast Guard believes that the majority of ships, ports or terminals which may generate hazardous wastes, would receive favorable consideration as "small quantity generators" as defined in 40 CFR 261.5.

One commenter stated that the Coast Guard needs to specify in more detail what is expected of a port or terminal with respect to reception facilities for garbage. The Coast Guard believes that this revised rule does just that: a port or terminal must be able to receive all garbage from ships it services, including APHIS regulated wastes within 24 hours. It is also obligated to receive ship-generated medical wastes or hazardous wastes under RCRA, or to provide a list of competent persons able to transport and treat these wastes, if called upon. Ports or terminals must make the reception facilities plainly accessible and convenient to ship operators so as not to discourage their use. Finally, the port or terminal must manage their reception facilities in a manner which will prevent ship-generated garbage from reentering the water and which complies with other federal, state and local laws.

33 CFR 158.420 Reception Facilities: Capacity and Exceptions

Under this section, ports and terminals must ensure the availability of reception facilities for garbage capable of receiving all garbage that the master or person who is in charge of a ship wants to discharge ashore, subject to two exceptions. Ports and terminals will not be obligated to receive large quantities of spoiled or damaged cargoes, or garbage from ships not having commercial transactions with that port or terminal.

Two commenters had recommendations regarding the proposed requirement to require ports and terminals to be able to receive all garbage that ships doing business there might desire to discharge ashore. One supported the Coast Guard decision to drop specific reception facility capacity requirements recommended by IMO. Some ports and terminals had suggested that these formulae tended to overestimate capacity required and the IMO later agreed, when it removed this recommendation from the "Guidelines for the Implementation of Annex V" in September 1988. Another commenter stated that the capacity requirement in this rule is too onerous and that ports or terminals should only be required to receive a quantity of garbage which could have been generated within 25 miles from nearest land, since ships may discharge all garbage, except plastics outside this distance. The Coast Guard hopes to learn more about actual quantities of garbage brought ashore during the interim period after implementation of Annex V, but will not at this time limit the capacity requirements as suggested. The Annex allows ships to discharge garbage at sea, but clearly encourages ships to bring garbage to port reception facilities. Reducing the capacity requirements as suggested would only encourage ship operators to discharge garbage at sea.

One commenter questioned why the Coast Guard granted an exception to the capacity requirements for "large quantities of spoiled or damaged cargoes" and asked what ship operators should do with this garbage in such a case. In granting this exemption, the Coast Guard acknowledges that unforeseen situations do occur in the transportation of goods by ship which are not normal and that it would be unrealistic to expect all ports and terminals to have the capacity to receive a whole ship's cargo as garbage. In such a case, the ship operator could do what was done before Annex V—contact the port or shipping agent and make special arrangements for such special circumstances.

Three persons commented on the provision in § 158.420(b) which exempts ports from the requirement to accept garbage from ships not having commercial transactions with that port or terminal. One commenter favored this concept and two opposed it. The Coast Guard has retained this wording because reception facilities for garbage are an ancillary (though now mandated) service provided by port and terminal operators and it is not their primary reason for being in business and would be inappropriate to establish such a mandate

Subpart E—Port and Terminal Operations

This Subpart, formerly Subpart D of Part 158, was redesignated "Subpart E" in order to allow for the placement of the new Subpart D, "Criteria for Adequacy of Reception Facilities: Garbage." in numerical sequence immediately after Annex I and II requirements. Sections previously numbered 158.400 and 158.420 were redesignated §§ 158.500 and 158.520 respectively.

46 CFR 25.50–1 Criteria

This section will apply the shipboard discharge requirements of Annex V to those ships which are not normally inspected by the Coast Guard. This section will require them to retain garbage generated on board for later disposal ashore, unless the garbage is discharged at sea in accordance with 33 CFR Part 151.

VI. Regulatory Evaluation and Environmental Assessment

Regulatory Evaluation

The Coast Guard considers these regulations to be significant under DOT regulatory policies and procedures (44 FR 11034; February 26, 1979) and non-major under Executive Order 12291. A final regulatory evaluation has been prepared and placed in the rulemaking docket. Copies of the evaluation may be inspected or copied at the address indicated in the first paragraph of **ADDRESSES** above.

The Coast Guard considered several alternatives in this rulemaking: take no regulatory action except for determining the criteria of adequacy for reception facilities; develop a performance based regulatory program requiring inspection

of reception facilities at all ports and terminals before issuing COAs to those which meet standards; or develop a performance based regulatory program requiring all ports and terminals to meet minimal reception facility standards and issue certain ports and terminals COAs after they have certified their compliance with the regulations.

The Coast Guard decided on the final option to implement the requirements of Pub. L. 100–220. The decision was based on several factors. A performance based regulatory program was selected as it was best suited for implementation of legislation prohibiting improper disposal of garbage. Performance standard regulatory programs are more conducive to compliance choices that are custom fitted to individual entities.

The Coast Guard considered the costs of the implementation of these regulations by considering six distinct industry sectors: merchant shipping, the fishing industry, recreational boating, offshore oil and gas operations, research and other miscellaneous classes of vessels, and ports and terminals.

Only those portions of each sector affected by implementation of Pub L. 100–220 were considered. Vessels on the U.S. portions of the Great Lakes and other internal waters of the United States were not considered as they must currently comply with the provisions of the Refuse Act. Ports and terminals were considered in all areas for the additional burden that provisions for additional waste collection would entail. Costs for each of these sectors were projected after an industry profile was constructed and current garbage disposal practices were analyzed to establish baseline costs. Estimates of cost compliance options were made for each sector except ports and terminals, since it was assumed that costs borne by ports would be passed on to vessels, either explicitly in the form of a garbage handling charge, or implicitly in the form of an increase in dockage fees. The vessels are assumed to pay costs sufficient to cover both a land disposal fee for garbage (imposed by the local waste hauler) and an additional surcharge imposed in some form by the port. Estimates of which compliance options each industry sector would choose were made and the total costs were projected based on these compliance options. The total annual projected costs are approximately $41.8 million. This burden is apportioned among the sectors as follows: merchant shipping, $2.9 million; commercial fishing, $33.9 million; recreational boating, $1.5 million; offshore oil and gas, $3.1 million; and miscellaneous vessels, $.3 million.

Most quantifiable benefits, from implementation of Pub. L. 100–220, result from savings due to events of pollution not occurring. One source of benefits would accrue from the reduction of damages to vessels from garbage entanglement in propellers, water intakes or other vessel equipment in contact with the water. Benefits could also be realized through avoidance of fishery losses due to "ghost fishing" by discarded nets and traps that continue to catch fish or mammals. Another large benefit would be the reduction of beach cleanup costs. Beach debris problems tend to be localized to specific areas that receive wastes carried on principal ocean currents or that are in proximity to heavily traveled shipping routes or fishing regions. The quantity of plastic, garbage and other debris discharged in the ocean will be reduced under this rule. However, plastic in the ocean originates from several sources, not solely from the vessels regulated by this action; these other sources are not affected by these regulations. It is uncertain whether beach areas will continue to require cleanup efforts, or if the cleanup efforts can be substantially reduced. Therefore, it is not possible to ascribe a quantitative estimate to reduction in beach cleanup costs. Another benefit closely tied to the reduction in beach cleanup costs is increased tourism and its associated spending in beach areas. Again it is difficult to quantify the change that these regulations will have on tourist spending in beach areas. Finally, one could consider increases in the values of beach properties. A net public gain occurs from improvement in ocean environmental conditions to the extent that beach property increases in value.

Environmental benefits are difficult to quantify but their effects can be considered. These benefits include a reduction in damages by plastic wastes to endangered species and the increased enjoyment of beach areas. Plastic garbage is believed to have deleterious effects on certain endangered species including Hawaiian monk seals and various species of sea turtles. These regulations will limit one source of oceanic plastic garbage affecting these species. Persons visiting a beach will receive increased enjoyment of the resource to the extent that less debris is present.

The potential net benefits of the regulations are estimated to be positive. This estimate results from an analysis that considered the potential costs and benefits.

Regulatory Flexibility Act

A regulatory flexibility analysis was conducted to evaluate the impact of the rule on small entities and it has been made part of the Final Regulatory Evaluation in accordance with the Regulatory Flexibility Act. The Coast Guard adopted the Small Business Administration's (SBA) definition of "small business" used when considering SBA loans to concerns engaging in transportation and warehousing (13 CFR 121.3–10(f)) as a definition for small entities. A concern is considered small, under this definition, if its annual receipts do not exceed $1.5 million.

The Coast Guard does not have accurate information on how many vessels or ports and terminals grouped in the various sectors discussed in the "Potential Costs" portion would qualify as small entities. However, the Coast Guard currently estimates that this will affect 2,200 U.S. flag vessels of less than 1,000 gross tons, 14,800 commercial fishing vessels, 600 offshore service vessels, and 4,400 ports and terminals, including recreational boating facilities.

Vessels which qualify as small entities will decide which option they will choose for compliance:

a. Garbage separation, with storage of plastic waste on board and final disposal ashore;

b. Storage of all garbage and final disposal ashore;

c. Garbage separation, with compaction and storage of plastic wastes on board and final disposal ashore;

d. Garbage incineration;

e. Product substitution.

Ports which qualify as small entities may have to invest in small-scale incineration equipment, equipment for garbage handling, or make contractual arrangements for reception facilities if they do not already have these.

These regulations contain minimal reporting or recordkeeping requirements for small entities. A small minority of all ports and terminals will also be required to complete an application "Form C" for a COA. Most vessels which are small entities would not have to comply with the reporting requirements for disposal of APHIS regulated garbage. Based upon the above factors, the Coast Guard certifies that this rule will not have a significant economic impact on a substantial number of small entities.

As discussed throughout the **SUPPLEMENTARY INFORMATION,** some existing legislation may duplicate, conflict or overlap with the rule. Some of these include the Clean Air Act, Clean Water Act, the Resource Conservation

and Recovery Act (RCRA), and the MPRSA. The Clean Air Act and RCRA may restrict the use of incinerators as a compliance choice for vessels in U.S. waters. Specifically, the Clean Air Act may restrict emissions from incinerators and RCRA may restrict the shore disposal of clinkers or ashes from vessel incinerators. The Clean Water Act also prohibits the discharge of pollutants, including garbage, in U.S. waters. There is a duplication of this interim rule and the regulations implementing the Clean Water Act for floating garbage, and an inconsistency between them for non-floating solid wastes. In the interim rule the discharge of non-floating wastes from mobile offshore drilling units and platforms is prohibited, while the regulations which implement the Clean Water Act allow this type of discharge.

Environmental Impact

Under Annex V of MARPOL 73/78, the Act, and its implementing regulations, the discharge of plastic from vessels into the sea is prohibited and the discharge of other ship-generated garbage within 25 nautical miles of land is restricted. Ports and terminals where ships call are required to provide adequate facilities for receiving this garbage.

The reception facility rule in this document does not directly affect the marine environment, but it is an essential part of an overall scheme to limit pollution of the marine environment and substantially reduce the need to dispose of plastics and other ship-generated garbage at sea. The facility regulations will affect the locations where ship generated garbage is received by reception facilities and implement the requirement of Regulation 7 of Annex V of MARPOL 73/78 that adequate reception facilities be available to meet the needs of ships without undue delay. If left unregulated, ships would not be able to discharge garbage, especially APHIS regulated garbage, at all ports and terminals because reception facilities would not be readily available. Further, in those ports and terminals where reception facilities would be available, the demand for reception facilities would exceed the supply. This would drive up the cost of disposal, contribute to the delay of vessels, and adversely affect compliance with the discharge requirements of Annex V and the Act.

The regulations are expected to have a positive but not significant environmental impact, as defined in the National Environmental Policy Act. The regulations are expected to contribute to the reduction of the occurrence of plastic in the marine environment as well as other ship-generated garbage. However, the impact of the regulations involves several factors. First, is the source of the marine debris. The regulations apply to U.S. vessels and foreign flag vessels when operating in U.S. waters. U.S. vessels account for less than 5% of the world's oceangoing fleet. Foreign flag vessels which operate in U.S. waters make up a much larger percentage of this fleet. Once outside U.S. waters, foreign flag vessels may continue past disposal practices, unless they are under the control of a country which is signatory to Annex V. Over 1,000 public vessels in noncommercial service, including naval vessels and other government owned or operated ships, must comply with regulations established by their own agencies, rather than these regulations. Further, these regulations do not apply to land based sources which, depending upon the predominant activity in the region, may account for more than half of the debris in the marine environment. Therefore, this action can influence only a rather limited portion of the overall marine debris problem.

The second factor is the marine environment. Several negative impacts from marine debris have been noted on marine wildlife including selected endangered species. The effect of this regulatory program on these impacts will be limited for several reasons. First, the limited influence of these regulations on the overall marine debris problem, as noted above. Second, there is little evidence to suggest that persistent marine debris has had a significant adverse impact on environmental populations. There is ample evidence that entanglement and ingestion of persistent marine debris have had an adverse affect on individual members of many species; however, scientists can identify adverse impacts on only a few wildlife populations, e.g., Northern fur seals and the endangered Hawaiian monk seals. The regulations are expected to contribute to a slight reduction of the incidence of entanglement and ingestion, but only by that amount which occurs as a result of debris which is intentionally discharged from ships. Third, the interim rule does not affect accidental loss of fishing gear or active fishing operations which are major contributors to the incidence of entanglement. Fourth, plastics account for a small portion of the debris disposed of by ships. The bulk of ship-generated garbage is still permitted to be discharged further out at sea. A final environmental assessment and a finding of no significant impact have been prepared and are available as indicated in the first paragraph of **ADDRESSES** above.

Paperwork Reduction Act

These regulations will change the information collection requirements at 33 CFR 151.65 and 33 CFR 158.140. Revisions to existing OMB paperwork approvals have been submitted to the Office of Management and Budget (OMB) for this interim rule. They have been assigned RCS/OMB Control Numbers 2115–0544 and 2115–0543 respectively. These regulations will require masters to give 24 hour notice of the need for an APHIS approved reception facility and for all ports and terminals which meet the requirements of 33 CFR 158.140 to apply for a COA for garbage. Persons desiring to comment on this information collection requirement should submit their comments to the Office of Management and Budget at the address listed in the fourth paragraph of **ADDRESSES** above. A copy of these comments should also be submitted to the Coast Guard at the address shown in the first paragraph of **ADDRESSES** above.

Federalism Statement

This rulemaking has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the concepts discussed therein do not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Regulatory Information Number (RIN)

A regulatory information number has been assigned to this regulatory action and it is listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center (RISC) publishes the Unified Agenda in April and October of each year. The RIN number listed at the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects

33 CFR Part 151

Oil pollution, Reporting and recordkeeping requirements, Water pollution control.

33 CFR Part 155

Oil pollution, Reporting and recordkeeping requirements.

33 CFR Part 158

Administrative practice and procedure, Harbors, Oil pollution, Penalties, Reporting and recordkeeping requirements, Water pollution control.

46 CFR Part 25

Fire prevention, Marine safety.

In consideration of the preceding, Parts 151, 155 and 158 of Title 33, Code of Federal Regulations and Part 25 of Title 46, Code of Federal Regulations are amended as follows:

TITLE 33—[AMENDED]

1. The title of Part 151 is revised to read as follows:

PART 151—OIL, NOXIOUS LIQUID SUBSTANCE AND GARBAGE REGULATIONS

2. The authority citation for Part 151 is revised to read as follows:

Authority: 33 U.S.C. 1321(j)(1)(C) and 1903(b), E.O. 11735, 3 CFR, 1971–1975 COMP., p.793, 49 CFR 1.46.

3. Section 151.01 is revised to read as follows:

§ 151.01 Purpose.

The purpose of this part is to implement the Act to Prevent Pollution from Ships, 1980, as amended (33 U.S.C. 1901–1911) and Annexes I, II and V of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78), done at London on February 17, 1978.

Note: MARPOL 73/78 is available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. Please include reference number "ADA 168 505" in your request.

4. Section 151.03 is revised to read as follows:

§ 151.03 Applicability.

This part applies to each ship that must comply with Annex I, II or V of MARPOL 73/78.

5. A new § 151.04 is added to Subpart A to read as follows:

§ 151.04 Penalties for violation.

(a) A person who violates MARPOL 73/78, the Act, or the regulations of this part is liable for a civil penalty not to exceed $25,000 for each violation, as provided by 33 U.S.C. 1908(b)(1). Each day of a continuing violation constitutes a separate violation.

(b) A person who makes a false, fictitious statement or fraudulent representation in any matter in which a statement or representation is required to be made to the Coast Guard under MARPOL 73/78, the Act, or the regulations of this part, is liable for a civil penalty not to exceed $5,000 for each statement or representation, as provided by 33 U.S.C. 1908(b)(2).

(c) A person who knowingly violates MARPOL 73/78, the Act, or the regulations of this part, is liable for a fine for each violation of not more than $50,000 dollars, or imprisonment for not more than 5 years, or both, as provided by 33 U.S.C. 1908(a).

(d) A ship operated in violation of MARPOL 73/78, the Act, or the regulations of this part is liable *in rem* for any civil penalty covered by paragraph (a) of this section, or any fine covered by paragraph (b) of this section, and may be proceeded against in the United States District Court of any district in which the ship may be found.

6. Section 151.05 is amended by adding the definitions for the terms "Cargo associated wastes," "Dishwater," "Domestic wastes," "Garbage," "Graywater," "Harmful substance," "Maintenance waste," "Medical waste," "Operational waste," "Plastic," "Victual waste," in the proper alphabetical sequence, by revising the definitions of "Discharge" and "Special Area," and by adding a note following the definition of "Terminal," to read as follows:

§ 151.05 Definitions.

* * * * *

"Cargo associated wastes" means all materials which have become wastes as a result of use on board a ship for cargo stowage and handling. Cargo associated wastes include, but are not limited to dunnage, shoring, pallets, lining and packing materials, plywood, paper, cardboard, wire, and steel strapping.

* * * * *

"Discharge," as defined by MARPOL 73/78 in relation to harmful substances or effluent containing such substances, means any release however caused from a ship, and includes any escape, disposal, spilling, leaking, pumping, emitting or emptying. It does not include—

(1) Dumping within the meaning of the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, done at London on November 13, 1972; or

(2) The release of harmful substances directly arising from the exploration, exploitation, and associated offshore processing of seabed mineral resources; or

(3) The release of harmful substances for purposes of legitimate scientific research relating to pollution abatement or control.

"Dishwater" means the liquid residue from the manual or automatic washing of dishes and cooking utensils which have been pre-cleaned to the extent that any food particles adhering to them would not normally interfere with the operation of automatic dishwashers.

"Domestic wastes" means all types of wastes generated in the living spaces on board a ship, except victual wastes.

* * * * *

"Garbage" means all kinds of victual, domestic, and operational waste, excluding fresh fish and parts thereof, generated during the normal operation of the ship and liable to be disposed of continuously or periodically, except dishwater, graywater, and those substances that are defined or listed in other Annexes to MARPOL 73/78.

"Graywater" means drainage from dishwasher, shower, laundry, bath, and washbasin drains and does not include drainage from toilets, urinals, hospitals, and cargo spaces.

"Harmful substance" means any substance which, if introduced into the sea, is liable to create hazards to human health, harm living resources and marine life, damage amenities, or interfere with other legitimate uses of the sea, and includes any substance subject to control by MARPOL 73/78.

* * * * *

"Maintenance waste" means materials collected while maintaining and operating the ship, including, but not limited to, soot, machinery deposits, scraped paint, deck sweepings, wiping wastes, and rags.

* * * * *

"Medical waste" means isolation wastes, infectious agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes and potentially contaminated laboratory wastes, dialysis wastes, and such additional medical items as prescribed by the Administrator of the EPA by regulation.

* * * * *

"Operational waste" means all cargo associated waste, maintenance waste, cargo residues, and ashes and clinkers from shipboard incinerators and coal burning boilers

* * * * *

"Plastic" means any garbage that is solid material that contains as an essential ingredient one or more synthetic organic high polymers and is formed or shaped during either manufacture of the polymer or fabrication into a finished product by heat or pressure or both.

Note: Plastics possess material properties ranging from hard and brittle to soft and elastic. Plastics are used for a variety of marine applications including, but not limited to: food wrappings, personal hygiene products, packaging (vaporproof barriers,

bottles, containers, liners), ship construction (fiberglass and laminated structures, siding, piping insulation, flooring, carpets, fabrics, adhesives, electrical and electronic components), disposable eating utensils and cups (including styrene products), bags, sheeting, floats, synthetic fishing nets, monofilament fishing line, strapping bands, hardhats, synthetic ropes and lines. "Degradeable" plastics which are composed of combinations of degradeable starches and either synthetically produced, or naturally produced plastics which are harvested for the use of man, are considered plastics for the purpose of these regulations.

* * * * *

"Special area" means a sea area, where for recognized technical reasons in relation to its oceanographical and ecological condition and to the particular character of its traffic, the adoption of special mandatory methods for the prevention of sea pollution by oil, NLS, or garbage is required. Special areas for the purposes of Annex I of MARPOL 73/78 include those listed in § 151.13 and for the purposes of Annex V of MARPOL 73/78 include those listed in § 151.53.

"Terminal" means an onshore facility or an offshore structure located in the navigable waters of the United States or subject to the jurisdiction of the United States and used, or intended to be used, as a port or facility for the transfer or other handling of a harmful substance.

Note: The Coast Guard interprets commercial fishing facilities, recreational boating facilities, and mineral and oil industry shorebases to be terminals for the purposes of Annex V of MARPOL 73/78, since these facilities normally provide wharfage and other services, including garbage handling, for ships.

* * * * *

"Victual waste" means any spoiled or unspoiled food waste.

7. Section 151.07 is revised to read as follows:

§ 151.07 Delegations.

Each Coast Guard official designated as a Captain of the Port (COTP) or Officer in Charge, Marine Inspection (OCMI) or Commanding Officer, Marine Safety Office (MSO), is delegated the authority to—

(a) Issue International Oil Pollution Prevention (IOPP) Certificates;

(b) Detain or deny entry to ships not in substantial compliance with MARPOL 73/78 or not having an IOPP Certificate or evidence of compliance with MARPOL 73/78 on board;

(c) Receive and investigate reports under § 151.15; and

(d) Issue subpoenas to require the attendance of any witness and the production of documents and other evidence, in the course of investigations of potential violations of the Act to Prevent Pollution from Ships, as amended (33 U.S.C. 1901–1911), this part, or MARPOL 73/78.

8. Section 151.08 is revised to read as follows:

§ 151.08 Denial of entry.

(a) Unless a ship is entering under force majeure, no oceangoing tanker or any other oceangoing ship of 400 gross tons or more required by § 151.10 to retain oil or oily residues and mixtures on board while at sea, and no oceangoing ship carrying a Category A, B, or C NLS cargo or NLS residue in cargo tanks that are required to be prewashed under 46 CFR Part 153, may enter any port or terminal under § 158.110(a) of this chapter unless the port or terminal has a Certificate of Adequacy, as defined in § 158.120 of this chapter.

(b) A COTP may deny the entry of a ship to a port or terminal under § 158.110(b) if—

(1) The port or terminal does not have a Certificate of Adequacy, as required in § 158.135 of this chapter; or

(2) The port or terminal is not in compliance with the requirements of Subpart D of Part 158.

§ 151.10 [Redesignated from § 151.09]

9. Section 151.09 (Control of discharge of oil) is redesignated as § 151.10.

10. A new § 151.09 is added to read as follows:

§ 151.09 Applicability.

(a) Except as provided in paragraph (b) of this section, this subpart applies to each ship that—

(1) Is operated under the authority of the United States and engages in international voyages;

(2) Is operated under the authority of the United States and is certificated for ocean service;

(3) Is operated under the authority of the United States and is certificated for coastwise service beyond three nautical miles from land;

(4) Is operated under the authority of the United States and operates at any time seaward of the outermost boundary of the territorial sea of the United States as defined in § 2.05–10 of this chapter; or

(5) Is operated under the authority of a country other than the United States while in the navigable waters of the United States, or while at a port or terminal under the jurisdiction of the United States.

(b) This subpart does not apply to—

(1) A warship, naval auxiliary, or other ship owned or operated by a country when engaged in noncommercial service;

(2) A Canadian or U.S. ship being operated exclusively on the Great Lakes of North America or their connecting and tributary waters;

(3) A Canadian or U.S. ship being operated exclusively on the internal waters of the United States and Canada; or

(4) Any other ship specifically excluded by MARPOL 73/78.

Note: The term "internal waters" is defined in § 2.05–20 of this chapter.

11. Section 151.11 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 151.11 Exceptions for emergencies.

(a) Sections 151.10 and 151.13 do not apply to—

* * * * *

12. The section title and paragraphs (a) and (g) of § 151.13 are revised to read as follows:

§ 151.13 Special areas for Annex I of MARPOL 73/78.

(a) For the purposes of this subpart, the special areas are the Mediterranean Sea area, the Baltic Sea area, the Black Sea area, the Red Sea area, and the Gulfs Area that are defined as follows:

(1) The Mediterranean Sea area means the Mediterranean Sea proper including the gulfs and seas therein, with the boundary between the Mediterranean and the Black Sea constituted by the 41 °N parallel and bounded to the west by the Straits of Gibraltar at the meridian of 5°36′ W.

(2) The Baltic Sea area means the Baltic Sea proper with the Gulf of Bothnia, the Gulf of Finland and the entrance to the Baltic Sea bounded by the parallel of the Skaw in the Skagerrak at 57°44.8′ N.

(3) The Black Sea area means the Black Sea proper with the boundary between the Mediterranean Sea and the Black Sea constituted by the parallel 41 °N.

(4) The Red Sea area means the Red Sea proper including the Gulfs of Suez and Aqaba bounded at the south by the rhumb line between Ras si Ane (12°8.5′ N, 43°19.6′ E) and Husn Murad (12°40.4′ N, 43°30.2′ E).

(5) The Gulfs Area means the sea area located northwest of the rhumb line between Ras al Hadd (22°30′ N, 59°48′ E) and Ras al Fasteh (25°04′ N, 61°25′ E).

* * * * *

(g) Nothing in this section prohibits a ship on a voyage, only part of which is in a special area, from discharging outside the special area in accordance with § 151.10.

13. By revising § 151.30 to read as follows:

151.30 Applicability.

(a) Except as provided in paragraph (b) of this section this subpart applies to each ship that—

(1) Is operated under the authority of the United States and engages in international voyages;

(2) Is operated under the authority of the United States and is certificated for ocean service;

(3) Is operated under the authority of the United States and is certificated for coastwise service beyond three nautical miles from land;

(4) Is operated under the authority of the United States and operates at any time seaward of the outermost boundary of the territorial sea of the United States as defined in § 2.05–10 of this chapter; or

(5) Is operated under the authority of a country other than the United States while in the navigable waters of the United States, or while at a port or terminal under the jurisdiction of the United States.

(b) This subpart does not apply to—

(1) A tank barge whose certificate is endorsed by the Coast Guard for a limited short protected coastwise route if the barge is constructed and certificated primarily for service on an inland route;

(2) A warship, naval auxiliary, or other ship owned or operated by a country when engaged in noncommercial service;

(3) A Canadian or U.S. ship being operated exclusively on the Great Lakes of North America or their connecting and tributary waters;

(4) A Canadian or U.S. ship being operated exclusively on the internal waters of the United States and Canada; or

(5) Any other ship specifically excluded by MARPOL 73/78.

Note: The term "internal waters" is defined in § 2.05–20 of this chapter.

14–15. Part 151 is amended by adding a new Subpart D to read as follows:

Subpart D—Garbage Pollution

Sec.

151.51 Applicability.
151.53 Special areas for Annex V of MARPOL 73/78.
151.55 Recordkeeping requirements [Reserved].
151.57 Waste management plans [Reserved].
151.59 Placards [Reserved].
151.61 Inspection for compliance and enforcement.
151.63 Shipboard control of garbage.
151.65 Reporting requirements.
151.66 Operating requirements: Discharge of garbage in the navigable waters prohibited.
151.67 Operating requirements: Discharge of plastic prohibited.
151.69 Operating requirements: Discharge of garbage outside special areas.
151.71 Operating requirements: Discharge of garbage within special areas.
151.73 Operating requirements: Discharge of garbage from fixed or floating platforms.
151.75 Grinders or comminuters.
151.77 Exceptions for emergencies.
Appendix A to Subpart D of Part 151—Summary of Garbage Discharge Restrictions.

Subpart D—Garbage Pollution

§ 151.51 Applicability.

(a) Except as provided by paragraph (b) of this section, this subpart applies to—

(1) Each ship that is of United States registry or nationality, or one operated under the authority of the United States, including recreational vessels defined in 46 U.S.C. 2101(25) and uninspected vessels defined in 46 U.S.C. 2101(43), wherever located; and

(2) Each ship, other than a ship referred to in paragraph (a)(1) of this section, while in the navigable waters or the Exclusive Economic Zone of the United States.

(b) This subpart does not apply to—

(1) A warship, naval auxiliary, or other ship owned or operated by the United States when engaged in noncommercial service; or

(2) Any other ship specifically excluded by MARPOL 73/78.

Note: The Exclusive Economic Zone extends from the baseline of the territorial sea seaward 200 miles as defined in the Presidential Proclamation 5030 of March 10, 1983 (3 CFR, 1983 Comp. p. 22).

§ 151.53 Special areas for Annex V of MARPOL 73/78.

For the purposes of this subpart, the special areas are the Mediterranean Sea area, the Baltic Sea area, the Black Sea area, the Red Sea area, and the Gulfs Area that are defined as follows:

(a) The Mediterranean Sea area means the Mediterranean Sea proper including the gulfs and seas therein, with the boundary between the Mediterranean and the Black Sea constituted by the 41° N parallel and bounded to the west by the Straits of Gibraltar at the meridian of 5°36′ W.

(b) The Baltic Sea area means the Baltic Sea proper with the Gulf of Bothnia, the Gulf of Finland and the entrance to the Baltic Sea bounded by the parallel of the Skaw in the Skagerrak at 57°44.8′ N. The discharge restrictions of § 151.71 are effective in the Baltic Sea on October 1, 1989.

(c) The Black Sea area means the Black Sea proper with the boundary between the Mediterranean Sea and the Black Sea constituted by the parallel 41° N.

(d) The Red Sea area means the Red Sea proper including the Gulfs of Suez and Aqaba bounded at the south by the rhumb line between Ras si Ane (12°8.5′ N, 43°19.6′ E) and Husn Murad (12°40.4′ N, 43°30.2′ E).

(e) The Gulfs area means the sea area located northwest of the rhumb line between Ras al Hadd (22°30′ N, 59°48′ E) and Ras al Fasteh (25°04′ N, 61°25′ E).

Note: In accordance with paragraph (4)(b) of Regulation 5 of Annex V of MARPOL 73/78, the discharge restrictions in § 151.71 for special areas will enter into effect when each party to MARPOL 73/78 whose coastline borders the special area has certified that reception facilities are available and the IMO has established an effective date for each special area. Notice of the effective dates for the discharge requirements in each special area will be published in the Federal Register and added to this section.

§ 151.55 Recordkeeping requirements [Reserved].

§ 151.57 Waste management plans [Reserved].

§ 151.59 Placards [Reserved].

§ 151.61 Inspection for compliance and enforcement.

While within the navigable waters of the United States or the Exclusive Economic Zone, a ship to which this subpart applies is subject to inspection by the Coast Guard or other authorized federal agency to determine if—

(a) The ship has been operating in accordance with these regulations and has not discharged plastics or other garbage in violation of the provisions of the Act or Annex V of MARPOL 73/78;

(b) Grinders or comminuters used for the discharge of garbage between 3 and 12 nautical miles from nearest land are capable of reducing the size of garbage so that it will pass through a screen with openings no greater than 25 millimeters (one inch);

(c) Information for recordkeeping requirements, when required under § 151.55, is properly and accurately logged;

(d) A waste management plan, when required under § 151.57, is on board and that the condition of the ship, equipment and operational procedures of the ship meet the plan; and

(e) Placards, when required by § 151.59, are posted on board.

§ 151.63 Shipboard control of garbage.

(a) The master, operator, or person who is in charge of a ship shall ensure that all garbage is discharged ashore or in accordance with §§ 151.66–151.73.

(b) The following factors, among others, may be considered by enforcement personnel in evaluating compliance with this subpart:

(1) Records, including receipts, of garbage discharges at port reception facilities.

(2) Log entries indicating discharge of garbage in accordance with §§ 151.67, 151.69, 151.71, or 151.73.

(3) The presence and operability of equipment to treat ship-generated garbage, including, but not limited to, incinerators, grinders, or comminuters.

(4) The presence of and adherence to a written shipboard waste management plan.

(5) The absence of plastics in ship stores.

(6) Ongoing educational programs to train shipboard personnel of garbage handling procedures and the need for these.

(7) The presence of shipboard spaces used for collecting, processing, storing and discharging ship-generated garbage.

(c) The master, operator, or person who is in charge of a ship shall ensure that if garbage is transported from a ship by shipboard personnel, it is properly deposited into a port or terminal's reception facility.

§ 151.65 Reporting requirements.

The master or person who is in charge of each oceangoing ship shall notify the port or terminal, at least 24 hours before entering the port or terminal, of the name of the ship and the estimated volume of garbage requiring disposal, if any of the following types of garbage are to be discharged:

(a) Garbage regulated by the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture under 7 CFR 330.400 or 9 CFR 94.5.

(b) Medical wastes.

(c) Hazardous wastes defined in 40 CFR 261.3.

§ 151.66 Operating requirements: Discharge of garbage in the navigable waters prohibited.

No person on board any ship to which this subpart applies may discharge garbage into the navigable waters of the United States.

Note: The navigable waters are defined in § 2.05–25 of this chapter.

§ 151.67 Operating requirements: Discharge of plastic prohibited.

No person on board any ship to which this subpart applies may discharge into the sea, or into the navigable waters of the United States, plastic or garbage mixed with plastic, including, but not limited to, synthetic ropes, synthetic fishing nets, and plastic garbage bags. All garbage containing plastics requiring disposal must be discharged ashore or incinerated.

§ 151.69 Operating requirements: Discharge of garbage outside special areas.

(a) When operating outside of a special area specified in § 151.53, no person may discharge, into the sea, garbage that is separated from plastic, if the distance from nearest land is less than—

(1) 25 nautical miles for dunnage, lining and packing materials that float; or

(2) 12 nautical miles for victual wastes and all other garbage including paper products, rags, glass, metal, bottles, crockery and similar refuse, except that, such garbage may be discharged outside of three nautical miles from nearest land after it has been passed through a grinder or comminuter specified in § 151.75. (b) Mixtures of garbage having different discharge requirements under paragraph (a)(1) or (a)(2) of this section must be—

(1) Retained on board for later disposal ashore; or

(2) Discharged in accordance with the more stringent requirement prescribed by paragraph (a)(1) or (a)(2) of this section.

§ 151.71 Operating requirements: Discharge of garbage within special areas.

When a ship is located in a special area listed in § 151.53 that entered into force under Rule 5 of Annex V of MARPOL 73/78, no person may discharge garbage, except that victual waste may be discharged beyond 12 nautical miles from nearest land

§ 151.73 Operating requirements: Discharge of garbage from fixed or floating platforms.

(a) Except as allowed in paragraph (b) of this section, no person may discharge garbage from—

(1) A fixed or floating platform engaged in the exploration, exploitation or associated offshore processing of seabed mineral resources; or

(2) Any ship within 500 meters (1650 feet) of such platforms.

(b) Victual waste may be discharged into the sea from a ship or fixed or floating platform regulated by paragraph (a) of this section if—

(1) It passes through a comminuter or grinder meeting § 151.75; and

(2) That ship or fixed or floating platform is beyond 12 nautical miles from nearest land.

§ 151.75 Grinders or comminuters.

Each grinder or comminuter used to discharge garbage in accordance with § 151.69(a)(2) or § 151.73(b)(1), must be capable of processing garbage so that it passes through a screen with openings no greater than 25 millimeters (one inch).

§ 151.77 Exceptions for emergencies.

Sections 151.67, 151.69 and 151.71 of this subpart do not apply to the following:

(a) Discharges of garbage from a ship for the purpose of securing the safety of the ship and those on board or saving life at sea.

(b) The escape of garbage resulting from damage to a ship or its equipment, if all reasonable precautions have been taken before and after the occurrence of the damage, to prevent or minimize the escape.

(c) The accidental loss of synthetic fishing nets or the loss of synthetic material during repair of nets, provided all reasonable precautions have been taken to prevent such losses.

15. Appendix A to Subpart D to Part 151 is added as follows:

Appendix A to Subpart D of Part 151—Summary of Garbage Discharge Restrictions

Garbage Type	All Vessels Except Fixed or Floating Platforms and Associated Vessels		Fixed or Floating Platforms & Assoc Vessels [3] (33 CFR 151.73)
	Outside special areas (33 CFR 151.69)	In special areas [2] (33 CFR 151.71)	
Plastics—includes synthetic ropes and fishing nets and plastic bags.	Disposal prohibited (33 CFR 151.67).	Disposal prohibited (33 CFR 151.67).	Disposal prohibited (33 CFR 151.67).
Dunnage, lining and packing materials that float.	Disposal prohibited less than 25 miles from nearest land and in the navigable waters of the U.S.	Disposal prohibited (33 CFR 151.71).	Disposal prohibited.
Paper, rags, glass, metal bottles, crockery and similar refuse.	Disposal prohibited less than 12 miles from nearest land and in the navigable waters of the U.S.	Disposal prohibited (33 CFR 151.71).	Disposal prohibited.

Garbage Type	All Vessels Except Fixed or Floating Platforms and Associated Vessels		Fixed or Floating Platforms & Assoc. Vessels [2] (33 CFR 151.73)
	Outside special areas (33 CFR 151.69)	In special areas [2] (33 CFR 151.71)	
Paper, rags, glass, etc. comminuted or ground.[1]	Disposal prohibited less than 3 miles from nearest land and in the navigable waters of the U.S.	Disposal prohibited (33 CFR 151.71).	Disposal prohibited.
Victual waste not comminuted or ground.	Disposal prohibited less than 12 miles from nearest land and in the navigable waters of the U.S.	Disposal prohibited less than 12 miles from nearest land.	Disposal prohibited.
Victual waste comminuted or ground.[1]	Disposal prohibited less than 3 miles from nearest land and in the navigable waters of the U.S.	Disposal prohibited less than 12 miles from nearest land.	Disposal prohibited less than 12 miles from nearest land and in the navigable waters of the U.S.
Mixed garbage types.[4]	See Note 4.	See Note 4.	See Note 4.

Note 1: Comminuted or ground garbage must be able to pass through a screen with a mesh size no larger than 25 mm. (1 inch) (33 CFR 151.75)
Note 2: Special areas for Annex V are the Mediterranean, Baltic, Red and Black Seas, and Persian Gulf areas. (33 CFR 151.53)
Note 3: Fixed or floating platforms and associated vessels includes all fixed or floating platforms engaged in exploration, exploitation or associated offshore processing of seabed mineral resources, and all ships within 500m of such platforms.
Note 4: When garbage is mixed with other harmful substances having different disposal or discharge requirements, the more stringent disposal restrictions shall apply.

PART 155—OIL POLLUTION PREVENTION REGULATIONS FOR VESSELS

16. The authority citation to Part 155 is revised to read as follows and the authority citations following the sections are removed:

Authority: 33 U.S.C. 1231; 49 CFR 1.46 except 155.450, 155.700, and 155.710 which are issued under 33 U.S.C. 1321(j)(i)(C), E.O. 11735, as amended, 3 CFR, 1971–1975 Comp. p. 793, 49 CFR 1.46. Sections 155.100, 155.110, 155.120, 155.130, 155.350, 155.360, 155.370, 155.380, 155.390, 155.400, 155.430, 155.440, and 155.470 are also issued under 33 U.S.C. 1903(b); 49 CFR 1.46.

17. Section 155.350(a)(2) is revised to read as follows:

§ 155.350 Bilge slops/fuel oil tank ballast water discharges on oceangoing ships of less than 400 gross tons.

(a) * * *

(2) Has approved oily-water separating equipment for the processing of oily bilge slops or oily fuel oil tank ballast and discharges into the sea in accordance with § 155.10.

* * * * *

18. Section 155.400(b)(2) is revised to read as follows:

§ 155.400 Platform machinery space drainage on oceangoing fixed and floating drilling rigs and other platforms.

* * * * *

(b) * * *

(2) Discharge in accordance with § 151.10 (b)(3), (b)(4) and (b)(5) of this chapter.

* * * * *

19. The authority citation for Part 158 is revised to read as follows:

Authority: 33 U.S.C. 1903(b); 49 CFR 1.46.

20. The title of Part 158 is revised to read as follows:

PART 158—RECEPTION FACILITIES FOR OIL, NOXIOUS LIQUID SUBSTANCES, AND GARBAGE

21. The title of Subpart A is revised to read as follows:

Subpart A—General

22. The undesignated center heading for §§ 158.100–158.165, "General" is removed.

23. Section 158.100(b) is revised to read as follows:

§ 158.100 Purpose.

* * * * *

(b) Procedures for certifying that reception facilities are adequate for receiving—

(1) Residues and mixtures containing oil from oceangoing tankers and any other oceangoing ships of 400 gross tons or more;

(2) NLS residue from oceangoing ships; or

(3) Garbage from ships.

* * * * *

24. Section 158.110 is revised to read as follows:

§ 158.110 Applicability.

(a) Subparts B, C, and E apply to each port and each terminal located in the United States or subject to the jurisdiction of the United States that is—

(1) Used by oceangoing tankers, or any other oceangoing ships of 400 gross tons or more, carrying residues and mixtures containing oil, or by oceangoing ships to transfer NLSs, except those ports and terminals that are used only by—

(i) Tank barges that are not configured and are not equipped to ballast or wash cargo tanks while proceeding enroute;

(ii) Ships carrying NLS operating under waivers under 46 CFR 153.491(b); or

(2) A ship repair yard that services oceangoing ships carrying oil or NLS residue.

(b) Subpart D applies to each port and terminal located in the United States or subject to the jurisdiction of the United States.

25. Section 158.115 is added to read as follows:

§ 158.115 Penalties for violation.

(a) A person who violates MARPOL 73/78, the Act, or the regulations of this part is liable for a civil penalty not to exceed $25,000 for each violation, as provided by 33 U.S.C. 1908(b)(1). Each day of a continuing violation constitutes a separate violation.

(b) A person who makes a false, fictitious statement or fraudulent representation in any matter in which a statement or representation is required to be made to the Coast Guard under MARPOL 73/78, the Act, or the regulations of this part, is liable for a civil penalty not to exceed $5,000 for each statement or representation, as provided by 33 U.S.C. 1908(b)(2).

(c) A person who knowingly violates MARPOL 73/78, the Act, or the regulations of this part is liable for a fine for each violation, of not more than $50,000 dollars, or imprisonment for not more than 5 years, or both, as provided by 33 U.S.C. 1908(a).

26. Section 158.120 is amended by adding definitions for the terms "Commercial fishing facility," "Form C," "Garbage," "Harmful substance," "Medical waste," "Mineral and oil industry shorebase," "Recreational boating facility," in the proper alphabetical sequence, by revising the definitions of "Certificate of Adequacy," "Reception facility" and "The Act," and by adding a note after the definition of "Terminal," to read as follows:

§ 158.120 Definitions and acronyms.

* * * * *

"Certificate of Adequacy" means a document issued by the Coast Guard or other authorized agency that certifies a port or terminal meets the requirements of this part with respect to reception facilities required under the Act and MARPOL 73/78, and has Form A, Form B, or Form C attached.

* * * * *

"Commercial fishing facility" means docks, piers, processing houses, or other facilities which receive commercial fishery products from ships.

* * * * *

"Form C" means the application for a Certificate of Adequacy for a Reception Facility for Garbage, Coast Guard form USCG–CG–5401C. "Garbage" means all kinds of victual, domestic, and operational waste, excluding fresh fish and parts thereof, generated during the normal operation of the ship and liable to be disposed of continuously or periodically, except dishwater, graywater, and those substances that are defined or listed in other annexes to MARPOL 73/78. "Harmful substance" means any substance which, if introduced into the sea, is liable to create hazards to human health, harm living resources and marine life, damage amenities or interfere with other legitimate uses of the sea, and includes any substance subject to control by MARPOL 73/78.

* * * * *

"Medical waste" means isolation wastes, infectious agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes and potentially contaminated laboratory wastes, dialysis wastes, and such additional medical items as prescribed by the Administrator of the EPA by regulation. "Mineral and oil industry shorebase" means a place or onshore structure or facility which is a base of operations for ships serving the mineral and oil industry.

* * * * *

"Reception facility" means anything capable of receiving shipboard residues and mixtures containing oil or NLS residue, or receiving garbage, including, but not limited to—

(1) Fixed piping that conveys residues and mixtures from the ship to a storage or treatment system;

(2) Tank barges, railroad cars, tank trucks, or other mobile facilities;

(3) Containers or other receptacles that are used as temporary storage for garbage; or

(4) Any combination of fixed and mobile facilities. "Recreational boating facility" means a facility that is capable of providing wharfage or other services for 10 or more recreational vessels. It includes, but is not limited to, marinas, boatyards, and yacht clubs, but does not include a place or facility containing only an unattended launching ramp.

* * * * *

"Terminal" means an onshore facility or an offshore structure located in the navigable waters of the United States or subject to the jurisdiction of the United States and used, or intended to be used, as a port or facility for the transfer or other handling of a harmful substance.

Note: The Coast Guard interprets commercial fishing facilities, recreational boating facilities, and mineral and oil industry shorebases to be terminals for the purposes of Annex V of MARPOL 73/78, since these facilities normally provide wharfage and other services, including garbage handling, for ships. "The Act" means the Act to Prevent Pollution from Ships, as amended, (33 U.S.C. 1901–1911).

27. Section 158.130 is revised to read as follows:

§ 158.130 Delegations.

Each COTP is delegated the authority to—

(a) Conduct inspections at ports and terminals required to have reception facilities under this part;

(b) Issue Certificates of Adequacy;

(c) Grant waivers under § 158.150;

(d) Designate ports; and

(e) Deny entry of ships to any port or terminal, except when a ship is entering under force majeure, that does not have—

(1) A Certificate of Adequacy if required under § 158.135; or

(2) Reception facilities for garbage required under Subpart D of this part.

28. Section 158.133 is added to read as follows:

§ 158.133 Which ports and terminals must provide reception facilities?

(a) A port or terminal which receives oceangoing tankers, or any other oceangoing ship of 400 gross tons or more, carrying residues and mixtures containing oil, must have a reception facility which meets Subpart B of this part.

(b) A port or terminal which receives oceangoing ships carrying NLSs must have a reception facility which meets Subpart C of this part.

(c) All ports and terminals under the jurisdiction of the United States, including commercial fishing facilities, mineral and oil shorebases, and recreational boating facilities, must have a reception facility which meets Subpart D of this part.

29. Section 158.135 is added to read as follows:

§ 158.135 Which ports and terminals must have Certificates of Adequacy?

To continue to receive ships, a port or terminal must hold one or more Certificates of Adequacy to show compliance with—

(a) Subpart B of this part if it receives oceangoing tankers, or any other oceangoing ship of 400 gross tons or more, carrying residues and mixtures containing oil.

(b) Subpart C of this part if it receives oceangoing ships carrying NLSs.

(c) Subpart D of this part if it receives—

(1) The ships under paragraph (a) or (b) of this section; or

(2) Fishing vessels which offload more than 500,000 pounds of commercial fishery products from all ships during a calendar year.

30. Section 158.140 is revised to read as follows:

§ 158.140 Applying for a Certificate of Adequacy.

(a) To continue to receive ships at a port or terminal required by § 158.135 to have a Certificate of Adequacy for its reception facilities, the person in charge must apply to the Coast Guard for a certificate as follows:

(1) Applicants for a Certificate of Adequacy required by § 158.135(a) or (b) must apply to the COTP of the Zone in which the port or terminal is located using Form A or Form B, respectively.

(2) Before August 28, 1989, an applicant for a Certificate of Adequacy required by § 158.135(c) must apply on Form C to: Commandant (G–MPS–1), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, Attention: Annex V Reception Facility Desk. On or after August 28, 1989 applicants must apply on Form C to the COTP of the Zone in which the port or terminal is located.

(b) Applications for Certificates of Adequacy, Forms A, B, or C, may be obtained from the local Coast Guard COTP.

31. Section 158.160 is revised to read as follows:

§ 158.160 Issuance and termination of a Certificate of Adequacy.

(a) After reviewing an application made under § 158.140(a)(1), the COTP determines by inspection the following:

(1) When the application is made on Form A, whether or not the reception facility meets Subpart B of this part.

(2) When the application is made on Form B, whether or not the reception facility and the port, or the reception facility and the terminal, meet Subpart C of this part.

Note: If in the instruction manual required by § 158.330(b) there is a certification by a registered professional engineer licensed by a state or the District of Columbia that the backpressure requirements under § 158.330(a) are met, the COTP determines whether or not to accept this finding.

(b) After the inspections under paragraph (a) are conducted, and after consulting with the Administrator of the Environmental Protection Agency (EPA) or his or her designee, the COTP.

(1) Issues a Certificate of Adequacy to the person in charge for the port or terminal; or

(2) Denies the application and informs the person in charge in writing of the reasons for the denial.

(c) After reviewing an application made under § 158.140(a)(2), Commandant (G-MPS-1) or the COTP——

(1) Issues a Certificate of Adequacy to the person in charge for the port or terminal; or

(2) Denies the application and informs the person in charge in writing of the reasons for the denial.

(d) In order to remain valid, the Certificate of Adequacy must have attached to it any waivers that are granted under § 158.150 when the Certificate of Adequacy is issued.

(e) Each Certificate of Adequacy remains valid until—

(1) Suspended;

(2) Revoked; or

(3) This part no longer applies to the port or terminal.

32. Section 158.163(b)(2) is revised to read as follows:

§ 158.163 Reception facility operations.

* * * * *

(b) * * *

(2) Available for inspection by the COTP and the master, operator, person who is in charge of a ship, or agent for a ship.

* * * * *

33. Section 158.165(b) is revised to read as follows:

§ 158.165 Certificate of Adequacy: Change of information.

* * * * *

(b) The person in charge shall notify the COTP in writing within 30 days after any information required in the following is changed:

(1) Form A, sections 1, 3B, 3C, 3E, 3F, 3I, or 3J.

(2) Form B, sections 1, 3, 4, 5B, 5D, 5E, 5F or 5G.

(3) Form C, sections A1, B1, B2, or C4.

* * * * *

34. Section 158.167 is added to read as follows:

§ 158.167 Reporting inadequate reception facilities.

Any person may report to the local Coast Guard COTP that reception facilities required by these regulations or MARPOL 73/78 are inadequate. Reports of inadequate reception facilities may be made orally, in writing or by telephone.

Subpart E—[Redesignated From Subpart D]

35. Subpart D of Part 158 is redesignated as Subpart E.

§ 158.500 [Redesignated from § 158.400]

36. Section 158.400 is redesignated § 158.500.

§ 158.520 [Redesignated from § 158.420]

37. Section 158.420 is redesignated § 158.520.

38. Part 158 is amended by adding a new Subpart D to read as follows:

Subpart D—Criteria for Adequacy of Reception Facilities: Garbage

Sec.

158.400 Purpose.
158.410 Reception facilities: General.
158.420 Reception facilities: Capacity and exceptions.

158.400 Purpose.

The purpose of this subpart is to supply the criteria for determining the adequacy of reception facilities for garbage at ports and terminals that receive ships and to comply with the Act and Regulation 7 of Annex V to MARPOL 73/78.

§ 158.410 Reception facilities: General.

(a) Except as allowed in paragraph (b) of this section, the person in charge of a port or terminal shall ensure that each port or terminal's reception facility—

(1) Is capable after August 28, 1989 of receiving APHIS regulated garbage at a port or terminal no later than 24 hours after notice under § 151.65 of this chapter is given to the port or terminal, unless it only receives ships that—

(i) Operate exclusively within the navigable waters of the United States;

(ii) Operate exclusively between ports or terminals in the continental United States; or

(iii) Operate exclusively between continental United States ports or terminals and Canadian ports or terminals.

(2) Is capable of receiving medical wastes or hazardous wastes defined in 40 CFR 261.3, unless the port or terminal operator can provide to the master, operator, or person in charge of a ship, a list of persons authorized by federal, state, or local law or regulation to transport and treat such wastes;

(3) Is arranged so that it does not interfere with port or terminal operations;

(4) Is conveniently located so that mariners unfamiliar with the port or terminal can find it easily and so that it's use will not be discouraged;

(5) Is situated so that garbage from ships which has been placed in it cannot readily enter the water; and

(6) Holds each federal, state, and local permit or license required by environmental and public health laws and regulations concerning garbage handling.

(b) A reception facility for a ship repair yard does not have to meet the requirements of paragraph (a)(1) of this section if it is capable of handling the transfer of garbage from a ship before the ship departs from the yard.

Note: The U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) requires victual wastes or garbage contaminated by victual wastes, except from vessels that operate only between the continental United States and Canadian ports, to be incinerated or sterilized in accordance with their regulations in 7 CFR 330.400 and 9 CFR 94.5.

§ 158.420 Reception facilities: Capacity and exceptions.

Each day a port or terminal is in operation, the person in charge of a port or terminal must provide, or ensure the availability of, a reception facility that is capable of receiving all garbage that the master or person who is in charge of a ship desires to discharge, except—

(a) Large quantities of spoiled or damaged cargoes not usually discharged by a ship; or

(b) Garbage from ships not having commercial transactions with that port or terminal.

TITLE 46—[AMENDED]

Chapter I of Title 46 Code of Federal Regulations is amended as follows:

PART 25—[AMENDED]

39. The authority citation to Part 25 is revised to read as follows:

Authority: 33 U.S.C. 1903(b), 46 U.S.C. 3306, 4104, and 4302; 49 CFR 1.46.

40. A new Subpart 25.50 is added to Part 25 to read as follows:

Subpart 25.50—Garbage Retention

§ 25.50–1 Criteria.

Each uninspected vessel must retain all garbage generated on board the vessel for later shoreside disposal, unless it is discharged at sea as specified under 33 CFR Part 151.

Note: The Act to Prevent Pollution from Ships, as amended (33 U.S.C. 1901–1911), prohibits the discharge of all plastics from U.S. vessels and limits discharges of other types of garbage in these waters. See 33 CFR 151.05 for definitions of "plastic" and "garbage."

Dated: February 9, 1989.

P.A. Yost,

Admiral, Commandant, U.S. Coast Guard.

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Friday
April 28, 1989

Part III

Environmental Protection Agency

40 CFR Part 421

Nonferrous Metals Manufacturing Point Source Category; Effluent Limitations Guidelines, Pretreatment Standards and New Source Performance Standards; Proposed Regulation

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 421

[OW-FRL-3774-1]

Nonferrous Metals Manufacturing Point Source Category; Effluent Limitations Guidelines, Pretreatment Standards and New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed regulation.

SUMMARY: EPA is proposing amendments to the regulation which limits effluent discharges to waters of the United States and the introduction of pollutants into publicly owned treatment works by existing and new sources that conduct metal manufacturing operations in the metallurgical acid plants subcategory (Subpart I), primary beryllium subcategory (Subpart O), primary molybdenum subcategory (Subpart S), secondary molybdenum and vanadium subcategory (Subpart T), secondary precious metals subcategory (Subpart X), and secondary tungsten and cobalt subcategory (Subpart AC). EPA agreed to propose these amendments in settlement agreements with AMAX Inc., Brush Wellman Inc., Engelhard Corporation, GTE Products Corp., Gulf Chemical and Metallurgical Company, and Johnson Matthey, Inc. The agreements settle disputes between these companies and EPA that were the subject of petitions for review of the final nonferrous metals manufacturing regulation promulgated by EPA on September 20, 1985 (50 FR 38276).

The proposed amendments include: (1) Certain modifications of the effluent limitations for "best practicable technology" (BPT), "best available technology economically achievable" (BAT), and "new source performance standards" (NSPS) for direct dischargers; and (2) certain modifications to the pretreatment standards for new and existing indirect dischargers (PSNS and PSES). After considering comments received in response to this proposal, EPA will promulgate a final rule.

DATE: Comments on this proposal must be submitted on or before May 30, 1989.

ADDRESS: Send comments to Industrial Technology Division (WH-552), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Attention: ITD Docket Clerk, Proposed Nonferrous Metals Manufacturing (WH-552).

The supporting information and all comments on this proposal will be available for inspection and copying at the EPA Public Information Reference Unit, Room 2404 (Rear) (EPA Library) 501 M Street SW., Washington, DC. The EPA information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Questions regarding this notice may be addressed to Mr. Ernst P. Hall at (202) 382-7126.

SUPPLEMENTARY INFORMATION: Organization of this notice:

I. Legal authority
II. Background
  A. Rulemaking and Settlement Agreements
  B. Effect of the Settlement Agreements for Nonferrous Metals Forming Regulation
III. Proposed Amendments to the Nonferrous Metals Manufacturing Phase II Regulation
IV. Environmental Impact of the Proposed Amendments to the Nonferrous Metals Manufacturing Regulation
V. Economic Impact of the Proposed Amendments
VI. Solicitation of Comments
VII. Executive Order 12291
VIII. Regulatory Flexibility Analysis
IX. OMB Review
X. List of Subjects in 40 CFR Part 421

I. Legal Authority

The amendments described in this notice are proposed under authority of sections 301, 304, 306, 307, 308, and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1251 et seq., as amended by the Clean Water Act of 1977, Pub. L. 95-217). These amendments are also being proposed in response to the Settlement Agreements in *AMAX Inc. v. U.S. Environmental Protection Agency, Brush Wellman Inc., v. U.S. Environmental Protection Agency, Engelhard Corporation v. U.S. Environmental Protection Agency, GTE Products Corp. v. U.S. Environmental Protection Agency, Gulf Chemical and Metallurgical Co. v. U.S. Environmental Protection Agency,* and *Johnson Matthey, Inc. v. U.S. Environmental Protection Agency,* Nos. 85-3560, 86-3072, 85-3694, 85-3625, 86-3039 and 85-3726 respectively (3rd Cir. 1986).

II. Background

A. Rulemaking and Settlement Agreements

On March 8, 1984, EPA promulgated Best Practicable Control Technology Currently Available (BPT) and Best Available Technology Economically Achievable (BAT) effluent limitations guidelines and new source performance standards (NSPS), pretreatment standards for existing sources (PSES) and pretreatment standards for new sources (PSNS) for the twelve subcategories in the nonferrous metals manufacturing (NFM) point source category (49 FR 8714). At that time the Agency recognized that we would regulate additional subcategories in the nonferrous metals manufacturing subcategory at some future date. On June 27, 1984 (49 *FR* 26352) EPA proposed an amendment to establish Best Practicable Control Technology Currently Available (BPT) and Best Available Technology Economically Achievable (BAT) effluent limitations guidelines, New Source Performance Standards (NSPS), Pretreatment Standards for Existing Sources (PSES), and Pretreatment Standards for New Sources (PSNS) for some twenty-five additional subcategories in the nonferrous metals manufacturing point source category. The final rule amending the nonferrous metals manufacturing industry point source category (i.e., NFMII) was promulgated on September 20, 1985 (50 FR 38276) and established effluent limitations guidelines and standards to control specific toxic, nonconventional and conventional pollutants for twenty new subcategories in the nonferrous metals manufacturing point souce category. Only six of these subcategories (the metallurgical acid plants subcategory (Subpart I), the primary beryllium subcategory (Subpart O), the primary molybdenum and rehenium subcategory (Subpart S), the secondary molybdenum and vandium subcategory (Subpart T), the secondary precious metals subcategory (Subpart X), and the secondary tungsten and cobalt subcategory (Subpart AC)) are affected by today's proposal. The remaining subcategories are unchanged by today's proposal.

B. Effect of the Settlement Agreements for Nonferrous Metals Manufacturing

After promulgation of the amendments to the NFM regulation (September 20, 1985), petitions for judicial review of the final regulation were filed in various United States Courts of Appeals by AMAX Inc., Brush Wellman Inc., Engelhard Corporation, GTE Products Corp., Gulf Chemical and Metallurgical Co., Johnson Matthey, Inc., Remacor Inc., Teledyne WaChang Albany Inc., Oregon Metallurgical Inc. and Tex Tin. On April 9, 1986, these petitions were consolidated in the United States Court of Appeals for the Third Circuit for judicial review. The Agency held extensive negotiations with the petitioners on issues relating to the effluent limitations guidelines and standards for the nonferrous metals manufacturing point source categories.

As a result of these negotiations, three petitioners, Teledyne WaChang Albany Inc., Oregon Metallurgical Inc., and Tex Tin withdrew their petitions for review. The Agency took a voluntary remand in response to Remacor's petition. The remaining petitioners entered into comprehensive settlement agreements with the Agency resolving all issues raised in the litigation. In these agreements EPA agreed to propose amendments to the NFM regulation and to solicit comments regarding these proposed amendments. EPA also agreed to propose specific preamble language. The petitioners agreed to move to dismiss their petitions for judicial review within 30 days from the date any final amendments and preamble are published by the EPA provided each provision of the final NFM regulation is substantially the same as that called for by the settlement agreements. Copies of the settlement agreements were promptly sent to EPA's Regional offices and State NPDES permit issuing authorities.

As part of the settlement agreements, EPA and the petitioners jointly requested the United States Court of Appeals for the Third Circuit to stay the effectiveness of those portions of 40 CFR Part 421 that EPA is proposing to amend, pending final action by EPA on the proposed amendments. On June 2, 1987 and June 23, 1987, the Court entered orders staying the following sections of the regulation promulgated on September 20, 1985:

Subpart I—Metallurgical Acid Plant Subcategory

40 CFR Part 421.93—The molybdenum limitations only.
40 CFR Part 421.94—The molybdenum limitations only.
40 CFR Part 421.96—The molybdenum limitations only.

Subpart O—Primary Beryllium Subcategory

40 CFR Part 421.152(d)—All limitations except pH.
40 CFR Part 421.152(f)—Fluoride limitations only.
40 CFR Part 421.153(d)—All limitations.
40 CFR Part 421.153(f)—Fluoride limitations only.
40 CFR Part 421.154(d)—All limitations except pH.
40 CFR Part 421.154(f)—Fluoride limitations only.

Subpart S—Primary Molybdenum and Rhenium Subcategory

40 CFR Part 421.212(a)(e)—The molybdenum limitations only.
40 CFR Part 421.213(a)(e)—The molybdenum limitations only.
40 CFR Part 421.214(a)(e)—The molybdenum limitations only.
40 CFR Part 421.216(a)(e)—The molybdenum limitations only.

Subpart T—Secondary Molybdenum and Vanadium Subcategory

40 CFR Part 421.222(a)(b)—All pollutants except for the pH limitation.
40 CFR Part 421.223(a)(b)—All pollutants.
40 CFR Part 421.224(a)(b)—All pollutants except for the pH limitation.
40 CFR Part 421.226(a)(b)—All pollutants.

Subpart X—Secondary Precious Metals Subcategory

40 CFR Part 421.262 (a)–(i); (k)–(m)—All limitations for gold, platinum and palladium.
40 CFR Part 421.262(j)—All limitations except pH.
40 CFR Part 421.263 (a)–(i); (k)–(m)—All limitations for gold, platinum and palladium.
40 CFR Part 421.263(j)—All limitations.
40 CFR Part 421.264 ()–(i); (k)–(m)—All limitations.
40 CFR Part 421.264(j)—All limitations except pH.
40 CFR Part 421.265 (a)–(i); (k)–(m)—All limitations for gold, platinum and palladium.
40 CFR Part 421.265(j)—All limitations.
40 CFR Part 421.266 (a)–(i); (k)–(m)—All limitations for gold, platinum and palladium.
40 CFR Part 421.266(j)—All limitations.

Subpart AC—Secondary Tungsten and Cobalt Subcategory

40 CFR Part 421.312 (a)–(k)—The Cobalt limitations only.
40 CFR Part 421.313 (a)–(k)—The Cobalt limitations only.
40 CFR Part 421.314 (a)–(k)—The Cobalt limitations only.
40 CFR Part 421.315 (a)–(k)—The Cobalt limitations only.
40 CFR Part 421.316 (a)–(k)—The Cobalt limitations only.

EPA is today proposing to amend these sections in accord with the settlement agreements. All limitations and standards in the final nonferrous metals manufacturing regulation that are not specifically listed in this proposal remain in effect. EPA is not today proposing to delete or modify any effluent limitations guidelines or standards not either stayed or remanded.

III. Proposed Amendments to the Nonferrous Metals Manufacturing Phase II Regulation

In the Settlement Agreements, EPA agreed to propose specific changes to the NFM regulation for the following subcategories: Subpart I—Metallurgical Acid Plants Subcategory, Subpart O—Primary Beryllium Subcategory, Subpart S—Primary Molybdenum and Rhenium Subcategory, Subpart T—Secondary Molybdenum and Vanadium Subcategory, Subpart X—Secondary Precious Metals Subcategory, and Subpart AC—Secondary Tungsten and Cobalt Subcategory. These proposed changes are discussed below.

(A) Primary Beryllium Subcategory (Subpart O)

1. Treatment Effectiveness Concentration for Fluoride Removal

EPA is proposing amendments to the BPT and BAT limitations and NSPS, PSES and PSNS for fluoride in the beryllium hydroxide supernatant building block when fluoride is treated under a specific set of circumstances. EPA promulgated effluent limitations and standards based on fluoride removal using lime, settle and filter model technology. In the promulgated rule, these limitations and standards applied regardless of the composition of the influent being treated (50 FR 38346, September 20, 1985). The petitioners indicated that although they could meet these values for most of their streams, the wastestream from the beryllium hydroxide supernatant process step could not be treated to this level because it contains unusually high concentrations of total dissolved solids (TDS). They stated that TDS at such high concentrations could interfere with the model technology performance by significantly inhibiting the precipitation of fluoride.

EPA has reconsidered the promulgated fluoride limit in the beryllium hydroxide supernatant wastestream which contains reported levels of TDS as high as 200,000 mg/1. Upon further review and analysis of the available data bearing on fluoride treatment effectiveness at such high TDS levels, the Agency has concluded the long term average value of 14.6 mg/l used as the basis for the promulgated limitations is inappropriate for this wastewater stream. Therefore, EPA is proposing to establish a mass discharge allowance for wastewater from the beryllium hydroxide supernatant building block based upon a long term average fluoride treatment effectiveness concentration value of 170.0 mg/l. This revised treatment effectiveness value for fluoride is based upon data from an EPA treatability study of cathode reprocessing wastewater in the primary aluminum subcategory. The reprocessing wastewater there had TDS and fluoride levels comparable to the influent values found for the beryllium hydroxide supernatant process regulated in this subcategory. Therefore, we are transferring the lime settle and filter treatment performance for the beryllium hydroxide supernatant building block from the primary aluminum subcategory.

The only building block in the primary beryllium subcategory that contains these high TDS and fluoride levels affecting the treatment effectiveness of fluoride is beryllium hydroxide supernatant. Thus, today's proposal is limited to revising the fluoride limit in that building block.

2. Regulatory Flows

EPA is proposing to increase the mass pollutant discharge limits for the beryllium hydroxide filtrate building block. Based on more detailed information, EPA has determined that the regulatory flow allowance used as the basis for developing the discharge limit should be revised from 52,600 to 136,000 l/kkg. The pollutants regulated in this building block and the associated treatment effectiveness values for those pollutants will remain the same as originally promulgated. Additionally, the Agency is clarifying that the production of beryllium hydroxide is additive to the production of beryllium carbonate and both the beryllium carbonate and beryllium hydroxide allowance are applied when beryllium hydroxide is produced.

3. New Building Blocks

EPA is also proposing to add new building blocks for the following six processes in the primary beryllium subcategory: beryl ore gangue dewatering, bertrandite ore gangue dewatering, beryl ore processing (comprises quench pit, scrubber and washdown), AIS area wastewater, bertrandite ore leaching scrubber, and bertrandite ore counter current decantation scrubber. These building blocks were not included in the promulgated rule because the Agency anticipated they would be addressed through permit limits developed on the basis of best professional judgment. As part of the settlement negotiations, however, petitioner requested that EPA establish national regulations for these processes. Today's proposal would regulate the same pollutants as regulated in other primary beryllium building blocks and rely on the same end of pipe wastewater treatment technology. The flow basis for this proposal is as follows: 1,043 l/kkg for beryl ore gangue dewatering; 2,665 l/kkg for bertrandite ore gangue dewatering; 7,303 l/kkg for beryl ore processing; 468,000 l/kkg for aluminum iron sludge (AIS) area wastewater; 1,511 l/kkg for bertrandite ore leaching scrubber; and 101 l/kkg for bertrandite ore counter current decantation scrubber.

4. Monitoring Requirements

EPA has reviewed the processes employed in generating beryllium hydroxide and carbonate and finds that certain building blocks of the manufacturing processes do not use cyanide. If a plant uses these noncyanide processes and does not use cyanide elsewhere in the facility, the requirement for cyanide monitoring may appropriately be reduced. Accordingly, EPA is proposing to allow yearly confirmatory analysis in any beryllium manufacturing plant which discharges to a navigable water or a POTW and which certifies that it does not use or generate cyanide at the facility.

(B) Primary Molybdenum and Rhenium Subcategory (Subpart S) and Metallurgical Acid Plants Subcategory (Subpart I)

1. Treatment Effectiveness Concentration for Molybdenum Removal

EPA is proposing amendments to the BAT limitations, NSPS and PSNS for the metallurgical acid plant subcategory, and BPT and BAT limitations, and NSPS, and PSNS for the primary molybdenum and rhenium subcategories. EPA promulgated effluent limitations and standards based on molybdenum removal using iron coprecipitation model technology. The petitioners have raised technical concerns about the operating data upon which the model technology is based and the ability of that technology to achieve the molybdenum limitations promulgated for these two subcategories.

As part of the settlement, EPA is proposing to suspend the molybdenum limitations and standards for the metallurgical acid plant and the primary molybdenum and rhenium subcategories. Petitioners have agreed, as part of the settlement agreement, to install the model technology (full-scale iron coprecipitation) and beginning on April 30, 1988, provide the Agency with one year of operating data (daily observations for the first three months and weekly observations for the remaining nine months). This information will be provided to the Agency on a monthly basis. EPA has agreed to consider this data in proposing new molybdenum limits for these two subcategories.

Due to the technical concerns raised by petitioners and the absence of specific iron coprecipitation data for this particular subcategory, EPA is unable to propose alternative treatment effectiveness concentrations for molybdenum for the metallurgical acid plant and the primary molybdenum and rhenium subcategories at this time. Petitioners expressed their belief to the Agency that, pending installation of the full-scale model technology, they could achieve a one-day maximum of 60 mg/l and a monthly average of 30 mg/l based on data from the equivalent of a properly operated lime settle and filter system. Based on these representations, any BPJ limitation should not be less stringent than this daily maximum and monthly average.

(C) Secondary Molybdenum and Vanadium Subcategory (Subpart T)

1. Regulatory Flows for the Pure Grade Molybdenum Building Block

EPA is today proposing to establish BPT and BAT limitations, NSPS, and PSNS for a new pure grade molybdenum building block for the secondary molybdenum and vanadium subcategory. This building block applies to the production of pure grade molybdenum from commercial grade molybdenum and is based on a production normalized flow of 23,280 liters per kkg of pure molybdenum produced. This building block was not included in the promulgated rule because the wastewater from this operation was included as part of the flow from the molybdenum filtrate solvent extraction building block. Petitioner has indicated that the pure grade molybdenum process and the molybdenum solvent extraction operations are not directly linked as the Agency had believed. Today's action, therefore, proposes to establish a new building block for the pure grade molybdenum process. As noted below, the regulatory flow for the molybdenum solvent extraction raffinate will be adjusted accordingly.

2. Change in Production Normalized Flows ("PNF")

EPA is proposing to modify the flow allowance for the molybdenum filtrate solvent extraction building block from 60,548 to 58,239 liters per kkg of technical grade and pure grade molybdenum and vanadium produced. This adjustment reflects the establishment of a new pure grade molybdenum building block as discussed above. The Agency is also proposing to modify the flow allowance for the leach tailings building block from 12,540 to 19,511 liters per kkg technical grade and pure grade of molybdenum and vanadium produced. This second change reflects a recalculation of the average flows for this building block and the incorporation of new data.

3. Indicator Pollutants

In the final promulgated rule, the Agency indicated that molybdenum was considered to be an indicator pollutant for operation and removal efficiency of the model technology treatment chain as a whole (50 FR 38306, September 20, 1985). In response to concerns raised by petitioners, EPA has reviewed and reconsidered its earlier preamble statement on the status of molybdenum as an indicator pollutant. Based on this reconsideration, the EPA is clarifying today that the Agency does not consider molybdenum to be an indicator pollutant. Molybdenum is being regulated as a nonconventional pollutant because it is a principal metal produced in this subcategory.

4. Treatment Effectiveness Concentration for Molybdenum Removal

EPA is proposing amendments to the BPT and BAT limitations, NSPS, and PSNS for the secondary molybdenum and vanadium subcategory. EPA promulgated effluent limitations and standards based on iron coprecipitation as the model technology for molybdenum removal. The petitioners have raised technical concerns about the operating data upon which the model technology is based and the ability of that technology to achieve the molybdenum limitations promulgated for the secondary molybdenum and vanadium subcategory.

As part of the settlement, EPA is proposing to suspend the molybdenum limitations and standards for this subcategory to allow an opportunity to develop and gather additional data to address the technical concerns raised by petitioners in the secondary molybdenum and vanadium subcategory as well as in the metallurgical acid plant and the primary molybdenum and rhenium subcategories.

Due to the absence of specific iron coprecipitation data for this particular subcategory, EPA is unable to propose alternative treatment effectiveness concentrations for molybdenum for the secondary molybdenum and vanadium subcategory at this time. Petitioner does not have the model technology in place. However, it does have a solvent extraction system in operation which is capable of achieving molybdenum removal. Petitioner has expressed its belief to the Agency and supplied three months of chemical analysis data indicating that it can achieve a one-day maximum of 66.5 mg/l and a monthly average of 30 mg/l based on operating data from the existing solvent extraction system. Based on these representations, any BPJ limitation should not be less stringent than this daily maximum and monthly average.

(D) Secondary Precious Metals Subcategory (Subpart X)

1. Regulatory Flows for the Preliminary Treatment ("PT") Building Block

EPA is today proposing to establish BPT and BAT limitations and NSPS, PSES, and PSNS for a new preliminary treatment (PT) building block for the secondary precious metals subcategory. The PT building block applies to the pretreatment of non-combustible, nonmetallic-based basis materials containing precious metals and is based on a production normalized flow of 50 liters per troy ounce of precious metals produced. This building block was not included in the promulgated rule because the Agency believed that the Furnace Wet Air Pollution Control (FWAPC) building block accounted for the flows generated by the preparatory processing of basis materials required before these materials can be introduced into the main hydrometallurgical refining system. Petitioners have indicated that while the FWAPC building block applies to the preparatory processing of certain carbon-based basis material through combustion in a furnace, it does not reflect the raw material processing steps required for non-combustible, non-metallic-based basis materials. Today's proposal addresses this aspect of the secondary precious metals manufacturing process and regulates the same pollutants as are regulated in the FWAPC building block. The flow basis for this proposal is based upon information that has been claimed confidential.

This proposal provides that the production normalizing parameter of the PT building block is troy ounces of precious metals produced. The production basis for assigning appropriate flows for this building block may also be calculated as the total of precious metals input into the building block less the amount of precious metals sent to offsite refiners. The Agency expects that either calculation will arrive at essentially the same production value.

2. Change in Production Normalized Flow ("PNF")

EPA is proposing to modify the flow allowance for the palladium precipitation and filtration building block from 3.5 to 6.0 liters per troy ounce of precious metals produced. This change reflects a recalculation of the average flows for this building block and the incorporation of new data.

3. Changes in Applicability

EPA is proposing to amend the applicability provisions of the refinery wet air pollution control (RWAPC) building block to provide separate flow allowances for RWAPC acid and alkaline scrubbers at facilities with both types of scrubbers in operation. The RWAPC building block as promulgated was based upon data from facilities which use alkaline scrubbers for this process. Petitioners have indicated that the RWAPC step in their facilities requires the use of an acid scrubber as well. Today's proposal would modify the promulgated regulation to reflect this information. The promulgated production normalized parameters and flows for this building block would remain unchanged.

In response to an issue raised by petitioners, EPA is also clarifying the Agency's intent that the spent plating solution (SPS) building block applies to gold bearing stripping solutions received by a facility from off-site.

In addition, the Agency is clarifying that it considers the wastewater flows associated with the recovery of molybdenum from a molybdenum precious metal alloy to be outside the scope of this subpart. This pre-precious metal processing step creates the precious metal bearing residue which is then introduced into the precious metal building block process. Flows from secondary molybdenum recovery are regulated under the appropriate subcategory.

4. Treatment Effectiveness Basis for Precious Metals Limitations

EPA is proposing to change the manner of regulating gold, platinum and palladium in the promulgated regulation from 0.1 mg/l (as the maximum for any day) for each of these pollutants to 0.3 mg/l for "combined metals" produced (as the maximum for any day). The term "combined metals" shall mean the sum of the measured amounts of gold, platinum and palladium. Petitioners have indicated that production is variable among these three precious metals depending in part upon whether high or low grade feed materials are used. Petitioners have also indicated concern about the analytical accuracy of certain chemical analysis procedures when used to detect these low levels of regulated precious metals. EPA's proposed change addresses both of these concerns. While the amount of any particular precious metal discharged may increase beyond 0.1 mg/liter, the total amount of precious metals allowed

to be discharged will not increase beyond 0.3 mg/liter.

(E) Secondary Tungsten and Cobalt Subcategory (Subpart AC)

1. Treatment Effectiveness Concentration for Cobalt Removal

EPA is proposing amendments to the BPT and BAT limitations and NSPS, PSES and PSNS for cobalt in the secondary tungsten and cobalt subcategory (tungsten-cobalt subcategory). EPA promulgated effluent limitations and standards based on cobalt removal using lime, settle and filter model technology. The treatment effectiveness value underlying these promulgated cobalt limits is based upon lime, settle and filter operating data from the porcelain enameling category. The petitioners indicated that the wastewater streams from the tungsten-cobalt subcategory cannot be treated to the same level as porcelain enameling because they contain significantly higher concentrations of complexed cobalt than were found in the porcelain enameling category.

Upon further review and analysis of the available data bearing on cobalt treatment effectiveness at the concentration levels and conditions found in the effluent from the tungsten-cobalt subcategory, the Agency has concluded that the long term average value of 0.03 mg/l used as the basis for the promulgated limitations is inappropriate for these wastewater streams. Therefore, EPA is proposing to establish a mass discharge allowance for wastewater from the tungsten-cobalt subcategory based upon a long term average cobalt treatment effectiveness value of 0.667 mg/l. The one day maximum for BAT from this long term average is 2.76 mg/l and the monthly average for BAT is 1.21 mg/l. The proposed treatment effectiveness concentration is based upon 30 days of lime settle and centrifuge data with associated TSS values supplied by the petitioner based upon the operation of a secondary tungsten and cobalt facility. The revised BPT for this pollutant is based on the assumption that lime and settlement treatment technology will be 30 percent less effective than the lime settle and centrifuge data.

(F) Clarifications

1. In addition to the changes to the regulatory sections described above, the Agency is clarifying the intent of Response No. 11 (Permit Writer Guidance) in Section IX of the preamble to the final regulation (50 FR 38325) by adding the following paragraph:

In developing site specific mass limits related to non-scope flows for nonferrous metals manufacturing for inclusion in a NPDES permit, the permit writer is encouraged to apply the treatment effectiveness concentrations used as the basis for establishing this regulation. However, the permit writer is not necessarily bound to use these concentrations as the basis for the mass limits and he may use other appropriate treatment effectiveness concentrations if the nature of the non-scope flows requires special consideration.

IV. Environmental Impact of the Proposed Amendments to the Nonferrous Metals Forming Regulation

Because of the limited nature of the proposed amendments described above only about 13 facilities are expected to be affected by these amendments. The nature of most of these changes is environmentally neutral because they neither substantially increase nor decrease the amounts of pollutants allowed to be discharged to the environment. For example, the suspension of the molybdenum limits is expected to be for only a short period while confirmative data is collected on the treatment effectiveness for this pollutant. Similarly, the division of one building block into two, the establishment of building blocks for operations that were originally expected to be regulated at the permit level and the summing of certain nonconventional metals into a single value are expected to cause no substantial change in the amount of pollutants allowed to be discharged to the environment. These amendments will allow the discharge of additional pollutants where the treatment effectiveness for a specific pollutant was amended (increased) or where the flow basis for the limitations and standards was revised upward. These changes are projected to allow the discharge of an additional 71.33 kg/yr (156.9 lbs/yr) of toxic pollutants and 2736.5 kg/yr (6020.3 lb/yr) of nonconventional pollutants. These quantities of pollutants are small compared to the estimated 340,800 kg/yr toxic pollutant removed by application of the (1985) regulation.

V. Economic Impact of the Proposed Amendments

The proposed amendments do not alter the model technologies for complying with the nonferrous metals forming regulation. The Agency considered the economic impact of the regulation when the final regulation was promulgated (see 50 FR 38276). EPA concluded at that time that the regulation was economically achievable. Since today's proposed amendments are based on the same model technologies, EPA's conclusions as to economic impact and achievability are unaffected.

VI. Solicitation of Comments

EPA invites public participation in this rulemaking and requests comments on the proposed amendments discussed or set out in this notice. The Agency asks that comments be as specific as possible and that suggested revisions or corrections be supported by data.

VII. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. Major rules are defined as rules that impose an annual cost to the economy of $100 million or more, or meet other economic criteria. This proposed regulation, which modestly reduces regulatory requirements, is not a major rule.

VIII. Regulatory Flexibility Analysis

Pub. L. 96–354 requires that EPA prepare a Regulatory Flexibility Analysis for regulations that have a significant impact on a substantial number of small entities. In the preamble to the August 23, 1985, final nonferrous metals forming regulation, the Agency concluded that there would not be a significant impact on a substantial number of small entities (49 *FR* 8775). For that reason, the Agency determined that a formal regulatory flexibility analysis was not required. That conclusion is equally applicable to these proposed amendments, since the amendments slightly reduce the regulatory requirements.

IX. OMB Review

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291. Any comments from OMB to EPA and any EPA response to those comments are available for public inspection at Room M2404, U.S. EPA, 401 M Street SW., Washington, DC 20460 from 9:00 a.m. to 4:00 p.m. Monday through Friday, excluding Federal holidays.

List of Subjects in 40 CFR Part 421

Metals, Nonferrous metals manufacturing, Water pollution control, Waste treatment and disposal.

Dated: March 24, 1989.

William K. Reilly,

Administrator.

For the reasons stated above, EPA proposes to amend 40 CFR Part 421 as follows:

PART 421—NONFERROUS METALS MANUFACTURING POINT SOURCE CATEGORY

1. The authority citation for Part 421 continues to read as follows:

Authority: Secs. 301, 304 (b), (c), (e), and (g), 306 (b) and (c), 307 (b) and (c), 308, and 501 of (the Federal Water Pollution Control Act, as amended (the "Act") 33 U.S.C. 1251 1311, 1314 (b), (c), (e), and (g), 1316 (b) and (c), 1317 (b) and (c), and 1361; 86 Stat. 816, Pub. L. 92-500; 91 Stat. 1567, Pub. L. 95-217.

2. 40 CFR 421.3 is amended by adding new paragraph (b) to read as follows:

§ 421.3 Monitoring and reporting requirements.

* * * * *

(b) Periodic analyses for cyanide are not required for a facility in the primary beryllium subcategory (Subpart 0) when both of the following conditions are met:

(1) The first wastewater sample taken in each calendar year has been analyzed and found to contain less than 0.07 mg/l cyanide.

(2) The owner or operator of the primary beryllium manufacturing facility certifies in writing to the POTW authority or permit issuing authority that cyanide is neither generated nor used in the beryllium manufacturing process employed at that facility.

3. 40 CFR Part 421.93 is amended by revising the entry for molybdenum to read as follows:

§ 421.93 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

* * * * *

SUBPART I—METALLURGICAL ACID PLANT—BAT EFFLUENT LIMITATIONS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Molybdenum [1]	[Reserved]	[Reserved]
* * * * *		

[1] For Molybdenum acid plants only.

4. 40 CFR Part 421.94 is amended by revising the entry for molybdenum to read as follows:

§ 421.94 Standards of performance for new sources.

* * * * *

SUBPART I—METALLURGICAL ACID PLANT—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Molybdenum [1]	[Reserved]	[Reserved]
* * * * *		

[1] For Molybdenum acid plants only.

5. 40 CFR Part 421.96 is amended by revising the entry for molybdenum to read as follows:

§ 421.96 Pretreatment standards for new sources.

* * * * *

SUBPART I—METALLURGICAL ACID PLANT—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Molybdenum [1]	[Reserved]	[Reserved]
* * * * *		

[1] For Molybdenum acid plants only.

§ 421.152 [Amended]

6. 40 CFR 421.152(d) is amended by revising all of the values for Beryllium, Chromium (Total), Copper, Cyanide (Total) Ammonia (as N), Fluoride, and Total Suspended Solids to read as follows.

* * * * *

(d) Beryllium Hydroxide Filtrate.

* * * * *

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	Mg/kg (pounds per million pounds) of beryllium hydroxide produced as beryllium	
Beryllium	167.280	74.800
Chromium (Total)	59.840	24.480
Copper	258.400	136.000
Cyanide (Total)	39.440	16.320
Ammonia (as N)	18,128.800	7,969.600
Fluoride	4,760.000	2,706.400
Total Suspended Solids	5,576.000	2,652.000
pH		

7. 40 CFR 421.152(f) is amended by revising the entry for fluoride to read as follows:

* * * * *

(f) Beryllium Hydroxide Supernatant.

BPT LIMITATIONS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Fluoride	160,308.0	71,201.0
* * * * *		

8. 40 CFR 421.152 is amended by adding paragraphs (k) through (p) to read as follows:

* * * * *

(k) Beryl Ore Gangue Dewatering.

BPT LIMITATIONS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	Mg/kg (pounds per million pounds) of beryl ore processed	
Beryllium	1.283	0.574
Chromium (Total)	0.459	0.188
Copper	1.982	1.043
Cyanide (Total)	0.302	0.125
Ammonia (as N)	139.032	61.120
Fluoride	36.505	20.756
Total Suspended Solids	42.763	20.339
pH	[1]	[1]

[1] Within the range of 7.5 go 10.0 at all times.

(l) Bertrandite Ore Gangue Dewatering.

BPT LIMITATIONS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	Mg/kg (pounds per million pounds) of bertrandite ore processed	
Beryllium	3.279	1.466
Chromium (Total)	1.173	0.480
Copper	5.064	2.665
Cyanide (Total)	0.773	0.320
Ammonia (as N)	355.245	156.169
Fluoride	93.275	53.034
Total Suspended Solids	109.265	51.968
pH	[1]	[1]

[1] Within the range of 7.5 to 10.0 at all times.

(m) Beryl Ore Processing.

BPT LIMITATIONS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	Mg/kg (pounds per million pounds) of beryl ore processed	
Beryllium	8.983	4.017
Chromium (Total)	3.213	1.315
Copper	13.876	7.303
Cyanide (Total)	2.118	0.876
Ammonia (as N)	973.490	427.956
fluoride	255.605	145.330
Total Suspended Solids	299.423	142.409
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(n) Aluminum Iron Sludge (AIS) Area Wastewater.

BPT LIMITATIONS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of total beryllium carbonate produced as beryllium	
Beryllium	575.640	257.400
Chromium (Total)	205.920	84.240
Copper	889.200	468.000
Cyanide (Total)	135.720	56.160
Ammonia (as N)	62384.400	27424.800
Fluoride	16380.000	9313.200
Total Suspended Solids	19188.000	9126.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(o) Bertrandite Ore Leaching Scrubber.

BPT LIMITATIONS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg of bertrandite ore processed	
Beryllium	1.859	0.831
Chromium (Total)	0.665	0.272
Copper	2.871	1.511
Cyanide (Total)	0.438	0.181
Ammonia (as N)	201.416	88.545
Fluoride	52.885	30.069
Total Suspended Solids	61.951	29.465
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(p) Bertrandite Ore Countercurrent and Decantation (CCD) Scrubber.

BPT LIMITATIONS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg of bertrandite ore processed	
Beryllium	0.124	0.056
Chromium (Total)	0.044	0.018
Copper	0.192	0.101
Cyanide (Total)	0.029	0.012
Ammonia (as N)	13.463	5.919
Fluoride	3.535	2.010
Total Suspended Solids	4.141	1.970
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

§ 421.153 [Amended]

9. 40 CFR 421.153(d) is amended by revising paragraph (d) to read as follows:

* * * * *

(d) Beryllium Hydroxide Filtrate.

BAT LIMITATIONS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) or beryllium hydroxide produced as beryllium	
Beryllium	111.520	50.320
Chromium (Total)	50.320	20.400
Copper	174.080	82.960
Cyanide (Total)	27.200	10.880
Ammonia (as N)	18128.800	7969.600
Fluoride	4760.000	2706.400

10. 40 CFR 421.153(f) is amended by revising the entry for fluoride to read as follows:

* * * * *

(f) Beryllium Hydroxide Supernatant.

BAT LIMITATIONS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of beryllium hydroxide produced from scrap and residues as beryllium	
* * * * *		
Fluoride	160,308.0	71,201.0
* * * * *		

11. 40 CFR 421.153 is amended by adding paragraphs (k) through (p) to read as follows:

* * * * *

(k) Beryl ore gangue dewatering.

BAT LIMITATIONS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of beryl ore processed	
Beryllium	0.855	0.386
Chromium (Total)	0.386	0.156
Copper	1.335	0.636
Cyanide (Total)	0.209	0.083
Ammonia (as N)	139.032	61.120
Fluoride	36.505	20.756

(l) Bertrandite Ore Gangue Dewatering.

BAT LIMITATIONS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of bertrandite ore processed	
Beryllium	2.185	0.986
Chromium (Total)	0.986	0.400
Copper	3.411	1.626
Cyanide (Total)	0.533	0.213
Ammonia (as N)	355.245	156.169
Fluoride	93.275	53.034

(m) Beryl Ore Processing.

BAT LIMITATIONS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of beryl ore processed	
Beryllium	5.988	2.702
Chromium (Total)	2.702	1.095
Copper	9.348	4.455
Cyanide (Total)	1.461	0.584
Ammonia (as N)	973.490	427.956
Fluoride	255.605	145.330

(n) Aluminum Iron Sludge (AIS) Area Wastewater.

BAT LIMITATIONS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of total beryllium carbonate produced as beryllium	
Beryllium	383.760	173.160
Chromium (Total)	173.160	70.200
Copper	599.040	285.480
Cyanide (Total)	93.600	37.440
Ammonia (as N)	62384.400	27424.800
Fluoride	16380.000	9313.200

(o) Bertrandite Ore Leaching Scrubber.

BAT LIMITATIONS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg of bertrandite ore processed	
Beryllium	1.239	0.559
Chromium (Total)	0.559	0.227
Copper	1.934	0.922
Cyanide (Total)	0.302	0.121
Ammonia (as N)	201.416	88.545
Fluoride	52.885	30.069

(p) Bertrandite Ore Countercurrent and Decantation (CCD) Scrubber.

BAT LIMITATIONS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg of bertrandite ore processed	
Beryllium	0.083	0.037
Chromium (Total)	0.037	0.015
Copper	0.129	0.062
Cyanide (Total)	0.020	0.008
Ammonia (as N)	13.463	5.919
Fluoride	3.535	2.010

§ 421.154 [Amended]

12. 40 CFR 421.154(d) is amended by revising the entries for Beryllium, Chromium (Total), Copper, Cyanide (Total) Ammonia (as N), Fluoride, and Total Suspended Solids to read as follows.

* * * * *

(d) Beryllium Hydroxide Filtrate.

NSPS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of beryllium hydroxide produced as beryllium	
Beryllium	111.520	50.320
Chromium (Total)	50.320	20.400
Copper	174.080	82.960
Cyanide (Total)	27.200	10.880
Ammonia (as N)	18,128.800	7,969.600
Fluoride	4,760.000	2,706.400
Total Suspended Solids	2,040.000	1,632.000
pH		

13. 40 CFR 421.154(f) is amended by revising the entry for fluoride to read as follows:

* * * * *

(f) Beryllium Hydroxide Supernatant.

NSPS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of beryllium hydroxide produced from scrap and residues as beryllium	
* * * * *		
Fluoride	160,308.0	71,201.0
* * * * *		

14. 40 CFR 421.154 is amended by adding paragraphs (k) through (p) to read as follows:

* * * * *

(k) Beryl Ore Gangue Dewatering.

NSPS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of beryl ore processed	
Beryllium	0.855	0.386
Chromium (Total)	0.386	0.156
Copper	1.335	0.636
Cyanide (Total)	0.209	0.083
Ammonia (as N)	139.032	61.120
Fluoride	36.505	20.756
Total Suspended Solids	15.645	12.516
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(l) Bertrandite Ore Gangue Dewatering.

NSPS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of bertrandite ore processed	
Beryllium	2.185	0.986
Chromium (Total)	0.986	0.400
Copper	3.411	1.626
Cyanide (Total)	0.533	0.213
Ammonia (as N)	355.245	156.169
Fluoride	93.275	53.034
Total Suspended Solids	39.975	31.980
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(m) Beryl Ore Processing.

NSPS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of beryl ore processed	
Beryllium	5.988	2.702
Chromium (Total)	2.702	1.095
Copper	9.348	4.455
Cyanide (Total)	1.461	0.584
Ammonia (as N)	973.490	427.956
Fluoride	255.605	145.330
Total Suspended Solids	109.545	87.636
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(n) Aluminum Iron Sludge (AIS) Area Wastewater.

NSPS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of total beryllium carbonate produced by beryllium	
Beryllium	383.760	173.160
Chromium (Total)	173.160	70.200
Copper	599.040	285.480
Cyanide (Total)	93.600	37.440
Ammonia (as N)	62384.400	27424.800
Fluoride	16380.000	9313.200
Total Suspended Solids	7020.000	5616.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(o) Bertrandite Ore Leaching Scrubber.

NSPS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg of bertrandite ore processed	
Beryllium	1.239	0.559
Chromium (Total)	0.559	0.227
Copper	1.934	0.922
Cyanide (Total)	0.302	0.121
Ammonia (as N)	201.416	88.545
Fluoride	52.885	30.069
Total Suspended Solids	22.665	16.132
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(p) Bertrandite Ore Countercurrent and Decantation (CCD) Scrubber.

NSPS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg of bertrandite ore processed	
Beryllium	0.083	0.037
Chromium (Total)	0.037	0.015
Copper	0.129	0.062
Cyanide (Total)	0.020	0.008
Ammonia (as N)	13.463	5.919
Fluoride	3.535	2.010
Total Suspended Solids	1.515	1.212
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

§ 421.156 [Amended]

15. 40 CFR 421.156 is amended by revising paragraph (d) to read as follows:

* * * * *

(d) Beryllium Hydroxide Filtrate.

PSNS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of beryllium hydroxide produced as beryllium	
Beryllium	111.520	50.320
Chromium (Total)	50.320	20.400
Copper	174.080	82.960
Cyanide (Total)	27.200	10.880
Ammonia (as N)	18128.800	7969.600
Fluoride	4760.000	2706.400

16. 40 CFR 421.156(f) is amended by revising the entry for fluoride to read as follows:

* * * * *

(f) Beryllium Hydroxide Supernatant.

PSNS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of beryllium hydroxide produced from scrap and residues as beryllium	
* * * * *		
Fluoride	160,308.0	71,201.0

17. 40 CFR 421.156 is amended by adding paragraphs (k) through (p) to read as follows:

* * * * *

(k) Beryl Ore Gangue Dewatering

PSNS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of beryl ore processed	
Beryllium	0.855	0.386
Chromium (Total)	0.386	0.156
Copper	1.335	0.636
Cyanide (Total)	0.209	0.083
Ammonia (as N)	139.032	61.120
Fluoride	36.505	20.756

(l) Bertrandite Ore Gangue Dewatering.

PSNS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant for pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of bertrandite ore processed	
Beryllium	2.165	0.986
Chromium (Total)	0.986	0.400
Copper	3.411	1.626
Cyanide (Total)	0.533	0.213
Ammonia (as N)	355.245	156.169
Fluoride	93.275	53.034

(m) Beryl Ore Processing.

PSNS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of beryl ore processed	
Beryllium	5.988	2.702
Chromium (Total)	2.702	1.095
Copper	9.348	4.455
Cyanide (Total)	1.461	0.584
Ammonia (as N)	973.490	427.956
Fluoride	255.605	145.330

(n) Aluminum Iron Sludge (AIS) Area Wastewater.

PSNS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant for pollutant property	Maximum fora ny 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of total beryllium carbonate produced as beryllium	
Beryllium	383.760	173.160
Chromium (Total)	173.160	70.200
Copper	599.040	285.480
Cyanide (Total)	93.600	37.440
Ammonia (as N)	62384.400	27424.800
Fluoride	16380.000	9313.200

(o) Bertrandite Ore Leaching Scrubber.

PSNS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or Pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg of bertrandite ore processed	
Beryllium	1.239	0.559
Chromium (Total)	0.559	0.227
Copper	1.934	0.922
Cyanide (Total)	0.302	0.121
Ammonia (as N)	201.416	88.545
Fluoride	52.885	30.069

(p) Bertrandite Ore Countercurrent and Decantation (CCD) Scrubber.

Pollutant for pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg of bertrandite ore processed	
Beryllium	0.083	0.037
Chromium (Total)	0.037	0.015

Pollutant for pollutant property	Maximum for any 1 day	Maximum for monthly average
Copper	0.129	0.062
Cyanide (Total)	0.020	0.008
Ammonia (as N)	13.463	5.919
Fluoride	3.535	2.010

18. 40 CFR Part 421.212(a) is amended by revising the entry for molybdenum to read as follows:

(a) Molybdenum sulfide leachate.

BPT LIMITATIONS FOR THE PRIMARY MOLYBDENUM RHENIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Molybdenum	Reserved	Reserved.
* * * * *		

§ 421.212 [Amended]

19. 40 CFR Part 421.212(b) is amended by revising the entry for molybdenum to read as follows:

(b) Roaster SO_2 scrubber.

BPT LIMITATIONS FOR THE PRIMARY MOLYBDENUM AND RHENIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Molybdenum	[Reserved]	[Reserved].
* * * * *		

20. 40 CFR Part 421.212(c) is amended by revising the entry for molybdenum to read as follows:

(c) Molybdic oxide leachate.

BPT LIMITATIONS FOR THE PRIMARY MOLYBDENUM AND RHENIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Molybdenum	[Reserved]	[Reserved].
* * * * *		

21. 40 CFR Part 421.212(d) is amended by revising the entry for molybdenum to read as follows:

(d) Hydrogen reduction furnace scrubber.

BPT LIMITATIONS FOR THE PRIMARY MOLYBDENUM AND RHENIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Molybdenum	[Reserved]	[Reserved].
* * * * *		

22. 40 CFR Part 421.212(e) is amended by revising the entry for molybdenum to read as follows:

(e) Depleted rhenium scrubbing solution.

BPT LIMITATIONS FOR THE PRIMARY MOLYBDENUM AND RHENIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Molybdenum	[Reserved]	[Reserved].
* * * * *		

§ 421.213 [Amended]

23. 40 CFR Part 421.213(a) is amended by revising the entry for molybdenum to read as follows:

(a) Molybdenum sulfide leachate.

BPT LIMITATIONS FOR THE PRIMARY MOLYBDENUM AND RHENIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Molybdenum	[Reserved]	[Reserved].
* * * * *		

24. 40 CFR Part 421.213(b) is amended by revising the entry for molybdenum to read as follows:

(b) Roaster SO_2 scrubber.

BPT LIMITATIONS FOR THE PRIMARY MOLYBDENUM AND RHENIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Molybdenum	[Reserved]	[Reserved].
* * * * *		

25. 40 CFR Part 421.213(c) is amended by revising the entry for molybdenum to read as follows:

(c) Molybdic oxide leachate.

BAT LIMITATIONS FOR THE PRIMARY MOLYBDENUM AND RHENIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Molybdenum	[Reserved]	[Reserved].
* * * * *		

26. 40 CFR Part 421.213(d) is amended by revising the entry for molybdenum to read as follows:

(d) Hydrogen reduction furnace scrubber.

BAT LIMITATIONS FOR THE PRIMARY MOLYBDENUM AND RHENIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Molybdenum	[Reserved]	[Reserved].
* * * * *		

27. 40 CFR Part 421.213(e) is amended by revising the entry for molybdenum to read as follows:

(e) Depleted rhenium scrubbing solution.

BAT LIMITATIONS FOR THE PRIMARY MOLYBDENUM AND RHENIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Molybdenum	[Reserved]	[Reserved].
* * * * *		

§ 421.214 [Amended]

28. 40 CFR Part 421.214(a) is amended by revising the entry for molybdenum to read as follows:

(a) Molybdenum sulfide leachate.

NSPS FOR THE PRIMARY MOLYBDENUM AND RHENIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Molybdenum	[Reserved]	[Reserved].
* * * * *		

29. 40 CFR Part 421.214(b) is amended by revising the entry for molybdenum to read as follows:

(b) Roaster SO_2 scrubber.

NSPS FOR THE PRIMARY MOLYBDENUM AND RHENIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
• • • • •		
Molybdenum	[Reserved]	[Reserved].
• • • • •		

30. 40 CFR Part 421.214(c) is amended by revising the entry for molybdenum to read as follows:

(c) Molybdic oxide leachate.

NSPS FOR THE PRIMARY MOLYBDENUM AND RHENIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
• • • • •		
Molybdenum	[Reserved]	[Reserved].
• • • • •		

31. 40 CFR Part 421.214(d) is amended by revising the entry for molybdenum to read as follows:

(d) Hydrogen reduction furnace scrubber.

NSPS FOR THE PRIMARY MOLYBDENUM AND RHENIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
• • • • •		
Molybdenum	[Reserved]	[Reserved].
• • • • •		

32. 40 CFR Part 421.214(e) is amended by revising the entry for molybdenum to read as follows:

(e) Depleted rhenium scrubbing solution.

NSPS FOR THE PRIMARY MOLYBDENUM AND RHENIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
• • • • •		
Molybdenum	[Reserved]	[Reserved].
• • • • •		

§ 421.216 [Amended]

33. 40 CFR Part 421.216(a) is amended by revising the entry for molybdenum to read as follows:

(a) Molybdenum sulfide leachate.

PSNS FOR THE PRIMARY MOLYBDENUM AND RHENIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
• • • • •		
Molybdenum	[Reserved]	[Reserved].
• • • • •		

34. 40 CFR Part 421.216(b) is amended by revising the entry for molybdenum to read as follows:

(b) Roaster SO_2 scrubber.

PSNS FOR THE PRIMARY MOLYBDENUM AND RHENIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
• • • • •		
Molybdenum	[Reserved]	[Reserved].
• • • • •		

35. 40 CFR Part 421.216(c) is amended by revising the entry for molybdenum to read as follows:

(c) Molybdic oxide leachate.

PSNS FOR THE PRIMARY MOLYBDENUM AND RHENIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
• • • • •		
Molybdenum	[Reserved]	[Reserved].
• • • • •		

36. 40 CFR Part 421.216(d) is amended by revising the entry for molybdenum to read as follows:

(d) Hydrogen reduction furnace scrubber.

PSNS FOR THE PRIMARY MOLYBDENUM AND RHENIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
• • • • •		
Molybdenum	[Reserved]	[Reserved].
• • • • •		

37. 40 CFR Part 421.216(e) is amended by revising the entry for molybdenum to read as follows:

(e) Depleted rhenium scrubbing solution.

PSNS FOR THE PRIMARY MOLYBDENUM AND RHENIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
• • • • •		
Molybdenum	[Reserved]	[Reserved].
• • • • •		

§ 421.222 [Amended]

38. 40 CFR 421.222(a) is amended by revising all of the values for Arsenic, Chromium, Lead, Nickel, Iron, Molybdenum, Ammonia (as N), Fluoride, and Total Suspended Solids to read as follows.

• • • • •

(a) Leach tailings.

BPT LIMITATIONS FOR THE SECONDARY MOLYBDENUM AND VANADIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of technical grade molybdenum plus vanadium plus pure grade molybdenum produced	
Arsenic	40.778	18.145
Chromium	8.585	3.512
Lead	8.195	3.902
Nickel	37.460	24.779
Iron	23.410	11.902
Molybdenum	(2)	(2)
Ammonia (as N)	8078.000	3551.000
Total Suspended Solids	799,950	380.460
pH		

• • • • •

[2] [Reserved].

39. 40 CFR 421.222(b) is amended by revising all of the values for Arsenic, Chromium, Lead, Nickel, Iron, Molybdenum, Ammonia (as N), Fluoride, and Total Suspended Solids to read as follows:

• • • • •

(b) Molybdenum filtrate solvent extraction raffinate.

BPT LIMITATIONS FOR THE SECONDARY MOLYBDENUM AND VANADIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of technical grade molybdenum plus vanadium plus pure grade molybdenum produced	
Arsenic	121.720	54.162
Chromium	25.625	10.483
Lead	24.460	11.648
Nickel	111.819	73.964
Iron	69.887	35.526
Molybdenum	[2]	[2]
Ammonia (as N)	24114.000	10600.000
Total Suspended Solids	2387.800	1135.660
pH		

* * * * *

[2] [Reserved].

40. Section 40 CFR 421.222 is amended by adding new paragraph (e) to read as follows:

* * * * *

(e) Pure Grade Molybdenum.

BPT LIMITATIONS FOR THE SECONDARY MOLYBDENUM AND VANADIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of pure molybdenum produced	
Arsenic	48.655	21.650
Chromium	10.243	4.190
Lead	9.778	4.656
Nickel	44.698	29.566
Iron	27.936	14.201
Molybdenum	[2]	[2]
Ammonia (as N)	9638.000	4237.000
Total Suspended Solids	954.480	453.960
pH	[1]	[1]

[1] Within the range of 7.5 to 10.0 at all times
[2] [Reserved].

§ 421.223 [Amended]

41. Section 40 CFR 421.223(a) is revised to read as follows:

* * * * *

(a) Leach tailings.

BAT LIMITATIONS FOR THE SECONDARY MOLYBDENUM AND VANADIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of technical grade molybdenum plus vanadium plus pure grade molybdenum produced	
Arsenic	27.120	12.097
Chromium	7.219	2.927
Lead	5.463	2.536
Nickel	10.731	7.219
Iron	23.413	11.902
Molybdenum	[1]	[1]
Ammonia (as N)	8078.000	3551.000

[1] [Reserved].

42. Section 40 CFR 421.223(b) is revised to read as follows:

* * * * *

(b) Molybdenum filtrate solvent extraction reaffinate.

BAT LIMITATIONS FOR THE SECONDARY MOLYBDENUM AND VANADIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of technical grade molybdenum plus vanadium plus pure grade molybdenum produced	
Arsenic	80.952	36.108
Chromium	21.548	8.736
Lead	16.306	7.571
Nickel	32.031	21.548
Iron	69.887	35.526
Molybdenum	[1]	[1]
Ammonia (as N)	24114.000	10600.000

[1] [Reserved]

43. Section 40 CFR 421.223 is amended by adding new paragraph (e) to read as follows:

* * * * *

(e) Pure Grade Molybdenum.

BAT LIMITATIONS FOR THE SECONDARY MOLYBDENUM AND VANADIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of pure molybdenum produced	
Arsenic	32.359	14.434
Chromium	8.614	3.492
Lead	6.518	3.026
Nickel	12.804	8.614
Iron	27.936	14.201
Molybdenum	[1]	[1]
Ammonia (as N)	9638.000	4237.000

[1] [Reserved]

§ 421.224 [Amended]

44. 40 CFR 421.224(a) is amended by revising all of the values for Arsenic, Chromium, Lead, Nickel, Iron, Molybdenum, Ammonia (as N), Fluoride, and Total Suspended Solids to read as follows:

* * * * *

(a) Leach Tailings.

NSPS FOR THE SECONDARY MOLYBDENUM AND VANADIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	Mg/kg (pounds per million pounds) of technical grade molybdenum plus vanadium plus pure grade molybdenum produced	
Arsenic	27.120	12.097
Chromium	7.219	2.927
Lead	5.463	2.536
Nickel	10.731	7.219
Iron	23.413	11.902
Molybdenum	[2]	[2]
Ammonia (as N)	8078.000	3551.000
Total Suspended Solids	292.665	234.132
pH		

* * * * *

[2] [Reserved]

45. 40 CFR 421.224(b) is amended by revising all of the values for Arsenic, Chromium, Lead, Nickel, Iron, Molybdenum, Ammonia (as N), Fluoride,

and Total Suspended Solids to read as follows:

* * * * *

(b) Molybdenum filtrate solvent extraction raffinate.

NSPS THE SECONDARY MOLYBDENUM AND VANADIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	Mg/kg (pounds per million pounds) of technical grade molybdenum plus vanadium plus pure grade molybdenum produced	
Arsenic	80.952	36.108
Chromium	21.548	8.736
Lead	16.306	7.571
Nickel	32.031	21.548
Iron	69.887	35.526
Molybdenum	[2]	[2]
Ammonia (as N)	24114.000	10600.000
Total Suspended Solids	873.585	698.868
pH		

* * * * *

[2] [Reserved]

46. Section 40 CFR 421.224 is amended by adding new paragraph (e) to read as follows:

* * * * *

(e) Pure Grade Molybdenum.

NSPS FOR THE SECONDARY MOLYBDENUM AND VANADIUM SUBCATEGORY

Pollutant or Pollutant Property	Maximum for Any One Day	Maximum for Monthly Average
	mg/kg (pounds per million pounds) of pure molybdenum produced	
Arsenic	32.359	14.434
Chromium	8.614	3.492
Lead	6.518	3.026
Nickel	12.804	8.614
Iron	27.936	14.201
Molybdenum	[2]	[2]
Ammonia (as N)	9638.000	4237.000
Total Suspended Solids	349.200	279.360
pH	[1]	[1]

[1] Within the range of 7.5 to 10.0 at all times.
[2] [Reserved]

§ 421.226 [Amended]

47. Section 40 CFR 421.226(a) is revised to read as follows:

* * * * *

(a) Leach tailings.

PSNS FOR THE SECONDARY MOLYBDENUM AND VANADIUM SUBCATEGORY

Pollutant or Pollutant Property	Maximum for Any One Day	Maximum for Monthly Average
	mg/kg (pounds per million pounds) of technical grade molybdenum plus vanadium plus pure grade molybdenum produced	
Arsenic	27.120	12.097
Chromium	7.219	2.927
Lead	5.463	2.536
Nickel	10.731	7.219
Iron	23.413	11.902
Molybdenum	[1]	[1]
Ammonia (as N)	8078.000	3551.000

[1] [Reserved]

48. Section 40 CFR 421.226(b) is revised to read as follows:

* * * * *

(b) Molybdenum filtrate solvent extraction raffinate.

PSNS FOR THE SECONDARY MOLYBDENUM AND VANADIUM SUBCATEGORY

Pollutant or Pollutant Property	Maximum for Any One Day	Maximum for Monthly Average
	mg/kg (pounds per million pounds) of technical grade molybdenum plus vanadium plus pure grade molybdenum produced	
Arsenic	80.952	36.108
Chromium	21.548	8.736
Lead	16.306	7.571
Nickel	32.031	21.548
Iron	69.887	35.526
Molybdenum	[1]	[1]
Ammonia (as N)	24114.000	10600.000

[1] [Reserved]

49. Section 40 CFR 421.226 is amended by adding new paragraph (e) to read as follows:

* * * * *

(e) Pure Grade Molybdenum.

PSNS FOR THE SECONDARY MOLYBDENUM AND VANADIUM SUBCATEGORY

Pollutant or Pollutant Property	Maximum for Any One Day	Maximum for Monthly Average
	mg/kg (pounds per million pounds) of pure molybdenum produced	
Arsenic	32.359	14.434
Chromium	8.614	3.492
Lead	6.518	3.026

PSNS FOR THE SECONDARY MOLYBDENUM AND VANADIUM SUBCATEGORY—Continued

Pollutant or Pollutant Property	Maximum for Any One Day	Maximum for Monthly Average
Nickel	12.804	8.614
Iron	27.936	14.201
Molybdenum	[1]	[1]
Ammonia (as N)	9638.000	4237.000

[1] [Reserved]

50. Section 40 CFR 421.261 is amended by adding paragraph (c) to read:

§ 421.261 Specialized definitions.

* * * * *

(c) the term "Combined metals" shall mean the total of gold, platinum and palladium.

§ 421.262 [Amended]

51. 40 CFR Part 421.262(a) is amended by removing the entries for gold, platinum and palladium and adding the entry "combined metals" to read as follows:

* * * * *

(a) Furnace Wet Air Pollution Control.

BPT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined metals	21.54	
* * * * *		

52. 40 CFR Part 421.262(b) is amended by removing the entries for gold, platinum and palladium and adding the entry "combined metals" to read as follows:

* * * * *

(b) Raw Material Granulation.

BPT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined metals	1.902	
* * * * *		

53. 40 CFR Part 421.262(c) is amended by removing the entries for gold,

platinum and palladium and adding the entry "combined metals" to read as follows:

(c) Spent Plating Solutions.

BPT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined metals	0.300	
* * * * *		

54. 40 CFR Part 421.262(d) is amended by removing the entries for gold, platinum and palladium and adding the entry "combined metals" to read as follows:

* * * * *

(d) Spent Cyanide Stripping Solutions.

BPT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined metals	1.110	
* * * * *		

55. 40 CFR Part 421.262(e) is amended by removing the entries for gold, platinum and palladium and adding the entry "combined metals"; a footnote 1 is added to read as follows:

* * * * *

(e) Refinery Wet Air Pollution Control.[1]

BPT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined metals	6.300	
* * * * *		

[1] This allowance applies to either acid or alkaline wet air pollution control scrubbers. If both acid and alkaline wet air pollution control scrubbers are present in a particular facility the same allowance applies to each.

56. 40 CFR Part 421.262(f) is amended by removing the entries for gold, platinum and palladium and adding the entry "combined metals" to read as follows:

* * * * *

(f) Gold Solvent Extraction Raffinate and Wash Water.

BPT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined metals	0.189	
* * * * *		

57. 40 CFR Part 421.262(g) is amended by removing the entries for gold, platinum and palladium and adding the entry "combined metals" to read as follows:

* * * * *

(g) Gold Spent Electrolyte.

BPT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined metals	0.003	
* * * * *		

58. 40 CFR Part 421.262(h) is amended by removing the entry for gold, platinum and palladium and adding the entry "combined metals" to read as follows:

* * * * *

(h) Gold Precipitation and Filtration.

BPT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined metals	1.320	
* * * * *		

59. 40 CFR Part 421.262(i) is amended by removing the entries for gold, platinum and palladium and adding the entry "combined metals" to read as follows:

* * * * *

(i) Platinum Precipitation and Filtration.

BPT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined metals	1.560	
* * * * *		

60. 40 CFR Part 421.262(j) is amended by removing the entries for gold, platinum and palladium and adding the entry "combined metals"; the entries copper, cyanide, zinc, ammonia and total suspended solids are revised to read as follows:

* * * * *

(j) Palladium Precipitation and Filtration.

BPT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of palladium precipitated	
Copper	11.400	6.000
Cyanide (total)	1.740	0.720
Zinc	8.760	3.660
Ammonia (as N)	799.800	351.6700
Combined metals	1.800	
Total suspended solids	246.000	117.000
pH		

61. 40 CFR Part 421.262(k) is amended by removing the entries for gold, platinum and palladium and adding the entry "combined metals" to read as follows:

* * * * *

(k) Other Platinum Group Metals Precipitation and Filtration.

BPT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined metals	1.560	
* * * * *		

62. 40 CFR Part 421.262(l) is amended by removing the entries for gold, platinum and palladium and adding the entry "combined metals" to read as follows:

* * * * *

(l) Spent Solution from PGC Salt Production.

BPT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined metals	0.270	
* * * * *		

63. 40 CFR Part 421.262(m) is amended by removing the entries for gold, platinum and palladium and adding the entry "combined metals" to read as follows:

* * * * *

(m) Equipment and Floor Wash.

BPT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined metals	0.000	0.000
* * * * *		

64. 40 CFR 421.262 is amended by adding a new paragraph (n) to read as follows:

* * * * *

(n) Preliminary treatment.

BPT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy total metals through operation	ounce of precious produced this operation
Copper	95.000	50.000
Cyanide (total)	14.500	6.000
Zinc	73.000	30.500
Ammonia (as N)	6665.000	2930.000
Combined metals	15.000	
Total suspended solids	2050.000	975.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

§ 421.263 [Amended]

65. 40 CFR Part 421.263(a) is amended by removing the entries for gold, platinum and palladium and adding the entry "combined metals" to read as follows:

* * * * *

(a) Furnace Wet Air Pollution Control.

BAT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined metals	1.350	
* * * * *		

66. 40 CFR Part 421.263(b) is amended by removing the entries for gold, platinum and palladium and adding the entry "combined metals" to read as follows:

* * * * *

(b) Raw material granulation.

BAT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined metals	0.192	
* * * * *		

67. 40 CFR Part 421.263(c) is amended by removing the entries for gold, platinum and palladium and adding the entry "combined metals" to read as follows:

* * * * *

(c) Spent Plating Solutions.

BAT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined metals	0.300	
* * * * *		

68. 40 CFR Part 421.263(d) is amended by removing the entries for gold, platinum and palladium and adding the entry "combined metals" to read as follows:

* * * * *

(d) Spent Cyanide Stripping Solutions.

BAT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined metals	1.110	
* * * * *		

69. 40 CFR Part 421.263(e) is amended by removing the entries for gold, platinum and palladium and adding the entry "combined metals"; a footnote 1 is added to read as follows:

* * * * *

(e) Refinery Wet Air Pollution Control.[1]

[1] This allowance applies to either acid or alkaline wet air pollution control scrubbers. If both acid and alkaline wet air pollution control scrubbers are present in a particular facility the same allowance applies to each.

BAT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined metals	0.300	
* * * * *		

70. 40 CFR Part 421.263(f) is amended by removing the entries for gold, platinum and palladium and adding the entry "combined metals" to read as follows:

* * * * *

(f) Gold Solvent Extraction Raffinate and Wash Water.

BAT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined metals	0.189	
* * * * *		

71. 40 CFR 421.263(g) is amended by removing the entries for gold, platinum and palladium and adding the entry "combined metals" to read as follows:

* * * * *

(g) Gold Spent Electrolyte.

BAT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined metals	0.0030	
* * * * *		

72. 40 CFR 421.263(h) is amended by removing the entries for gold, platinum and palladium and adding the entry "combined metals" to read as follows:

* * * * *

(h) Gold Precipitation and Filtration.

BAT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined metals	1.320	
* * * * *		

73. 40 CFR 421.263(i) is amended by removing the entries for gold, platinum and palladium and adding the entry "combined metals" to read as follows:

* * * * *

(i) Platinum Precipitation and Filtration.

BAT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined metals	1.560	
* * * * *		

74. 40 CFR 421.263 is amended by revising paragraph (j) to read as follows:

* * * * *

(j) Palladium Precipitation and Filtration.

BAT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of palladium precipitated	
Copper	7.680	3.660
Cyanide (total)	1.200	.480
Zinc	6.120	2.520
Combined metals	1.800	
Ammonia (as N)	799.800	351.600

75. 40 CFR 421.263(k) is amended by removing the entries for gold, platinum and palladium and adding the entry "combined metals" to read as follows:

* * * * *

(k) Other Platinum Group Metals Precipitation and Filtration.

BAT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined metals	1.560	
* * * * *		

76. 40 CFR Part 421.263(l) is amended by removing the entries for gold, platinum and palladium and adding the entry "combined metals" to read as follows:

* * * * *

(l) Spent Solutions from PGC Salt Production.

BAT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined metals	0.270	
* * * * *		

77. 40 CFR Part 421.263(m) is amended by removing the entries for gold, platinum and palladium and adding the entry "combined metals" to read as follows:

* * * * *

(m) Equipment and Floor Wash.

BAT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for Monthly Average
* * * * *		
Combined metals	0.000	
* * * * *		

78. 40 CFR Part 421.263 is amended by adding a new paragraph (n) to read as follows:

(n) Preliminary treatment.

BAT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of total precious metals produced through this operation	
Copper	64.000	30.000
Cyanide (total)	10.000	4.000
Zinc	51.000	21.000
Combined metals	15.000	
Ammonia (as N)	6665.000	2930.000

§ 421.264 [Amended]

79. 40 CFR Part 421.264(a) is amended by removing the entries for gold, platinum and palladium and adding the entry "combined metals" to read as follows:

* * * * *

(a) Furnace Wet Air Pollution Control.

NSPS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
* * * * *		
Combined metals	1.350	
* * * * *		

80. 40 CFR Part 421.264(b) is amended by removing the entries for gold, platinum and palladium and adding the entry "combined metals" to read as follows:

* * * * *

(b) Raw Material Granulation.

NSPS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 dDay	Maximum for Monthly Average
* * * * *		
Combined metals	0.192	
* * * * *		

81. 40 CFR Part 421.264(c) is amended by removing the entries for gold, platinum and palladium and adding the entry "combined metals" to read as follows:

* * * * *

(c) Spent Plating Solutions.

NSPS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined metals	0.300	
* * * * *		

82. 40 CFR Part 421.264(d) is amended by removing the entries for gold, platinum and palladium and adding the entry "combined metals" to read as follows:

* * * * *

(d) Spent Cyanide Stripping Solutions.

NSPS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined metals	1.11	
* * * * *		

83. 40 CFR Part 421.264(e) is amended by removing the entries for gold, platinum and palladium and adding the entry "combined metals"; a footnote 1 is added to read as follows:

* * * * *

(e) Refinery Wet Air Pollution Control.[1]

NSPS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined metals	0.300	
* * * * *		

[1] This allowance applies to either acid or alkaline wet air pollution control scrubbers. If both acid and alkaline wet air pollution control scrubbers are present in a particular facility the same allowance applies to each.

84. 40 CFR Part 421.264(f) is amended by removing the entries for gold, platinum and palladium and adding the entry "combined metals" to read as follows:

* * * * *

(f) Gold Solvent Extraction Raffinate and Wash Water.

NSPS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined metals	0.189	
* * * * *		

85. 40 CFR Part 421.264(g) is amended by removing the entries for gold, platinum and palladium and adding the entry "combined metals" to read as follows:

* * * * *

(g) Gold Spent Electrolyte.

NSPS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined metals	0.003	
* * * * *		

86. 40 CFR Part 421.264(h) is amended by removing the entries for gold, platinum and palladium and adding the entry "combined metals" to read as follows:

* * * * *

(h) Gold Precipitation and Filtration.

NSPS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined metals	1.320	
* * * * *		

87. 40 CFR Part 421.264(i) is amended by removing the entries for gold, platinum and palladium and adding the entry "combined metals" to read as follows:

* * * * *

(i) Platinum Precipitation and Filtration.

NSPS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined metals	1.560	
* * * * *		

88. 40 CFR Part 421.264 is amended by revising paragraph (j) to read as follows:

* * * * *

(j) Palladium Precipitation and Filtration.

NSPS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of palladium precipitated	
Copper	7.680	3.660
Cyanide (total)	1.200	0.480
Zinc	6.120	2.520
Combined metals	1.800	
Ammonia (as N)	799.800	351.600
Total suspended solids	90.000	72.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

89. 40 CFR Part 421.264(k) is amended by removing the entries for gold, platinum and palladium and adding the entry "combined metals" to read as follows:

* * * * *

(k) Other Platinum Group Metals Precipitation and Filtration.

NSPS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined metals	1.560	
* * * * *		

90. 40 CFR Part 421.264(l) is amended by removing the entries for gold, platinum and palladium and adding the entry "combined metals" to read as follows:

* * * * *

(l) Spent Solutions from PGC Salt Production.

NSPS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined metals	0.270	
* * * * *		

91. 40 CFR Part 421.264(m) is amended by removing the entries for gold, platinum and palladium and substituting the entry "combined metals" to read as follows:

* * * * *

(m) Equipment and Floor Wash.

NSPS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined metals	0.000	0.000
* * * * *		

92. 40 CFR 421.264 is amended by adding a new paragraph (n) to read as follows:

* * * * *

(n) Preliminary treatment.

NSPS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of total precious metals produced through this operation	
Copper	64.000	30.500
Cyanide (total)	10.000	4.000
Zinc	51.000	21.000
Combined metals	15.000	

NSPS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Ammonia (as N)	6665.000	2930.000
Total suspended solids	750.000	600.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

§ 421.265 [Amended]

93. 40 CFR Part 421.265(a) is amended by removing the entries for gold, platinum and palladium and adding the entry "combined metals" to read as follows:

* * * * *

(a) Furnace Wet Air Pollution Control.

PSES FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined metals	1.350	
* * * * *		

94. 40 CFR Part 421.265(b) is amended by removing the entries for gold, platinum and palladium and adding the entry "combined metals" to read as follows:

* * * * *

(b) Raw Material Granulation.

PSES FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined metals	0.192	
* * * * *		

95. 40 CFR Part 421.265(c) is amended by removing the entries for gold, platinum and palladium and adding the entry "combined metals" to read as follows:

* * * * *

(c) Spent Plating Solutions.

PSES FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined metals	0.003	
* * * * *		

96. 40 CFR Part 421.265(d) is amended by removing the entries for gold, platinum and palladium and adding the entry "combined metals" to read as follows:

* * * * *

(d) Spent Cyanide Stripping Solutions.

PSES FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined metals	1.110	
* * * * *		

97. 40 CFR Part 421.265(e) is amended by removing the entries for gold, platinum and palladium and adding the entry "combined metals"; a footnote 1 is added to read as follows:

* * * * *

(e) Refinery Wet Air Pollution Control [1].

PSES FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined metals	0.300	
* * * * *		

* * * * *

98. 40 CFR Part 421.265(f) is amended by removing the entries for gold, platinum and palladium and adding the entry "combined metals" to read as follows:

* * * * *

(f) Gold Solvent Extraction Raffinate and Wash Water.

PSES FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined metals	0.189	
* * * * *		

99. 40 CFR Part 421.265(g) is amended by removing the entries for gold, platinum and palladium and adding the entry "combined metals" to read as follows:

* * * * *

(g) Gold Spent Electrolyte.

PSES FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined metals	0.003	
* * * * *		

100. 40 CFR Part 421.265(h) is amended by removing the entries for gold, platinum and palladium and adding the entry "combined metals" to read as follows:

* * * * *

(h) Gold Precipitation and Filtration.

PSES FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined metals	1.320	
* * * * *		

101. 40 CFR Part 421.265(i) is amended by removing the entries for gold, platinum and palladium and adding the entry "combined metals" to read as follows:

* * * * *

(i) Platinum Precipitation and Filtration.

PSES FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined metals	1.560	
* * * * *		

102. 40 CFR Part 421.265 is amended by revising paragraph (j) to read as follows:

* * * * *

(j) Palladium Precipitation and Filtration.

[1] This allowance applies to either acid or alkaline wet air pollution control scrubbers. If both acid and alkaline wet air pollution control scrubbers are present in a particular facility the same allowance applies to each.

PSES FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of palladium precipitated	
Copper	7.680	3.660
Cyanide (total)	1.200	0.480
Zinc	6.120	2.520
Combined metals	1.800	
Ammonia (as N)	799.800	351.600

103. 40 CFR Part 421.265(k) is amended by removing the entries for gold, platinum and palladium and adding the entry "combined metals" to read as follows:

* * * * *

(k) Other Palladium Group Metals Precipitation and Filtration.

PSES FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined metals	1.560	
* * * * *		

104. 40 CFR Part 421.265(l) is amended by removing the entries for gold, platinum and palladium and adding the entry "combined metals" to read as follows:

* * * * *

(l) Spent Solution from PGC Salt Production.

PSES FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined metals	0.270	
* * * * *		

105. 40 CFR Part 421.265(m) is amended by removing the entries for gold, platinum and palladium and adding the entry "combined metals" to read as follows:

* * * * *

(m) Equipment and Floor Wash.

PSES FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined metals	0.000	0.000
* * * * *		

106. 40 CFR 421.265 is amended by adding a new paragraph (n) to read as follows:

* * * * *

(n) Preliminary treatment.

PSES FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of total precious metals produced through this operation	
Copper	64.000	30.500
Cyanide (total)	10.000	4.000
Zinc	51.000	21.000
Combined metals	15.000	
Ammonia (as N)	6665.000	2930.000

§ 421.266 [Amended]

107. 40 CFR Part 421.266(a) is amended by removing the entries for gold, platinum and palladium and adding the entry "combined metals" to read as follows:

* * * * *

(a) Furnace Wet Air Pollution Control.

PSNS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined metals	1.350	
* * * * *		

108. 40 CFR Part 421.266(b) is amended by removing the entries for gold, platinum and palladium and adding the entry "combined metals" to read as follows:

* * * * *

(b) Raw Material Granulation.

PSNS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined metals	0.192	
* * * * *		

109. 40 CFR Part 421.266(c) is amended by removing the entries for gold, platinum and palladium and adding the entry "combined metals" to read as follows:

* * * * *

(c) Spent Plating Solutions.

PSNS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for ny 1 day	Maximum for monthly average
* * * * *		
Combined metals	0.300	
* * * * *		

110. 40 CFR Part 421.266(a) is amended by removing the entries for gold, platinum and palladium and adding the entry "combined metals" to read as follows:

* * * * *

(d) Spent Cyanide Stripping Solutions.

PSNS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined metals	1.110	
* * * * *		

111. 40 CFR Part 421.266(e) is amended by removing the entries for gold, platinum and palladium and adding the entry "combined metals"; a footnote 1 is added to read as follows:

* * * * *

(e) Refinery Wet Air Pollution Control [1].

PSNS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined metals[1]	0.300	
* * * * *		

[1] This allowance applies to either acid or alkaline wet air pollution control scrubbers. If both acid and alkaline wet air pollution control scrubbers are present in a particular facility the same allowance applies to each.

112. 40 CFR Part 421.266(f) is amended by removing the entries for gold, platinum and palladium and adding the entry "combined metals" to read as follow:

* * * * *

(f) Gold Solvent Extraction Raffinate and Wash Water.

PSNS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined metals	0.189	
* * * * *		

113. 40 CFR Part 421.266(g) is amended by removing the entries for gold, platinum and palladium and adding the entry "combined metals" to read as follows:

* * * * *

(g) Gold Spent Electrolyte.

PSNS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined metals	0.003	
* * * * *		

114. 40 CFR Part 421.266(f) is amended by removing the entries for gold, platinum and palladium and adding the entry "combined metals" to read as follows:

* * * * *

(h) Gold Precipitation and Filtration.

PSNS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined metals	1.320	
* * * * *		

115. 40 CFR Part 421.266(i) is amended by removing the entries for gold, platinum and palladium and adding the entry "combined metals" to read as follows:

* * * * *

(i) Platinum Precipitation and Filtration.

PSNS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined metals	1.560	
* * * * *		

116. 40 CFR Part 421.266(i) is amended by revising paragraph (j) to read as follows:

* * * * *

(j) Palladium Precipitation and Filtration.

PSNS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of palladium precipitated	
Copper	7.680	3.660
Cyanide (total)	1.200	0.480
Zinc	6.120	2.520
Combined metals	1.800	
Ammonia (as N)	799.800	351.600

117. 40 CFR Part 421.266(k) is amended by removing the entries for gold, platinum and palladium and adding the entry "combined metals" to read as follows:

* * * * *

(k) Other Platinum Group Metals Precipitation and Filtration.

PSNS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined metals	1.560	
* * * * *		

118. 40 CFR Part 421.266(l) is amended by removing the entries for gold, platinum and palladium and adding the entry "combined metals" to read as follows:

* * * * *

(l) Spent Solution from PGC Salt Production.

PSNS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined metals	0.270	
* * * * *		

119. 40 CFR Part 421.266(m) is amended by removing the entries for gold, platinum and palladium and adding the entry "combined metals" to read as follows:

* * * * *

(m) Equipment and Floor Wash.

PSNS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined metals	0.000	0.000
* * * * *		

120. 40 CFR Part 421.266 is amended by adding a new paragraph (n) to read as follows:

* * * * *

(n) Preliminary treatment.

PSNS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of total precious metals produced through this operation	
Copper	64.000	30.500
Cyanide (total)	10.000	4.000
Zinc	51.000	21.000
Combined metals	15.000	
Ammonia (as N)	6665.000	2930.000

121. 40 CFR Part 421.312(a) is amended by revising the entry for cobalt to read as follows:

* * * * *

(a) Tungsten detergent wash and rinse.

BPT LIMITATIONS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* *	* *	*
Cobalt	0.768	0.337
* *	* *	*

122. 40 CFR Part 421.312(b) is amended by revising the entry for cobalt to read as follows:

* * * * *

(b) Tungsten leaching acid.

BPT LIMITATIONS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * *	* *	*
Cobalt	10.130	4.448
* * *	* *	*

123. 40 CFR Part 421.312(c) is amended by revising the entry for cobalt to read as follows:

* * * * *

(c) Tungsten post leaching wash and rinse.

BPT LIMITATIONS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * *	* *	*
Cobalt	20.263	8.897
* * *	* *	*

124. 40 CFR Part 421.312(d) is amended by revising the entry for cobalt to read as follows:

* * * * *

(d) Synthetic scheelite filtrate.

BPT LIMITATIONS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * *	* *	*
Cobalt	65.644	28.824
* * *	* *	*

125. 40 CFR Part 421.312(e) is amended by revising the entry for cobalt to read as follows:

* * * * *

(e) Tungsten carbide leaching wet air pollution control.

BPT LIMITATIONS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * *	* *	*
Cobalt	6.899	3.029
* * *	* *	*

126. 40 CFR Part 421.312(f) is amended by revising the entry for cobalt to read as follows:

* * * * *

(f) Tungsten carbide wash water.

BPT LIMITATIONS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * *	* *	*
Cobalt	32.832	14.416
* * *	* *	*

127. 40 CFR Part 421.312(g) is amended by revising the entry for cobalt to read as follows:

* * * * *

(g) Cobalt sludge leaching wet air pollution control.

BPT LIMITATIONS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * *	* *	*
Cobalt	140.977	61.901
* * *	* *	*

128. 40 CFR Part 421.312(h) is amended by revising the entry for cobalt to read as follows:

* * * * *

(h) Crystallization decant.

BPT LIMITATIONS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * *	* *	*
Cobalt	164.101	72.055
* * *	* *	*

129. 40 CFR Part 421.312(i) is amended by revising the entry for cobalt to read as follows:

* * * * *

(i) Acid ash decant.

BPT LIMITATIONS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * *	* *	*
Cobalt	75.104	32.977
* * *	* *	*

130. 40 CFR Part 421.312(j) is amended by revising the entry for cobalt to read as follows:

* * * * *

(j) Cobalt hydroxide filtrate.

BPT LIMITATIONS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * *	* *	*
Cobalt	223.189	97.999
* * *	* *	*

131. 40 CFR Part 421.312(k) is amended by revising the entry for cobalt to read as follows:

* * * * *

(k) Cobalt hydroxide filter cake wash.

BPT LIMITATIONS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * *	* *	*
Cobalt	429.598	188.631
* * *	* *	*

§ 421.213 [Amended]

132. 40 CFR Part 421.313(a) is amended by revising the entry for cobalt to read as follows:

(a) Tungsten detergent wash and rinse.

BAT LIMITATIONS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	0.538	0.236
* * * * *		

133. 40 CFR Part 421.313(b) is amended by revising the entry for cobalt to read as follows:

* * * * *

(b) Tungsten leaching acid.

BAT LIMITATIONS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	7.096	3.111
* * * * *		

134. 40 CFR Part 421.313(c) is amended by revising the entry for cobalt to read as follows:

* * * * *

(c) Tungsten post leaching wash and rinse.

BAT LIMITATIONS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	14.194	6.223
* * * * *		

135. 40 CFR Part 421.313(d) is amended by revising entry for cobalt to read as follows:

* * * * *

(d) Synthetic scheelite filtrate.

BAT LIMITATIONS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	45.984	20.160
* * * * *		

136. 40 CFR Part 421.313(e) is amended by revising the entry for cobalt to read as follows:

* * * * *

(e) Tungsten carbide leaching wet air pollution contol.

BAT LIMITATIONS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	4.833	2.119
* * * * *		

137. 40 CFR Part 421.313(f) is amended by revising the entry for cobalt to read as follows:

* * * * *

(f) Tungsten carbide wash water.

BAT LIMITATIONS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	22.999	10.083
* * * * *		

138. 40 CFR Part 421.313(g) is amended by revising the entry for cobalt to read as follows:

* * * * *

(g) Cobalt sludge leaching wet air pollution control.

BAT LIMITATIONS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	98.756	43.295
* * * * *		

139. 40 CFR Part 421.313(h) is amended by revising the entry for cobalt to read as follows:

* * * * *

(h) Crystallization decant.

BAT LIMITATIONS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	114.954	50.397
* * * * *		

140. 40 CFR Part 421.313(i) is amended by revising the entry for cobalt to read as follows:

* * * * *

(i) Acid wash decant.

BAT LIMITATIONS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	52.611	23.065
* * * * *		

141. 40 CFR Part 421.313(j) is amended by revising the entry for cobalt to read as follows:

* * * * *

(j) Cobalt hydroxide filtrate.

BAT LIMITATIONS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	156.346	68.543
* * * * *		

142. 40 CFR Part 421.313(k) is amended by revising the entry for cobalt to read as follows:

* * * * *

(k) Cobalt hydroxide filter cake wash.

BAT LIMITATIONS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	300.094	131.094
* * * * *		

§ 421.314 [Amended]

143. 40 CFR Part 421.314(a) is amended by revising the entry both for cobalt to read as follows:

(a) Tungsten detergent wash and rinse.

NSPS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	0.538	0.236
* * * * *		

144. 40 CFR Part 421.314(b) is amended by revising the entry for cobalt to read as follows:

* * * * *

(b) Tungsten leaching acid.

NSPA FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	7.096	3.111
* * * * *		

145. 40 CFR Part 421.314(c) is amended by revising the entry for cobalt to read as follows:

* * * * *

(c) Tungsten post leaching wash and rinse.

NSPS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	14.194	6.223
* * * * *		

146. 40 CFR Part 421.314(d) is amended by revising the entry for cobalt to read as follows:

* * * * *

(d) Synthetic scheelite filtrate.

NSPS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	45.984	20.160
* * * * *		

147. 40 CFR Part 421.314(e) is amended by revising the entry for cobalt to read as follows:

* * * * *

(e) Tungsten carbide leaching wet air pollution control.

NSPS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	4.833	2.119
* * * * *		

148. 40 CFR Part 421.314(f) is amended by revising the entry for cobalt to read as follows:

* * * * *

(f) Tungsten carbide wash water.

NSPS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	22.999	10.083
* * * * *		

149. 40 CFR Part 421.314(g) is amended by revising the entry for cobalt to read as follows:

* * * * *

(g) Cobalt sludge leaching wet air pollution control.

NSPS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	98.756	43.295
* * * * *		

150. 40 CFR Part 421.314(h) is amended by revising the entry for cobalt to read as follows:

* * * * *

(h) Crystallization decant.

NSPS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	114.954	50.397
* * * * *		

151. 40 CFR Part 421.314(i) is amended by revising the entry for cobalt to read as follows:

* * * * *

(i) Acid wash decant.

NSPS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	52.611	23.065
* * * * *		

152. 40 CFR Part 421.314(j) is amended by revising the entry for cobalt to read as follows:

* * * * *

(j) Cobalt hydroxide filtrate.

NSPS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	156.346	68.543
* * * * *		

153. 40 CFR Part 421.314(k) is amended by revising the entry for cobalt to read as follows:

* * * * *

(k) Cobalt hydroxide filter cake wash.

NSPS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	300.094	131.932
* * * * *		

§ 421.315 [Amended]

154. 40 CFR Part 421.315(a) is amended by revising the entry for cobalt to read as follows:

* * * * *

(a) Tungsten detergent wash and rinse.

PSES FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	0.538	0.236
* * * * *		

155. 40 CFR Part 421.315(b) is amended by revising the entry for cobalt to read as follows:

* * * * *

(b) Tungsten leaching acid.

PSES FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	7.096	3.111
* * * * *		

156. 40 CFR Part 421.315(c) is amended by revising the entry for cobalt to read as follows:

* * * * *

(c) Tungsten post leaching wash and rinse.

PSES FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	14.194	6.223
* * * * *		

157. 40 CFR Part 421.315(d) is amended by revising the entry for cobalt to read as follows:

* * * * *

(d) Synthetic scheelite filtrate.

PSES FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	45.984	20.160
* * * * *		

158. 40 CFR Part 421.315(e) is amended by revising the entry for cobalt to read as follows:

* * * * *

(e) Tungsten carbide leaching wet air pollution control.

PSES FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	4.833	2.119
* * * * *		

159. 40 CFR Part 421.315(f) is amended by revising the entry for cobalt to read as follows:

* * * * *

(f) Tungsten carbide wash water.

PSES FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	22.999	10.083
* * * * *		

160. 40 CFR Part 421.315(g) is amended by revising the entry for cobalt to read as follows:

* * * * *

(g) Cobalt sludge leaching wet air pollution control.

PSES FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	98.756	43.295
* * * * *		

161. 40 CFR Part 421.315(h) is amended by revising the entry for cobalt to read as follows:

* * * * *

(h) Crystallization decant.

PSES FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	114.954	50.397
* * * * *		

162. 40 CFR Part 421.315(i) is amended by revising the entry for cobalt to read as follows:

* * * * *

(i) Acid wash decant.

PSES FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	52.611	23.065
* * * * *		

163. 40 CFR Part 421.315(j) is amended by revising the entry for cobalt to read as follows:

* * * * *

(j) Cobalt hydroxide filtrate.

PSES FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	156.346	68.543
* * * * *		

164. 40 CFR Part 421.315(k) is amended by revising the entry for cobalt to read as follows:

* * * * *

(k) Cobalt hydroxide filter cake wash.

PSES FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	300.094	131.932
* * * * *		

§ 421.316 [Amended]

165. 40 CFR Part 421.316(a) is amended by revising the entry for cobalt to read as follows:

(a) Tungsten detergent wash and rinse.

PSNS for the Secondary Tungsten and Cobalt Subcategory

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	0.538	0.236
* * * * *		

166. 40 CFR Part 421.316(b) is amended by revising the entry for cobalt to read as follows:

* * * * *

(b) Tungsten leaching acid.

PSNS for the Secondary Tungsten and Cobalt Subcategory

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	7.096	3.111
* * * * *		

167. 40 CFR Part 421.316(c) is amended by revising the entry for cobalt to read as follows:

* * * * *

(c) Tungsten post leaching wash and rinse.

PSNS for the Secondary Tungsten and Cobalt Subcategory

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	14.194	6.223
* * * * *		

168. 40 CFR Part 421.316(d) is amended by revising the entry for cobalt to read as follows:

* * * * *

(d) Synthetic scheelite filtrate.

PSNS for the Secondary Tungsten and Cobalt Subcategory

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	45.984	20.160
* * * * *		

169. 40 CFR Part 421.316(e) is amended by revising the entry for cobalt to read as follows:

* * * * *

(e) Tungsten carbide leaching wet air pollution control.

PSNS for the Secondary Tungsten and Cobalt Subcategory

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	4.833	2.119
* * * * *		

170. 40 CFR Part 421.316(f) is amended by revising the entry for cobalt to read as follows:

* * * * *

(f) Tungsten carbide wash water.

PSNS for the Secondary Tungsten and Cobalt Subcategory

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	22.999	10.083
* * * * *		

171. 40 CFR Part 421.316(g) is amended by revising the entry for cobalt to read as follows:

* * * * *

(g) Cobalt sludge leaching wet air pollution control.

PSNS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	98.756	43.295
* * * * *		

172. 40 CFR Part 421.316(h) is amended by revising the entry for cobalt to read as follows:

* * * * *

(h) Crystallization decant.

PSNS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	114.954	50.397
* * * * *		

173. 40 CFR Part 421.316(i) is amended by revising the entry for cobalt to read as follows:

* * * * *

(i) Acid wash decant.

PSNS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	52.611	23.065
* * * * *		

174. 40 CFR Part 421.316(j) is amended by revising the entry for cobalt to read as follows:

* * * * *

(j) Cobalt hydroxide filtrate.

PSNS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	156.346	68.543
* * * * *		

175. 40 CFR Part 421.316(k) is amended by revising the entry for cobalt to read as follows:

* * * * *

(k) Cobalt hydroxide filter cake wash.

PSNS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	300.094	131.932
* * * * *		

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Friday
April 28, 1989

Part IV

Department of the Interior

Office of Surface Mining and Reclamation Enforcement

30 CFR Parts 773 and 843

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Requirements for Permits and Permit Processing; Federal Enforcement; Improvidently Issued Permits; Final Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 773 and 843

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Requirements for Permits and Permit Processing; Federal Enforcement; Improvidently Issued Permits

November 3, 1988.

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

ACTION: Final Rule.

SUMMARY: This rule adds to the existing regulations governing surface coal mining and reclamation permits and enforcement new procedures for improvidently issued Federal and State permits. It includes general procedures for determining whether a permit was improvidently issued, and for applying appropriate remedial measures. It also includes procedures for the suspension and rescission of improvidently issued permits, and for action by the Office of Surface Mining Reclamation and Enforcement (OSMRE) on improvidently issued State permits. The rule is needed to provide uniform procedures and remedial measures for dealing with improvidently issued permits.

This rule also revises the heading of an existing regulation to further differentiate that regulation from the new procedures for improvidently issued permits.

EFFECTIVE DATE: May 30, 1989.

FOR FURTHER INFORMATION CONTACT: Andrew F. DeVito, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: 202-343-5241 (Commercial or FTS).

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion of the rule and comments
III. Procedural matters

I. Background

A. General Purpose of the Rule

Sections 201(c) and 510(c) of the Surface Mining Control and Reclamation Act of 1977 (the Act or SMCRA), 30 U.S.C. 1211(c) and 1260(c), authorize a regulatory authority to withhold a surface coal mining and reclamation permit from any applicant who either directly, indirectly or through a relationship of ownership or control is in violation of the Act or certain other environmental laws and regulations.

The Office of Surface Mining Reclamation and Enforcement (OSMRE) has implemented these provisions of the Act by regulations at 30 CFR 773.5 and 773.15. Also, under section 503(a)(7) of the Act, 30 U.S.C. 1253(a)(7), and regulations at 30 CFR 730.5 and 732.15, each State regulatory program is required to have regulations that are consistent with §§ 773.5 and 773.15. General procedures governing OSMRE enforcement of this State program requirement appear at 30 CFR Part 843.

Through administrative error, or otherwise, a regulatory authority in some cases may not make the connection between an applicant and an unabated violation or a delinquent penalty or fee in accordance with these provisions, and as a result may improvidently issue a permit. To provide corrective measures for bringing these permits into compliance, this rule adds to Part 773 general procedures governing improvidently issued permits and permit suspension and rescission, and to Part 843 procedures for OSMRE action on improvidently issued State permits.

This rule also revises the heading of existing § 843.13 to further differentiate that section from the remainder of this rule.

B. History of the Rule

This rule initially was proposed by OSMRE on July 16, 1986 (51 FR 25822), along with other provisions in Part 773. The other provisions in §§ 773.15 (b)(1)(ii) and (b)(2) and a portion of § 773.15(b)(3) were promulgated in the October 3, 1988 (53 FR 38868) OSMRE final rule on ownership and control (the ownership and control rule). The remainder of these other provisions will appear in a subsequent final rule.

On September 24, 1986 (51 FR 33905), the comment period for the proposed rule was extended to October 24, 1986. On August 4, 1988 (53 FR 29343) OSMRE reopened the comment period and published a supplement to the proposed rule. As alternatives to initial proposed § 773.20, *Permit rescission,* and § 843.21, *Procedures on improperly or erroneously issued State permits,* the supplement proposed new provisions in § 773.20, *Procedures on improvidently issued permits,* § 773.21, *Permit suspension and rescission,* and § 843.21, *Procedures for improvidently issued State permits.* This final rule derives primarily from those later provisions.

C. Acronyms and Terms of Art

For the sake of brevity this preamble and the rule use a number of acronyms and terms of art, which have the following meanings:

AVS—the computerized Applicant/Violator System instituted by OSMRE to store and retrieve information on permit applicants, violators and violations of the Act, and persons related to them through ownership or control.

CO—a cessation order.

Improvidently issued permit—a surface coal mining and reclamation permit that meets the criteria of § 773.20(b) of this rule or its State program equivalent.

Initial—used to differentiate the *initial,* July 16, 1986, proposed rule from the *later,* August 4, 1988, proposed rule. Where a lack of differentiation would not cause confusion, the qualifying term is omitted.

Later—see *initial.*

NOV—a notice of violation.

Ownership and control rule—the October 3, 1988, OSMRE final rule which added to 30 CFR 773.5 a definition of the terms *owned or controlled* and *owns or controls* and amended the permit application review procedures at 30 CFR 773.15.

OSMRE—the Office of Surface Mining Reclamation and Enforcement.

Person responsible—the person who is directly or indirectly responsible for an unabated violation or a delinquent penalty or fee, which may be either the permittee, another person to whom the permittee is linked by a relationship of ownership or control, or both the permittee and another such person.

Rescission—equivalent to *revocation,* but used to differentiate between the *rescission* of an improvidently issued permit under § 773.21 of this rule and the *revocation* of a permit for a pattern of violations under existing 30 CFR 843.21.

Responsible agency—equivalent to the statutory phrase, "regulatory authority, department, or agency which has jurisdiction over such violation," as set out in section 510(c) of the Act.

Revised Parker Order—an order issued by the United States District Court for the District of Columbia in the case of *Save our Cumberland Mountains, Inc. v. Clark,* No. 81-2134 (D.D.C. January 31, 1985).

Revocation—see *rescission.*

SMCRA or *the Act*—the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.*

Violation, penalty or fee—a violation, penalty or fee covered by the violations review criteria of the applicable regulatory program. *Violations review criteria*—those permitting provisions of a

regulatory program under which the regulatory authority reviews the relationship of the applicant to outstanding violations and delinquent penalties and fees and determines whether a permit should be withheld. For the minimum violations review criteria each regulatory program should include, see the list of Applicable Violations Review Criteria under the subsequent heading, II.B.2.a. § 773.20(b)(2).

D. Public Comments

No request was received for a public hearing on the proposed rules, and none was held.

Commenters on the proposed rules included environmental groups, trade associations, Federal and State agencies, the coal industry, and individuals. Eighteen comment letters were received on the initial proposed rule, and three on the later proposed rule, some of which incorporated another of the letters by reference.

Comments were received both for and against the general regulatory scheme of the rule. The individual comments, along with OSMRE responses, are discussed in the following section of this preamble.

II. Discussion of the Rule and Comments

A. General Overview

This rule adds to the existing OSMRE regulations in 30 CFR Title VII new procedures for dealing with improvidently issued surface coal mining and reclamation permits. It includes, in § 773.20, general procedures for improvidently issued permits; in § 773.21, procedures for rescinding an improvidently issued permit; and, in § 843.21, procedures for OSMRE action on improvidently issued State permits.

In addition, to further differentiate existing § 843.13, which governs the suspension and revocation of a permit for a pattern of violations, from new § 773.20, this rule revises the heading of § 843.13 to read: "Suspension or revocation of permits: Pattern of violations."

As noted in the preceding background section of this preamble, this rule derives primarily from the later proposed rule, published on August 4, 1988 (53 FR 29343). A number of changes were made in the final rule in response to public comments, as discussed below. Without changing its general effect, the rule also was reworded in an attempt to eliminate ambiguity, and thus make it easier to understand and apply.

Each section of the rule is discussed in detail under the following headings, along with the comments received on the corresponding sections of the initial and later proposed rules and the OSMRE responses. Several issues and related comments that apply to more than one section of the rule are discussed under the subsequent heading, *F. Statutory Authority and General Comments*, which covers the following topics: (1) the statutory authority for the rule; (2) its relationship to the OSMRE rule on ownership and control; and (3) the rule is not retroactive.

B. Section 773.20 General Procedures for Improvidently Issued Permits

1. Overview

Section 773.20 contains the general procedures a regulatory authority must employ to determine whether a surface coal mining and reclamation permit was improvidently issued and to implement remedial measures. Section 773.20(a) imposes general requirements; § 773.20(b) lists the criteria a regulatory authority must apply in finding that a permit was improvidently issued; and § 773.20(c) sets out four remedial measures, one or more of which a regulatory authority must apply to an improvidently issued permit.

Final § 773.20 derives primarily from § 773.20 of the later proposed rule. The requirement of initial proposed § 773.20(b) for a notice of violation (NOV) was deleted as unnecessary because the remedial measures in final § 773.20(c) provide sufficient and more direct mechanisms for achieving compliance. The permit rescission procedures of initial proposed § 773.20(b) were relocated in revised form in final § 773.21 to emphasize that permit rescission is only one of the four alternative measures a regulatory authority must choose between to remedy an improvidently issued permit.

2. Section 773.20(a) Permit Review

Section 773.20(a) contains general requirements for permit review and review-related compliance. Under this section a regulatory authority which has reason to believe that it improvidently issued a surface coal mining and reclamation permit must review the circumstances under which the permit was issued, using the criteria in § 773.20(b). If the regulatory authority finds that the permit was improvidently issued, the regulatory authority must comply with § 773.20(c).

This section derives from the introductory paragraph of proposed § 773.20(a), which was revised to clarify and set out in a separate paragraph the procedural steps leading to a finding that a permit was improvidently issued. In this section, the term *finds* was substituted for the proposed term *determines* as more precise.

The "reason to believe" standard in § 773.20(a) for prompting action by the regulatory authority is equivalent to the "discovers" standard set out in the preamble to the initial proposed rule, 51 FR 25826. It was adopted to make the terminology of § 773.20 parallel to that of proposed § 843.21, which applies a similar standard to State permits.

Under this "reason to believe" standard the regulatory authority is not required to review all of the permits under its jurisdiction on a regular basis for improvident issuance, but only a particular permit it has some reason to believe was improvidently issued.

Application of Rule to Permit Revisions

One commenter said that while a regulatory authority might properly consider an operator's past history, in the absence of new information it should not use permit *revision* as a trigger to review whether a permit was improvidently issued.

OSMRE agrees. The rule requires a regulatory authority to review the underlying circumstances only when it has reason to believe that a permit was improvidently issued, not as a matter of routine for every permit revision. The OSMRE requirements for permit revision appear at 30 CFR 774.13.

Conditionally Issued Permits

Several commenters said that to facilitate prompt rescission if the permittee fails to comply with a conditionally issued permit, the rule should require the regulatory authority to periodically review and update the information which led to its conditional issuance.

OSMRE did not adopt the commenters' suggestion. As explained in the subsequent discussion of § 773.20(b)(1), this rule does not apply to permits validly issued with conditions, but only to those issued contrary to the violations review criteria of the applicable regulatory program, or issued on the presumption that a notice of violation was in the process of being corrected to the satisfaction of the responsible agency, but a failure-to-abate cessation order (FTACO) subsequently was issued.

For a permit that was *conditionally* issued, the regulatory authority has the same duty to monitor compliance with its conditions as for compliance with any other requirement of the regulatory program, and has available the same enforcement measures.

For a permit issued on the *presumption* that a specifically identified violation was being corrected, the regulatory authority has a duty to determine whether abatement in fact occurs, and if not to issue an FTACO which would lead to application of the remedial measures of this rule.

This rule does not require either OSMRE or State regulatory authorities, however, to conduct general, ongoing, systematic reviews of permits under their jurisdiction for improvident issuance.

3. Section 773.20(b) Review Criteria

Section 773.20(b) requires a regulatory authority to find that a surface coal mining and reclamation permit was improvidently issued if the permit meets specified review criteria. These criteria, which derive primarily from the later proposed rule, were modified somewhat in this final rule in response to public comment.

Although not explicitly stated in the rule, OSMRE expects that the regulatory authority will make the required finding in writing as a basis for further action on an improvidently issued permit.

Additional Factors

Several commenters said that later proposed § 773.20 was a major departure from the initial proposal, as well as from the October 1, 1987, OSMRE Directive INE–34, "Guidelines for Responding to Improvidently Issued Permits." Under the later proposal, the commenter said, OSMRE sought to impose additional factors to be considered by the regulatory authority in what, heretofore, had been a straightforward exercise. The commenter concluded that neither the Act nor its legislative history contemplated those additional factors, and that OSMRE had not offered the necessary justification for its change in policy.

OSMRE disagrees that the initial and later proposed rules were in any way deficient to support this final rule, or that the rule in any way is contrary to the Act or its legislative history. This preamble clearly articulates the basis and purpose of, and the legal authority for, the criteria in § 773.20(b), and thus fully supports any change in policy or legal interpretation the rule may embody. Following promulgation of this rule, OSMRE will consider the need to revise its internal directives to reflect any such change.

a. *Section 773.20(b)(1).* The first criterion, in § 773.20(b)(1), is that under the violations review criteria of the regulatory program at the time the permit was issued, either (i) because of an unabated violation or a delinquent penalty or fee the regulatory authority should not have issued the permit; or (ii) the permit was issued on the presumption that a notice of violation was in the process of being corrected to the satisfaction of the agency with jurisdiction over the violation, but a failure-to-abate cessation order (FTACO) subsequently was issued. This section derives from initial and later proposed § 773.20(a)(1).

Section 773.20(b)(1)(i) does not specify any particular unabated violation, delinquent penalty or fee, or ownership or control relationship as the basis for a finding that a permit was improvidently issued. Instead, the regulatory authority is to apply whatever violations review criteria were in force in the regulatory program at the time the permit was issued.

The rule does not require "a demonstrated pattern of willful violations," as specified in section 510(c) of the Act, for which separate procedures exist in 30 CFR 843.13.

Depending on the regulatory program under which a permit is reviewed, the applicable violations review criteria under § 773.20(b)(1)(i) of this rule may include such Federal regulations as those at 30 CFR 741.21(b) and 786.17(c) (1979) for the 1979 permanent program, or at 30 CFR 773.15(b)(1) for the current permanent program, their State program equivalents, definitions of ownership or control relationships, the Revised Parker Order, internal agency directives, and the like.

In response to public comment, OSMRE has concluded that it is best to frame the rule in general terms, referencing the violations review criteria of the applicable regulatory program, and then have the regulatory authority apply its specific violations review criteria on a case-by-case basis. This approach will best account for any differences that may exist between regulatory programs, and give each State regulatory program the status intended by the Congress under primacy. It also will account for any changes that may occur over time in a particular regulatory program.

OSMRE expects that in applying this criterion of the rule, a regulatory authority will interpret its violations review criteria in the same way as they lawfully were, or should have been, interpreted at the time of permit issuance.

The presumption referred to in § 773.20(b)(1)(ii) regarding a notice of violation (NOV) is authorized by § 773.15(b)(1) of the October 3, 1988 (53 FR 38868) OSMRE final rule on ownership and control (the ownership and control rule), which this preamble incorporates by reference. Under this presumption,

> [i]n the absence of a failure-to-abate cessation order, the regulatory authority may presume that a notice of violation issued pursuant to § 843.12 of [30 CFR Chapter VII] or under a Federal or State program has been or is being corrected to the satisfaction of the agency with jurisdiction over the violation, except where evidence to the contrary is set forth in the permit application, or where the notice of violation is issued for nonpayment of abandoned mine reclamation fees or civil penalties.

Id. at 38890. Where a permit is issued on this presumption, but an FTACO subsequently is issued, the procedures of this rule apply.

Violations Review Criteria

Because this rule is written in general terms, and the violations review criteria of each Federal or State regulatory program will govern the specific unabated violations, delinquent penalties and fees, and ownership and control relationships to which it will apply, it is appropriate to set out the violations review criteria each regulatory program should include.

The following list sets out these violations review criteria. It covers the types of unabated violations and delinquent penalties and fees for which a regulatory authority should have withheld a permit, as well as the applicable ownership and control relationships. Each item in the list is followed by the effective date after which a regulatory authority should have considered it in reviewing a permit application under its regulatory program. Notwithstanding this list, the violations review criteria of each Federal and State regulatory program at the time of permit issuance will govern the application of this rule.

For a violation, penalty, or fee, the effective date in the list relates to when a permit was issued, not when the violation became unabated or the penalty or fee became delinquent, either of which may have occurred at any time prior to permit issuance. The listed violations, penalties and fees apply regardless of the issuing regulatory authority. Unless otherwise noted, the same criteria apply equally to OSMRE and the States. Some State programs may include more stringent criteria.

Applicable Violations Review Criteria

I. Violations, Penalties and Fees

A. Abandoned Mine Reclamation Fees

Fees included: All delinquent reclamation fees.

Effective date: For Federal permits, from March 13, 1979.

For State permits, from July 5, 1984, the date when OSMRE published the final rule at 30 CFR 773.17(g) (49 FR 27493) making the payment of reclamation fees as required by 30 CFR Subchapter R a permit condition.

B. Air and Water quality Environmental Violations

Violations included: All unabated violations of Federal and State laws, rules and regulations pertaining to air or water environmental protection incurred in connection with any surface coal mining operation.

Effective date: From the outset of each permanent regulatory program.

c. Bond Forfeitures

Forfeitures included: Any bond forfeiture at an interim or permanent program operation involving a violation that was unabated at the time the permit under review was issued. For OSMRE and most States, abatement of the violation negates the effect of a forfeiture under § 773.20(b)(2) of this rule; some States may have more stringent requirements.

Effective date: From the outset of each permanent regulatory program.

D. Cessation Orders

Orders included: All unabated initial and permanent program imminent harm and failure-to-abate cessation orders (FTACO's).

Effective date: From the outset of each permanent regulatory program.

E. Civil Penalties

Penalties included: All delinquent civil penalties imposed under section 518 of the Act, 30 U.S.C. 1268, or the State regulatory program equivalent.

Effective date: For Federal permits, January 31, 1985, the date of the Revised Parker Order.

For State permits: For penalties other than Federal penalties under section 518(h) of the Act, the date when the State regulatory authority first considered nonpayment of Federal or State civil penalties following a final order to be a violation of the Act. For Federal penalties under section 518(h), January 31, 1985.

F. Notices of Violation

1. *Before Presumption on Abatement of NOV's Becomes Effective—Violations included:* Any unabated notice of violation (NOV) which information available to the regulatory authority at the time of permit issuance indicated was not being corrected to the satisfaction of the responsible agency; any unabated NOV for the nonpayment of abandoned mine reclamation fees; and any unabated NOV for which an FTACO was issued.

Effective date: From the outset of the regulatory program until a presumption corresponding to the one under § 773.15(b)(1) of the October 3, 1988 (53 FR 38868) OSMRE final rule (the ownership and control rule) becomes effective in the regulatory program.

Note: Except where the regulatory authority had information to the contrary, an NOV for which an FTACO was not issued is not included prior to the effective date of the presumption because the lack of an FTACO constitutes sufficient historic evidence that the NOV was being corrected to the satisfaction of the responsible agency. Moreover, any subsequent review for improvident issuance should ensure that an FTACO is issued where appropriate.

2. *After Presumption on Abatement of NOV's Becomes Effective—Violations included:* Any NOV to which the presumption did not apply, or for which an FTACO subsequently was issued.

Effective date: From the date the presumption becomes effective in the regulatory program.

II. Ownership and Control Relationships

A. Before Ownership and Control Rule Definition and Revised Review Criteria Become Effective

Relationships included: From a class of persons no less inclusive than specified in section 507(b)(4) of the Act, 30 U.S.C. 1257(b)(4), those persons who in fact own or control the applicant.

Note: For a discussion of the relationship between section 507(b)(4) of the Act and the permit blocking requirements of section 510(c) of the Act and 30 CFR 773.15(b)(1), see the ownership and control rule at 53 FR 38874–38875.

Effective date: From the outset of the regulatory program until the definition of *owned or controlled* and *owns or controls* at 30 CFR 773.5 and the review criteria at 30 CFR 773.15(b)(1) covering operations owned or controlled by either the applicant or by any person who owns or controls the applicant, as set out in the ownership and control rule, or the State program equivalent, become effective in the regulatory program.

B. After Ownership and Control Rule Definition and Revised Review Criteria Become Effective

Relationships included: Those covered by the definition and revised review criteria, or equivalent provisions.

Effective date: From the date the definition and revised review criteria, or equivalent provisions, become effective in the regulatory program.

Specific Criteria Removed

Later proposed § 773.20 (a)(1) and (a)(4)(ii)(B) set out specific types of violations, penalties and fees to which the rule would apply. Several commenters said that the proposal unlawfully differentiated between and limited these types of violations, penalties and fees.

Other commenters said that the rule should not depend solely on information contained in the OSMRE Applicant/Violator System (AVS). Several commenters said that the preamble to the initial proposed rule was incorrect in suggesting that only a failure to abate a "serious" violation constituted a "failure to comply" under section 201(c)(1) of the Act, and that this qualification should be deleted.

The criteria to which the commenters objected were removed from the rule. Final § 773.20(b)(l) does not specify any particular violation, penalty or fee as a basis for a finding that a permit was improvidently issued. Nor is it limited to the information contained in the AVS. Instead it requires a regulatory authority to apply the violations review criteria of the regulatory program at the time the permit was issued.

OSMRE has concluded that because of differences between regulatory programs, as well as in the interpretation of the Act as experience has been gained with its requirements, it is best to adopt general procedures which rely on the specific requirements of each regulatory program for their ultimate interpretation and application. The minimum types of unabated violations and delinquent penalties and fees which the violations review criteria of each regulatory program should cover are set out in the preceding list.

Section 518(f) Penalties

Several commenters said that as the basis for permit rescission § 773.20 should cover any penalty for which a final order was issued to an entity with a common control relationship to a permittee, including penalties assessed under section 518(f) of the Act, 30 U.S.C. 1268(f), or the State program equivalent.

OSMRE agrees. As discussed previously, the rule will apply to all penalties for which a final order was issued under section 518 of the Act or a State program equivalent, including individual civil penalties under section 518(f) or its equivalent.

Other Environmental Laws

One commenter said that the initial proposed rule should apply not only to violations of the Act, but also of other environmental laws.

OSMRE agrees. Under the violations review criteria of the regulatory program at the time the permit was issued, the rule can apply to violations of any Federal or State law, rule or regulation pertaining to air or water quality environmental protection in connection with any surface coal mining and reclamation operation.

Other Compliance

The same commenter said that the rule should require a permit applicant to demonstrate compliance by having appropriate permits, and subsequently to remain in compliance with them.

OSMRE did not adopt the commenter's suggestion. This rule provides remedial measures for permits that were improvidently issued as a result of an unabated violation or a delinquent penalty or fee of a related

operation at the time of permit issuance. Except for the overall violation of operating under an improvidently issued permit, it does not apply to any environmental or other violation that may arise under the permit itself, or to any violation occurring at another operation after permit issuance.

Future Events

One commenter said that the Act only authorized a regulatory authority to decline to issue a permit based on existing compliance, but neither authorized nor required rescission based on future events.

OSMRE agrees in part. To the extent the "future event" referred to by the commenter concerns compliance with the regulatory program for operations under the permit in question, or to a violation at another operation after the issuance of the permit in question, the rescission procedures of the rule do not apply. A regulatory authority may not use the rule to rescind a permit for any violation, penalty or fee resulting from such operations.

To the extent the rule requires a regulatory authority to consider events following permit issuance it is a reasonable means to identify and remedy improvidently issued permits.

Where a regulatory authority has reason to believe that a permit was improvidently issued, it legitimately may make the finding under this rule and take appropriate remedial measures, regardless of when the information concerning the violation status of the permittee at the time of permit issuance became available. Any other interpretation of the Act potentially would reward a permittee for failing to bring compliance information to light at the time of permit issuance.

Where a permit was issued on the presumption that a notice of violation was in the process of being corrected, and a cessation order subsequently was issued, the lack of abatement following permit issuance is a condition subsequent of sufficient gravity to support rescission of the permit under the Act.

Thus, to the extent the "future event" concerns an ongoing lack of abatement of a past violation, or the delinquency of a penalty or fee for which a regulatory authority should have withheld a permit the rule is authorized by sections 201 (c)(l) and (c)(2) and 510(c) of the Act.

Section 201(c)(1) authorizes OSMRE to rescind a permit for a failure to comply with the Act and its implementing regulations. A failure of a permittee to comply with the permit withholding requirements of Act and its implementing regulations, or the State program equivalents, at the time of permit issuance because of an unabated violation or a delinquent penalty of fee is a failure to comply under section 201(c)(1).

Under section 201(c)(2) of the Act, OSMRE and State regulatory authorities have the authority to correct errors in the issuance of permits through permit rescission and other appropriate remedial measures as a means of carrying out the purposes of sections 201(c)(1) and 510(c).

Except for these limited circumstances, however, and the violation of operating under an improvidently issued permit, the rule does not concern any violation, penalty or fee arising under the permit itself, or arising after permit issuance under an ownership or control link to the permittee.

Relationship to Revised Parker Order

One commenter said that since the Revised Parker Order appeared to be the principal, if not the sole, reason for this rule, OSMRE should limit its application to the limited universe of Federal violations and civil penalties covered by the order. OSMRE disagrees, and did not adopt the commenter's suggestion.

The Revised Parker Order, to which the commenter referred, was issued by the United States District Court for the District of Columbia in the case of *Save Our Cumberland Mountains, Inc. v. Clark*, No. 81–2134 (D.D.C. January 31, 1985), and among other things concerned the implementation and enforcement of section 510(c).

While this rule will facilitate compliance with the Revised Parker Order, it serves the broader purpose of bringing improvidently issued permits into compliance with the more encompassing requirements of the Act. Consistent with this broader purpose, the rule is not limited by the specific violations or penalties covered by the Revised Parker Order.

Pre-1985 Federal Violations

The same commenter said that the rule had the limited purpose of correcting pre-1985 Federal violations covered by the Revised Parker Order, so there was no basis for extending it beyond those violations. To the extent the rule applied to State violations, the commenter said, it was an intrusion into the exclusive domain of State permitting.

OSMRE disagrees. Neither section 510(c) of the Act nor 30 CFR 773.15(b)(1) differentiates between Federal and State violations for purposes of withholding a permit, and this rule is consistent with those requirements.

Statute of Limitations

One commenter said that the five year statute of limitations for the collection of fines and penalties prohibits using the mechanism of permit rescission to force payment of civil penalties for which the statute has tolled.

OSMRE disagrees. While a statute of limitations may act as a defense in a lawsuit filed to collect civil penalties, it does not cancel the underlying debt, and the failure to pay remains an act of noncompliance that is relevant in determining whether a permit was improvidently issued and imposing an appropriate remedial measure under this rule.

Ownership and Control Criteria at Time of Permit Issuance

Later proposed § 773.20(a)(4)(ii)(A) set out specific ownership and control relationships to which the rule would apply. Several commenters said the rule should cover operations that had an outstanding violation, penalty or fee and were in an ownership or control relationship with the permit applicant in a manner consistent with the Act and the regulations at the time of permit issuance. These commenters cited section 507(b)(4) of the Act and the Revised Parker Order to support their interpretation of which relationships were consistent with the Act.

OSMRE agrees with these commenters that the applicable criteria for determining ownership and control relationships under this rule are those in force at the time the permit was issued. As a result of these comments, all specific ownership and control criteria were deleted from the rule.

Instead, the rule requires the regulatory authority to base its finding that a permit was improvidently issued on the violations review criteria of the regulatory program at the time the permit was issued, including those criteria relating to ownership and control. The minimum ownership and control relationships which OSMRE believes the violations review criteria of a regulatory program should include are set out in the preceding list.

Section 507(b)(4) of the Act

Several commenters said that until the ownership and control rule was promulgated and adopted by the States, it appeared that later proposed § 773.20(a)(4)(ii)(A)(1) would, *de facto*, define ownership and control to include those entities listed in section 507(b)(4) of the Act. They said that this was

consistent with the Revised Parker Order, which mandated the use of this standard. They disagreed with the proposed limitation of this standard to "appropriate circumstances."

These same commenters said that the proposed rule was unclear on when in the development of a regulatory program those entities listed in section 507(b)(4) would serve as the basis for an ownership and control determination by a State regulatory authority, which the commenter said should begin with primacy. In addition, they said that under the rule the applicability of the term *owns or controls* in a regulatory program should begin with primacy.

The final rule no longer specifies the ownership and control relationships referred to by these commenters, but instead requires a regulatory authority to apply the ownership and control criteria of the regulatory program at the time the permit was issued. Nevertheless, because their reasoning also might apply to those criteria, it is necessary to explain why OSMRE disagrees with a number of the commenters' conclusions.

OSMRE agrees that the obligation of a State regulatory authority to withhold a permit in accordance with section 510(c) of the Act begins with primacy. OSMRE disagrees, however, with the commenters' interpretation of section 507(b)(4) of the Act and the Revised Parker Order.

For a discussion of the relationship between the requirements of sections 507(b)(4) and 510(c) of the Act in this context, as reflected in the Revised Parker Order, see the ownership and control rule at 53 FR 38874–38875. As stated there, the Congress intended to give a regulatory authority discretion to determine whether any person named under section 507(b)(4) in fact owns or controls a permit applicant.

The Revised Parker Order, which in footnote No. 1 provides that OSMRE shall use no less inclusive a class of persons than is set out in section 507(b)(4) when establishing and implementing the Applicant/Violator System, merely requires OSMRE to consider whether those persons are owners or controllers, not to find inflexibly in all cases that they are.

Corporate Separateness

Several commenters objected to the proposed rule to the extent it broadly applied the concept of ownership and control under section 510(c) of the Act. One said that in doing so the rule ignored established legal concepts of corporate separateness. The commenter said that due to a lack of authority to direct the actions of an affiliated company a permittee who was linked to a violation, penalty or fee through ownership or control would not be able to abate the violation or enter into an abatement plan or payment schedule, as provided by initial proposed § 773.20(b)(2).

OSMRE does not believe that this rule is the proper forum to reconsider the previously established scope of ownership or control relationships under section 510 (c) of the Act or a regulatory program. For the current OSMRE policy and procedures on this topic, see the October 3, 1988 (53 FR 38868) OSMRE final rule on ownership and control.

OSMRE agrees with the commenter that the initial proposed language, which appeared to require a permittee to abate a violation for which the permittee was not responsible, might have placed a permittee in an untenable position. Therefore, the later proposed and final rules were revised to provide that the necessary corrective action may be taken either by the permittee or by the "other person responsible."

Parent-Subsidiary Relationships

One commenter on initial proposed § 773.20 said that ownership and control considerations should apply only down, and not up, the corporate ladder.

OSMRE disagrees. Where the violations review criteria of the regulatory program at the time of permit issuance trace ownership or control up the corporate ladder, they are a legitimate basis for applying this rule. For a discussion of how ownership and control links may be traced up and down a corporate ladder, see the ownership and control rule at 53 FR 38875.

Another commenter objected to initial proposed § 773.20(b)(1) for requiring the issuance of an NOV to a subsidiary permittee where the parent company was responsible for the underlying violation, penalty or fee. The commenter said that a subsidiary company has no authority to dictate what must be done by its parent, and that it was inconceivable that any good could come from penalizing a subsidiary for the actions of the parent.

OSMRE disagrees. While final § 773.20 no longer provides for the issuance of an NOV, it includes other remedial measures which may be imposed on a subsidiary because of an ownership or control link to a parent company. Where such a link exists, the authority of the subsidiary to dictate the actions of the parent is irrelevant. A parent company has a definite economic interest in the continuing viability of its subsidiaries, and the rule will provide a strong incentive for the parent to abate any outstanding violation or pay any delinquent penalty or fee so that a subsidiary can continue to operate.

Coverage of Operators

Other commenters said that OSMRE should revise initial proposed § 773.20(a)(1) to specifically include the operator as having a control link to the permittee.

OSMRE did not adopt this suggestion. As previously discussed, the rule now incorporates the ownership and control criteria of the regulatory program at the time the permit was issued, including the operator in appropriate circumstances. For a discussion of how an ownership or control link may be traced through an operator, see the ownership and control rule at 53 FR 38873.

Attribution of Violations

One commenter said that the essence of this rule and the ownership and control rule was to attribute violations from one legal entity to another. The commenter said that it would be more expedient to seek a court order compelling abatement of the underlying violation than to adopt the passive approach of the rule. Another commenter said that the rule would impute to a permittee third party liability for a violation, penalty or fee.

OSMRE disagrees. As explained more fully in the October 3, 1988 (53 FR 38868) ownership and control rule, neither that rule nor this one makes one legal entity responsible for abating the violation or paying the penalty or fee of another.

As authorized by sections 201(c) and 510(c) of the Act, these rules instead deny persons who through ownership or control are linked to a person responsible for an unabated violation or a delinquent penalty or fee the privilege of obtaining or retaining a surface coal mining and reclamation permit.

Fraud, Misrepresentation and Lack of Knowledge

Several commenters on the later proposed rule said that the criteria of fraud, misrepresentation, lack of knowledge, and good faith on the part of the permittee or regulatory authority in later proposed § 773.20(a)(4) were immaterial. These commenters said that the criteria improperly shifted the focus of the inquiry away from whether an applicant had an outstanding violation to whether the regulatory authority knew or should have known of the violation. The commenters said that use of these criteria would unfairly award abuse or incompetence.

The proposed criteria concerning fraud, misrepresentation and lack of knowledge, to which the commenters objected, were removed from final § 773.20(b) of the rule. Instead, the regulatory authority is to apply the violations review criteria of the regulatory program at the time the permit was issued.

The criterion concerning good faith, to which the commenters also objected, does not concern permit issuance and was retained in § 773.20(b)(2)(ii) of the rule as a reasonable measure of a permittee's justification for appealing an unabated violation or delinquent penalty or fee for which a regulatory authority should not have issued a permit.

Other commenters said that the later proposed rule defined the term *known or should have known* too narrowly, and that the rule should apply whenever pertinent information becomes known to the regulatory authority. They added that since a permit applicant has an independent responsibility to comply with the Act and its implementing regulations, regardless of any inaction on the part of the regulatory authority, the action taken by a regulatory authority to remedy its prior inaction on an improvidently issued permit would not penalize a permittee.

OSMRE disagrees. Although this explicit criterion was removed from the rule, a regulatory authority's lack of knowledge of an existing violation at the time of permit issuance is a relevant consideration in determining whether a permit was improvidently issued, and is inherent in the violations review criteria of each regulatory program.

Section 510(c) of the Act does not impose on an applicant an unlimited responsibility to submit violations information, as the commenters infer, but is limited to certain notices of violations incurred during a certain period of time preceding the application. And under section 510(c) and 30 CFR 773.15(b)(1) a violations review must be based on information "available to the regulatory authority."

The existence of an unabated violation or a delinquent penalty or fee at the time of permit issuance does not invalidate a determination by a regulatory authority that none existed unless information concerning the violation, penalty or fee was available to the regulatory authority, or should have been available if the permit application were complete and accurate, or if the regulatory authority had made reasonable inquiries. At a minimum, for permits issued after October 1, 1987 such reasonable inquiries would include querying the Applicant/Violator System.

The discovery of a pre-existing violation after permit issuance should not automatically lead to the conclusion that the permit was improvidently issued if the regulatory authority could not reasonably have been made aware of the violation at the time the permit was issued. Similarly, such a discovery does not necessarily mean that an operator's activities under the permit were conducted in violation of the regulatory program. This standard for violations review will not, as the commenters suggested, award abuse or incompetence because it covers not only actual knowledge, but also what the regulatory authority reasonably should have known.

Several commenters asked OSMRE to clarify that the rule will apply not only in situations where a regulatory authority had the information necessary to block a permit at the time it was issued, but also where the information was obtained after the permit was issued.

OSMRE agrees that this is the correct interpretation of the rule in situations where the permit applicant should have provided the information in the permit application, or where the regulatory authority could have obtained the information with reasonable inquiry.

Erroneous AVS Information

One commenter asked how erroneous information in the OSMRE Applicant/Violator System (AVS) would affect the responsibility of a regulatory authority under initial proposed § 773.20(a)(4)(ii) for knowing about outstanding violations, penalties or fees.

Although the rule no longer explicitly includes the criterion to which the comment applies, the question remains relevant. Subject to the review standard set out in the preceding discussion, a regulatory authority may rely on the information in the AVS as up-to-date and accurate.

As explained previously, under section 510(c) of the Act and 30 CFR 773.15(b)(1) a violations review reasonably must cover the information "available to the regulatory authority." Due to its voluminous extent, OSMRE has found it necessary to establish the computer-based AVS as a means to provide access to this information.

Under this rule a proper query of the AVS will constitute a reasonable inquiry of the information available to the regulatory authority, and absent some defect in the violations information provided in the permit application, or inadequate use of other information that actually was known to the regulatory authority, an error in or omission from the information in the AVS will not provide the basis for a finding that a permit was improvidently issued.

b. Section 773.20(b)(2). The second criterion, in § 773.20(b)(2), is that the violation, penalty or fee for which the regulatory authority should have withheld the permit remains unabated or delinquent, and is not the subject of a good faith appeal, or of an abatement plan or payment schedule with which the permittee or other person responsible is complying to the satisfaction of the responsible agency.

This criterion is essentially the same as proposed. It is included in the rule because from the standpoint of administrative efficiency it makes little sense to rescind a permit where the underlying violation, penalty or fee would not currently bar the issuance of a new permit. Where the defect in the permit either has been or is in the process of being corrected, this criterion will obviate the unproductive rescission of, reapplication for, and reissuance of what ultimately would amount to the same permit.

As a result of this criterion, abatement of the underlying violation or payment of the delinquent penalty or fee to the satisfaction of the responsible agency subsequent to permit issuance will preclude a finding that a permit was improvidently issued. In addition, if the violation, penalty or fee is the subject of a good faith appeal or payment schedule at the time of permit review under this section, the regulatory authority will not find that the permit was improvidently issued.

If the permittee or other person responsible loses the appeal, however, or fails to comply with the abatement plan or payment schedule, and the regulatory authority did not consider the appeal, abatement plan, or payment schedule and conditionally issue the permit, the procedures of this rule will apply. Where the permit was conditionally issued, the provisions of the regulatory program governing noncompliance with a permit condition, and not this rule, will apply.

c. *Section 773.20(b)(3).* The third criterion, in § 773.20(b)(3), is that where the permittee was linked to the violation, penalty or fee through ownership or control, under the violations review criteria of the regulatory program at the time the permit was issued an ownership or control link still exists between the permittee and the person responsible for the violation, penalty or fee, or where the link was severed the permittee continues to be responsible for the violation, penalty or fee.

This criterion is similar to later proposed § 773.20(a)(3). It was expanded in response to public comment to require a finding of improvident issuance where a permittee continues to be responsible for an unabated violation or a delinquent penalty or fee, notwithstanding the severing of a previous ownership or control link.

Like previously discussed § 773.20(b)(2), this provision is included in the rule for reasons of administrative efficiency. Where no ownership or control link currently exists between the permittee and the person responsible for the underlying violation, penalty or fee, and the permittee has no continuing responsibility for the violation, penalty or fee, and thus the existence of the violation, penalty or fee would not currently bar the issuance of a new permit, it makes little sense to rescind the permit and, inevitably, issue a new one.

If an ownership or control link between a permittee and the person responsible for a violation, penalty or fee is severed after permit issuance, but later reestablished, this section would not preclude a subsequent finding that the permit was improvidently issued.

The requirement of this rule for a current ownership or control link between the permittee and the person responsible, or continuing responsibility on the part of the permittee, recognizes that there is little to be gained by applying the remedial measures of this rule to an existing permit if that critical link or responsibility no longer exists.

A fundamental purpose of section 510(c) of the Act is to ensure that unabated violations and delinquent penalties and fees associated with previous permits are abated or paid before another permit is issued. Where a permittee no longer bears any responsibility for, or has the requisite control to cause the abatement or payment of a previous violation, penalty or fee, however, it is consistent with section 510(c) for the regulatory authority to refrain from taking remedial action against the permit.

Since under section 510(c) a permit *applicant* legitimately may sever his or her ownership or control link with the person responsible for a violation, penalty or fee, and thus receive a permit, it is reasonable to afford a *permittee* a similar opportunity once a permit is issued.

Like § 773.20(b)(1) of this rule, § 773.20(b)(3) bases the continuing existence of an ownership or control link, and of the responsibility of the permittee for a violation, penalty or fee, on the criteria of the regulatory program at the time the permit was issued. OSMRE considered but rejected the alternative of applying the violations review criteria in force at the time a permit is reviewed under this section because it would have subjected the permittee to a standard that might be subject to change or reinterpretation.

Relationship Between Permittee and Violation, Penalty or Fee

To facilitate the interpretation of this rule, it is useful to differentiate three ways in which a permittee can be related to an unabated violation or a delinquent penalty or fee for purposes of section 510(c) of the Act and its implementing violations review criteria. The permittee can be (1) directly responsible for the violation, penalty or fee; (2) indirectly responsible; or (3) linked to the violation, penalty or fee through ownership or control.

Direct responsibility arises where the permittee is cited on the violation notice or penalty assessment, or specifically is identified in a requirement to pay a fee.

Indirect responsibility may arise through an ownership or control link under certain circumstances where the permittee *owns or controls* the person who is directly responsible. Indirect responsibility generally will not arise through an ownership or control link where the permittee *is owned or controlled by* the person responsible.

A link through ownership or control arises where, under the violations review criteria of the applicable regulatory program, the permittee either owns or controls, or is owned or controlled by, the person directly responsible for a violation, penalty or fee.

The use of these three categories to differentiate these possible relationships between a permittee and a violation, penalty or fee is consistent with the relevant provisions of section 510(c) of the Act and its implementing violations review criteria, which preclude the issuance of a permit only where a permit applicant is either directly or indirectly is responsible for, or through an ownership or control relationship is linked to, an unabated violation or a delinquent penalty or fee.

Correcting Defect in Permit

Where a permittee is either directly or indirectly responsible for an unabated violation or a delinquent penalty or fee, he or she cannot avoid this responsibility by severing his or her link with any other person. The only way to satisfy this responsibility is to prevail in an appeal, abate the violation, or pay the penalty or fee. If the permittee or other person responsible does so, this rule will allow the permit to remain in force. (For additional discussion of the circumstances under which a permittee continues to be indirectly responsible for the violation, penalty or fee of a former subsidiary, see the ownership and control rule at 53 FR 38876.)

Where a permittee is linked to a violation, penalty or fee only through ownership or control, and has no direct or indirect responsibility for the violation, penalty or fee, the permittee may correct the defect in the permit and forestall the remedial measures of this rule by severing the ownership or control link. This is because under such circumstances the purpose of this rule is not to compel abatement or payment by the permittee, but to compel abatement or payment by the person responsible.

Where an ownership or control link continues to exist, the purpose of this rule is to prevent the person responsible from evading the prohibition of section 510(c) of the Act by using an intermediary, to which he or she is linked by ownership or control, to obtain and retain a permit which he or she otherwise could not have obtained or retained. Where the link is broken, however, the person responsible no longer has an interest in the permit that would serve to compel abatement or payment.

Current Ownership or Control Link

Several commenters favored the later proposed requirement for a current ownership or control link as a basis for a finding that a permit was improvidently issued. They said that a current link between the permittee and violator would have to exist if this rule were to achieve its stated objective of compelling the abatement of existing violations. One commenter said that in the absence of such a link the rule would place the permittee in a position where compliance would be impossible, and would make the rule more difficult to defend with respect to retroactive application.

OSMRE agrees with the commenter that where a permittee has no direct or indirect responsibility for an unabated violation or a delinquent penalty or fee, a current ownership or control link is a necessary measure of the ability of the regulatory authority to compel compliance, and thus to remedy the defect in the permit. As explained under the subsequent heading, II.F.3. The Rule is not retroactive, however, OSMRE disagrees that the rule in any way is retroactive.

Several commenters on the later proposed rule said that it was contrary to the Act to require a current ownership or control link as a criterion

that a permit was improvidently issued. They said that this would provide an untimely incentive for permittees to sever links to avoid liability for operations under common ownership or control at the time of permit issuance.

OSMRE disagrees. As explained in the preceding discussion of § 773.20(b)(3), in the absence of any direct or indirect responsibility on the part of the permittee for an unabated violation or a delinquent penalty or fee, the rule requires a current ownership or control link for reasons of administrative efficiency and because there is nothing to be gained by rescinding a permit where the permittee is not responsible for and will not be able to bring about abatement or payment.

Section 510(c) of the Act does not require a regulatory authority to withhold a permit from an applicant who at any time in the past was linked to a violator through ownership or control. Thus, prior to applying for a permit, an applicant may sever his or her link to the person responsible for an unabated violation or a delinquent penalty or fee and legitimately receive a permit.

In the same manner, it is reasonable for this rule to give a permittee an opportunity to sever an ownership or control link to the person responsible, and thereby forestall a finding that the permit was improvidently issued. As long as the link legitimately is severed, and the permittee does not continue to be directly or indirectly responsible for the violation, penalty or fee, the purposes of the Act are fully served.

Several commenters on the later proposed rule said that the withholding of a permit under section 510(c) and the rescission of a permit under this rule had two purposes: (1) To provide an incentive for a coal operator to correct past violations if he or she wished to continue mining coal; and (2) to prevent an operator who failed to comply with the law from mining coal.

The commenters said that regardless of a current link between the permittee and the violator, permit rescission would provide a strong incentive to correct unabated violations and pay delinquent penalties. The commenters said that the rule overlooked the second purpose, and concluded that a current ownership or control link should not be required.

OSMRE agrees with the commenters on the dual purposes of withholding a permit under section 510(c), and for applying the remedial measures of this rule. In response to this comment, § 773.20(b)(3) was revised to require a finding of improvident issuance where a permittee continues to be responsible for an unabated violation or a delinquent penalty or fee, notwithstanding the severing of a previous ownership or control link. This revision will enhance the capacity of the rule to serve the second purpose of section 510(c) by subjecting a permittee who continues to be responsible for an unabated violation or a delinquent penalty or fee to its remedial measures.

OSMRE disagrees with the commenters, however, that requiring a current ownership or control link where a permittee does not continue to be responsible for a violation, penalty or fee is inconsistent with the purposes of section 510(c). As the commenters pointed out, the remedial measures of this rule will provide a strong incentive for a permittee to abate a violation or pay a delinquent penalty or fee for which he or she continues to be responsible and for which the regulatory authority should have withheld a permit.

Where the permittee has no direct or indirect responsibility for the violation, penalty or fee, however, this incentive can arise only where there is a current link between the permittee and the person responsible. Where the link is broken, the permittee is unlikely to have any relationship with the violator that might serve to bring about compliance, and the rule cannot provide the desired compliance incentive.

Notwithstanding its requirement for a current ownership or control link, this rule will effectively serve the second purpose noted by the commenters. It will enable regulatory authorities to prevent non-complying persons from retaining or otherwise continuing to operate under permits they should not have received. And it will give persons responsible an additional incentive to abate violations and pay delinquent penalties and fees because not doing so will prevent them from forming or maintaining viable ownership or control relationships with other prospective permittees.

Where the relevant ownership or control relationship continues to exist, so the violation, penalty or fee legitimately can be linked to the permittee, the rule requires the regulatory authority to take appropriate remedial action. But where the ownership or control link with the person responsible is severed, and the permittee has no direct or indirect responsibility for the violation, penalty or fee, the permittee cannot be considered to have a bad mining record requiring remedial action under this rule.

Severing Ownership or Control Link

Several commenters on the later proposed rule were concerned that the requirement for a current ownership or control link unlawfully would enable a permittee to break his or her connection with a non-complying mining operation and thus retain his or her permit. As examples of how this might be done, the commenters said that a partnership might be dissolved; a mining contract might expire or be terminated; a corporation might be dissolved, or liquidated in bankruptcy; or an operator might convey his or her interest in the operation to another party.

In response to this and a comment discussed under the preceding heading, § 773.20(b)(3) was revised to require a finding of improvident issuance where a permittee continues to be responsible for an unabated violation or a delinquent penalty or fee, notwithstanding any severing of the ownership or control link under which that responsibility arose.

This revision will prevent a permittee who severs such a link from avoiding the responsibility he or she may continue to have for an unabated violation or delinquent penalty or fee. For the reasons discussed under the preceding heading, however, OSMRE disagrees that the requirement of § 773.20(b)(3) for a current ownership or control link in the absence of such continuing responsibility provides any reason for the commenters' concern.

Depending on the review criteria of the applicable regulatory program, an ownership or control link between a permittee and a person responsible for an unabated violation or a delinquent penalty or fee may arise and be severed in a variety of ways. To use the examples cited by the commenters:

The dissolution of a partnership will not relieve the partners of any previously-held responsibility for an unabated violation, or for a delinquent penalty or fee as owners or controllers of the partnership. Nor will the expiration or termination of a mining contract necessarily relieve the parties to the contract of any previously-held responsibility. The dissolution or liquidation of a corporation in bankruptcy will not relieve any officer, director or other owner or controller of the corporation of his or her previous responsibility for operations conducted by, or under the ownership or control of, the corporation.

However, where a permittee has no personal responsibility for a violation, penalty or fee, and effectively severs his or her link with the person responsible,

there no longer exists any reason to consider permit rescission or other remedial action under this rule. At that point the slate is as clean as it should have been on the date the permit was issued, and it not only is reasonable, but also fully in compliance with the Act and its implementing regulations, to allow the permittee to retain the permit and continue to operate without interruption.

Inconsistent Terminology

One commenter said that while initial proposed § 773.20(a) referred to any surface coal mining operation owned or controlled by either the permittee or by any person who owns or controls the permittee, this terminology was not consistently carried through the remainder of that section.

OSMRE agrees with the commenter that these same ownership and control relationships should have been included throughout initial proposed § 773.20, as they were in later proposed § 773.20. Rather than explicitly setting out the applicable ownership and control relationships, however, final § 773.20(b)(1) and (b)(3) now refer generally to "the violations review criteria of the regulatory program," which covers any applicable ownership or control relationship.

In addition, § 773.20(b)(2)(ii), (b)(3), (c)(1) and (c)(2), refer to the "person responsible," as do §§ 773.21 and 843.21 of this rule, which covers any person related to the permittee through ownership or control who is responsible for an unabated violation or a delinquent penalty or fee.

4. Section 773.20(c) Remedial Measures

Where a regulatory authority finds, under § 773.20(b) of this rule, that a surface coal mining and reclamation permit was improvidently issued, § 773.20(c) requires it to use one or more of four specified remedial measures: To (1) implement an abatement plan or payment schedule; (2) impose a permit condition; (3) suspend the permit; or (4) rescind the permit. In combination with one or more of these remedial measures, a regulatory authority also may use any other measure available under its regulatory program.

This section derives from later proposed § 773.20(b). It includes four alternative remedial measures because of the diversity of circumstances under which a regulatory authority might find that a permit was improvidently issued, and the resulting need to apply a remedy that not only is administratively appropriate, but also is fair and equitable to the permittee.

Again, from the standpoint of administrative efficiency it is consistent with section 510(c) of the Act to adopt alternative remedial measures through which a regulatory authority can afford a permittee a reasonable period of time to correct the defect in the permit and achieve a state of compliance that neither would have caused the regulatory authority to withhold the permit initially or have led to a finding of improvident issuance under this rule.

While mandatory rescission might in some instances prompt a permittee to achieve compliance more rapidly, in other instances it might, through loss of income or default on contractural or other legal or financial obligations, effectively thwart a permittee's ability to do so.

Moreover, mandatory rescission could produce grossly inequitable results where a permit was improvidently issued through oversight or error on the part of the regulatory authority, and notwithstanding a relatively minor past violation the permittee or its employees would suffer considerable hardship if mining under the permit abruptly were terminated.

In view of the administrative and equitable considerations involved, this rule is intended to strike the reasonable balance sought by section 202(f) of the Act.

Need for Remedies Other Than Rescission

Several commenters on the initial proposed rule objected to permit rescission as the sole remedy for an improvidently issued permit. One commenter said that in circumstances involving a nominal penalty it was inconceivable that the only remedy available to the regulatory authority to accomplish the desired result was to rescind the permit and require reclamation of the operation. The commenter said that rescission would be particularly burdensome to large operators in the west, and recommended revision of the rule to include alternative remedies.

Another commenter said that while permit rescission may at times be warranted and appropriate, the rule should include discretion for permit suspension, both as an independent remedy and as the first step in the rescission process, to give all parties an opportunity to ensure that no errors had been made.

Another commenter said that suspension, rather than rescission, was the more appropriate sanction in most circumstances addressed by initial proposed § 773.20(c). This commenter said that in cases of fraud or misrepresentation rescission was the appropriate sanction, but where a permit was issued through human error or a lack of current information rescission would be unnecessarily harsh. The commenter said that both suspension and rescission would have the desired effect, but only suspension would facilitate the timely resumption of operations.

Another commenter said that the rule should include provision for suspending a permit as provided by section 521(b) of the Act, 30 U.S.C. 1271(b). This commenter said that because of delays in the repermitting process, permit rescission would delay mining at a site for a period of at least six months to two years. The commenter said that this would increase the burden on regulatory authorities because many of the affected operators would become insolvent, and thus default on penalties and fees, as well as forfeit their performance bonds.

A much better solution, the commenter said, was to suspend a permit until the defect in the permit was corrected. This not only would give a permittee a strong financial incentive to correct the defect, the commenter said, but also would increase the likelihood that the regulatory authority would collect the penalties and fees that were owed.

Another commenter said that the additional remedial measures in later proposed § 773.20(b) provided the flexibility necessary to resolve the problem through the most effective means available under each regulatory program.

OSMRE agrees that because of differences in the circumstances involving each improvidently issued permit, alternatives to permit rescission are needed, and has revised the later proposed and final rules accordingly.

Suspension and Rescission as Sole Remedy

Several commenters disagreed with the alternative remedial measures in later proposed § 773.20(b), and said that regardless of what definitions were applied or distinctions were drawn, once it was determined that a permit was issued in violation of section 510(c) of the Act the remedy mandated by law was permit suspension or revocation. These commenters characterized section 201(c)(1) of the Act, 30 U.S.C. 1211(c)(1), as unmistakably mandatory in nature, requiring that the regulatory authority *shall* order the suspension or revocation of the permit.

Likewise, the commenters said, section 510(b)(1) of the Act demands that a permit application be accurate

and complete and that all of the requirements of the Act and the regulatory program be complied with before the application is approved. Moreover, they said, the requirements of section 510(c) that a permit applicant list any and all notices of violations, and that the regulatory authority not issue a permit under certain circumstances, are equally demanding.

Citing the legislative history of the Act for support, the commenters said that under section 510(b), (b)(1) and (c) of the Act an applicant has a duty to provide information to the regulatory authority on any and all violations of environmental laws, and that absent an affirmative demonstration by the applicant that he or she has met all of the requirements of the Act no permit can lawfully be issued. Based on these provisions of the Act, the commenters concluded that the suspension and revocation of an improvidently issued permit was required regardless of any mitigating circumstances involved in its issuance.

OSMRE disagrees. For the reason why OSMRE prefers to use the term *rescission* in the context of an improvidently issued permit, as opposed to the commenters' term *revocation*, see the discussion of Permit Rescission vs. Revocation under the subsequent heading, II.F.1. Statutory Authority.

Contrary to the commenters' allegations, section 510(c) of the Act does not require an applicant to list all violations, but is limited to certain notices of violations incurred during a certain period of time prior to the date of the application.

Moreover, the commenters' excessively strict reading of section 201(c)(1) of the Act would necessitate permit suspension and rescission for any violation of the Act, which could result in economic hardship and disruption the Congress clearly did not intend to cause despite any mitigating circumstances.

OSMRE concludes that it has sufficient discretion under the Act to adopt procedures which reasonably account for the circumstances under which a permit was improvidently issued, and which include alternative remedial measures that will enable the regulatory authority to consider those circumstances in taking appropriate remedial action against the permit.

Contrary to several commenters' allegations, the term *improvidently issued* is not intended as a euphemism. Rather, OSMRE believes that the term reflects the severity of the problem involved when a regulatory authority should not have issued a permit, while at the same time not foreclosing reasonable flexibility in the adoption of appropriate remedial measures. In a process as complex as the filing and review of a permit application it is unavoidable that some errors may be made, either by the applicant or by the regulatory authority, which will require correction or modification of the permit once it is issued.

The all-or-nothing interpretation of the Act espoused by the commenters would lock this process into a state of rigidity that is contrary to the purposes of the Act and is inconsistent with the efficient and effective administration of its requirements and sound environmental policy. Thus, OSMRE declines to interpret the Act as inflexibly requiring permit suspension and rescission regardless of the circumstances under which a permit was improvidently issued.

Void vs. Voidable Permits

One commenter said that in view of the elaborate and detailed permit review process provided by the Congress, a presumption of validity accompanies a regulatory authority's decision to issue a permit. OSMRE agrees.

Several commenters on the later proposed rule said that sections 510 (b) and (c) of the Act are mandatory provisions, and any failure on the part of a permit applicant to divulge relevant violations renders the permit in violation of the law and subject to mandatory suspension or revocation under section 201(c)(1) of the Act. The commenters said that there is no room for failing to take action to rescind or suspend a permit based on regulatory authority or applicant inadvertance. Citing several court decisions to support this allegation, the commenters said that the issuance of a permit in contravention of the mandatory prerequisites for valid issuance renders the permit *void ab initio* and a legal nullity.

OSMRE disagrees with the commenters that suspension and rescission are the only lawful remedies for an improvidently issued permit. The Congress did not intend the extreme measures in section 201(c)(1) as exclusive remedies. Section 201(c)(2) of the Act provides authority for less extreme measures sufficient to carry out the purposes and provisions of the Act.

Because determining the validity of a particular permit under section 510(c) is not always as clearcut as the commenters allege, OSMRE is reluctant to require permit suspension or rescission in every instance. The case law cited by the commenters to support their allegation concerned Federal agency regulations, not permits, and thus is relevant in this context only by the broadest analogy, upon which OSMRE is reluctant to rely in promulgating a national rule.

This rule need not and cannot conclusively resolve the issue of whether a particular permit is either void or voidable. Through the alternative remedial measures in § 773.20(c), which range from the implementation of an abatement plan or payment schedule to permit rescission, the rule affords the regulatory authority reasonable discretion to consider the circumstances involving a particular improvidently issued permit and to fashion an appropriate remedy.

Rather than specifying in legalistic detail the circumstances under which a regulatory authority must consider a permit void, and thus subject to rescission, this rule reasonably leaves the question to the informed discretion of the regulatory authority for determination on a case-by-case basis.

Although the rule does not require a regulatory authority to use any particular one of the four remedial measures, OSMRE intends that the measure or measures used will be commensurate with the circumstances under which a permit was improvidently issued.

Where a permit was issued through willful fraud or collusion on the part of the permittee, rescission must be given serious consideration as the only appropriate remedy. Where a permit was issued because the regulatory authority itself did not fully implement the violations review criteria of the regulatory program, a remedy other than rescission may be more appropriate.

Where a remedial measure other than rescission is used, and the permittee fails to comply with the measure, the regulatory authority should reconsider its finding, and where appropriate rescind the permit.

This interpretation of the requirements of the Act for permit rescission under section 510(c) is consistent with the analagous requirements of section 521(b) of the Act, which provides that

> in the case of a State permittee who has met his obligations under such permit and who did not willfully secure the issuance of such permit through fraud or collusion, the Secretary shall give the permittee a reasonable time to conform ongoing surface mining and reclamation to the requirements of this Act before suspending or revoking the State permit.

This provision in section 521(b) authorizes OSMRE to use remedial measures other than suspension or

revocation when enforcing a defective State permit, as a means of bringing the permit into conformance with the regulatory program. Thus, it is reasonable to conclude that this rule, which includes alternatives to permit suspension and rescission, conforms with the intent of the Congress on how regulatory authorities should deal with improvidently issued permits.

Two-Acre Violations

The same commenters cited the experience of a State regulatory authority under " 'two-acre' permits" as evidence of how a lack of suspension or rescission would pose undesirable risks to the public and the environment. Where notices of violation rather than cessation orders were issued for two-acre violations, the commenter said, the lack of a requirement to immediately cease operations resulted in additional disturbance and subsequent abandonment of the affected sites.

OSMRE disagrees that the context of this rule is analagous to the two-acre situation described by the commenters. In the case of an improvidently issued permit, the underlying violation, penalty or fee did not arise from the mining operation under the permit, but from another operation.

Suspension or rescission of the permit would not necessarily bring about compliance at the other operation any more effectively than the other remedial measures of this rule. Moreover, any violation stemming from operations under an improvidently issued permit itself is subject to enforcement under the applicable regulatory program, including the issuance of a cessation order where appropriate.

Suggested Alternatives to Rule

One commenter on the initial proposed rule said that permit rescission should be made an optional enforcement mechanism. OSMRE has adopted this suggestion by including in § 773.20(c) remedial measures other than permit rescission, one or more of which a regulatory authority must use where it finds that a permit was improvidently issued.

One initial commenter suggested specific alternative procedures for a permit suspension process initiated by an order to the permittee to show cause. Under the alternative, where the permittee failed either to show that the regulatory authority's findings were in error, or to correct the defect in the permit, the permit temporarily would be suspended and the permittee would be required to commence reclamation. If the defect subsequently were corrected, the regulatory authority would reinstate the permit. The commenter concluded that this alternative more closely conformed with the provisions of section 521(a)(4) of the Act, 30 U.S.C. 1271(a)(4), concerning the suspension of permits.

OSMRE disagrees that the suspension procedures suggested by the commenter are preferable to those of this rule. The referenced section 521(a)(4) of the Act applies only to suspension or revocation of a permit for a pattern of violations *under that permit*, not to the improvident issuance of a permit because of an unabated violation or a delinquent penalty or fee *at another operation*. Moreover, the commenter's alternative fails to provide for permit rescission, a necessary remedial measure under appropriate circumstances.

Several commenters said that the rule was unnecessary in view of the enforcement measures already available to OSMRE and State regulatory authorities for dealing with improvidently issued permits. One said that the rule would put numerous contract miners out of work because a large company could not take the risk that a contractor might have failed to abate a violation or pay a penalty or fee in connection with another operation. This, the commenter said, could result in the closing of a large company's mines and the forcing of contract miners out of business.

Another commenter said that the rule created unnecessary obligations, and that a more focused approach to the problem would be a more prudent course. Another said that instead of issuing a new rule, OSMRE should develop a uniform and consistent policy or procedure for progressive enforcement actions against failures to abate violations and the nonpayment of civil penalties or reclamation fees.

The commenter said that instead of permit rescission, the regulatory authority should use existing procedures, such as better enforcement and the issuance of a notice of violation followed by a failure-to-abate cessation order. If compliance, or satisfactory progress toward compliance, were not achieved within ninety days, the earlier permit would be suspended. Failure to reclaim or to comply ultimately would result in bond forfeiture and revocation of the earlier permit.

OSMRE disagrees. This rule is needed to give regulatory authorities specific procedures which the existing regulatory scheme does not provide for dealing with improvidently issued permits. As such, it will provide not only the "focused approach" sought by the one commenter, but also the "uniform and consistent" procedures sought by the other. It will not put any law abiding permittees, operators or contract miners out of business, but will give any permittee whose permit was improvidently issued a reasonable opportunity to bring about the correction of the defect in the permit and thus continue mining.

The threat of alternative enforcement at a previous site with an unabated violation or a delinquent penalty or fee would not have an affect on operations under an improvidently issued permit. The potential rescission of an improvidently issued permit under this rule will give a permittee an incentive in addition to a cessation order or other enforcement action at a previous operation to bring about the abatement of a violation or the payment of a penalty or fee resulting from that operation.

One commenter said that the Congress provided an elaborate and detailed review process by which any objection to a permit decision must be raised. Therefore, the commenter concluded, a presumption of validity accompanies a regulatory authority's decision to issue a permit, and the only remedy for an improvidently issued permit is an appeal under sections 514 and 526 of the Act, 30 U.S.C. 1264 and 1276, and their State program counterparts.

OSMRE disagrees that an appeal is the only lawful remedy. Section 514 of the Act, which gives certain persons a right to appeal a permit decision, neither limits the authority of OSMRE to adopt this rule nor the power of State regulatory authorities over improvidently issued permits. Nor does section 526 of the Act, which applies to judicial review of OSMRE and State regulatory authority actions, place any limitation on the authority of OSMRE or a State to adopt or implement the oversight and enforcement procedures of this rule.

a. *Section 773.20(c)(1).* Section 773.20(c)(1) gives a regulatory authority the alternative of implementing, with the cooperation of the permittee or other person responsible, and of the responsible agency, a plan for abatement of the violation or a schedule for payment of the penalty or fee on which the finding of improvident issuance was based. This section derives from later proposed § 773.20(b)(1).

The cooperation of the permittee or other person responsible, and of the responsible agency, is necessary to insure the initial feasibility of and ultimate compliance with any resulting plan or schedule. If the permittee or

other person responsible is unwilling to cooperate in implementing an abatement plan or payment schedule, the regulatory authority should use one of the other remedial measures.

Any unwillingness on the part of the person responsible to cooperate with the regulatory authority in this process should not be construed as a lack of ownership or control on the part of the permittee. Otherwise, persons responsible might be induced to withhold cooperation as a means of demonstrating the lack of an ownership or control link.

Cooperation of Responsible Agency

One commenter said that the lack of a reference to the responsible agency in the provision of the later proposed rule corresponding to final § 773.20(c)(1) was inconsistent with later proposed § 773.21(a)(3), which required compliance with an abatement plan or payment schedule to the satisfaction of the responsible agency. The commenter asked whether this lack had any significance.

The lack of an explicit reference to the responsible agency in later proposed § 773.20(b)(1) was an oversight that was corrected in final § 773.20(c)(l). Where an agency other than the regulatory authority has jurisdiction over the unabated violation or delinquent penalty or fee, it is appropriate that the regulatory authority implement any abatement plan or payment schedule with the cooperation of that agency.

b. *Section 773.20(c)(2).* Section 773.20(c)(2) gives a regulatory authority the alternative of imposing on an improvidently issued permit a condition requiring that in a reasonable period of time the permittee or other person responsible abate the violation or pay the penalty or fee on which the finding of improvident issuance was based. This section derives from later proposed § 773.20(b)(2).

The final rule was revised to provide explicitly for a reasonable period of time for abatement or payment. This was done because the permittee otherwise would be in violation of the condition immediately after it was imposed. After this reasonable period of time, lack of compliance would subject the permittee to the enforcement measures of the regulatory program for the violation of a permit condition.

c. *Section 773.20(c)(3).* Section 773.20(c)(3) gives a regulatory authority the alternative of suspending an improvidently issued permit until the underlying violation is abated or the delinquent penalty or fee is paid. This section derives from later proposed § 773.20(b)(3).

A suspension under § 773.20(c)(3) will enable a regulatory authority to terminate mining operations under a permit for an indefinite period of time without subjecting the permittee to the possible financial, legal or other consequences that permit rescission might entail, such as default on financial or contractual agreements.

Unlike § 773.21 of this rule, § 773.20(c)(3) does not set out specific suspension procedures. A regulatory authority which elects to suspend a permit under this section may use any appropriate procedures that are consistent with the regulatory program. Unless sound reasons exist to the contrary, however, OSMRE anticipates that a suspension under this section would at a minimum include a requirement that reclamation of the site continue in a manner consistent with the anticipated duration of the suspension, and provide for administrative appeal.

Permit Suspension Procedures

One commenter said that OSMRE should modify later proposed § 773.20(b)(3) to allow the regulatory authority an appropriate period of time before initiating permit suspension. The commenter said that permit suspension could be more onerous than rescission if it occurred immediately, without an opportunity for the permittee to correct the defect in the permit.

OSMRE did not expressly adopt the commenter's suggestion. Section 773.20(c)(3) does not set out specific suspension procedures, but allows the regulatory authority to use any appropriate procedures that are consistent with the regulatory program, including a reasonable period of time between notifying a permittee of a suspension and when the suspension becomes effective.

The same commenter said that it was unclear whether the permit rescission procedures of § 773.21 applied both to suspension under later proposed § 773.20(b)(3), and to suspension and rescission under later proposed § 773.20(b)(4). The commenter concluded that § 773.21 applied only to rescission under § 773.20(b)(4).

The commenter is correct. As was proposed, final § 773.21 applies only to permit suspension and rescission under § 773.20(c)(4) of this rule. The suspension provision in § 773.20(c)(3) was included in the rule to give a regulatory authority discretion to tailor a suspension to the unique circumstances involving a particular permit, and thus prevent in appropriate cases such potentially onerous consequences as those to which the commenter referred.

To further clarify that § 773.21 applies only to permit suspension as a preliminary step in the permit rescission process, and not to suspension under § 773.20(c)(3), the word *suspension* was deleted from the heading of § 773.21.

d. *Section 773.20(c)(4).* Section 773.20(c)(4) gives a regulatory authority the alternative of rescinding an improvidently issued permit under § 773.21 of this rule.

This section derives from later proposed § 773.20(b)(4). For more on this remedial measure, see the immediately following discussion of § 773.21.

C. Section 773.21—Improvidently Issued Permits: Rescission Procedures

1. Overview

Section 773.21 of this rule sets out the procedures a regulatory authority must use when it elects to rescind an improvidently issued permit. It requires the regulatory authority to serve on the permittee a notice of proposed suspension and rescission which includes the reasons of the regulatory authority for its finding under § 773.20(b) of this rule. In addition, the notice must state (1) when the proposed suspension and rescission will take effect; (2) what proof the permittee must submit to forestall the suspension and rescission; (3) the effect of the suspension and rescission; and (4) the applicable appeal procedures.

This section derives from later proposed § 773.21. To insure that the permittee receiving a notice of proposed suspension and rescission is fully aware of its effect, this rule incorporates all of the requirements of later proposed § 773.21 into the notice itself.

An explicit requirement for the regulatory authority to include in the notice the reasons for its finding under § 773.20(b) of this rule, which was implicit in later proposed § 773.21(a)(1), was added to this section to insure that the permittee is informed of the basis for the finding. In serving a notice of proposed suspension and rescission on a permittee, OSMRE intends that the regulatory authority will follow the procedures of 30 CFR 843.14, or the State program equivalent, for the service of notices of violation, cessation orders, and show cause orders.

2. Section 773.21(a) Automatic Suspension and Rescission

Section 773.21(a) requires a regulatory authority to state in a notice of proposed suspension and rescission that after a specified period of time not to exceed ninety days the permit automatically will be suspended, and not to exceed

ninety days thereafter will be rescinded, unless within those periods the permittee demonstrates to the regulatory authority that the finding on which the notice was based was erroneous at the time it was made, or that he or she subsequently has brought about the necessary corrective action.

The maximum ninety-day notice periods prior to the effect of suspension and rescission derive from later proposed § 773.20(a). Periods shorter than ninety days may be set at the discretion of the regulatory authority as circumstances warrant, and the periods for suspension and rescission may have different durations.

The notice period for permit rescission begins to run on the date a suspension becomes effective, so that under the rule the maximum notice period is one hundred and eighty days. The specified periods include Saturdays, Sundays and holidays.

These notice periods were adopted for several reasons. They will give the permittee adequate time in appropriate cases to take corrective action or to gather and submit the proof required to forestall the proposed suspension and rescission. Such proof may not be readily available to the permittee if the person responsible for the violation, penalty or fee is linked to the permittee through a complex chain of ownership or control.

In view of the potentially severe consequences which permit suspension or rescission may have on the financial and contractual obligations, reputation, and employees of a permittee, and the diversity of circumstances under which a permit may be suspended or rescinded under this rule, it is reasonable to give the regulatory authority discretion to set appropriate periods before the notice takes effect. The notice periods also will enable the permittee to file an appeal as provided for by § 773.21(c) of this rule.

The proof which the permittee must submit to forestall the suspension and rescission of the permit is either that (1) the finding of the regulatory authority under § 773.20(b) of this rule was erroneous; (2) the permittee or other person responsible has abated the violation on which the finding was based, or paid the delinquent penalty or fee, to the satisfaction of the responsible agency; (3) the unabated violation or delinquent penalty or fee is the subject of a good faith appeal, or of an abatement plan or payment schedule with which the permittee or other person responsible is complying to the satisfaction of the responsible agency; or (4) since the finding was made the permittee has severed any ownership or control link with the person responsible for, and does not continue to be responsible for, the violation, penalty or fee.

Under § 773.21(a)(1) a permittee may submit proof concerning the status of the violation, penalty or fee at the time the finding was made, including any abatement, payment, appeal or abatement plan or payment schedule overlooked by the regulatory authority. Under § 773.21(a) (2) and (3), the permittee may submit proof concerning any abatement, payment, appeal or abatement plan or payment schedule that arose after the finding was made and the notice was issued.

Likewise, under § 773.21(a)(4) the permittee may submit proof that the applicable ownership or control link was severed after the notice of proposed suspension and rescission was issued, and that the permittee does not continue to be responsible for the violation, penalty or fee. This provision was added to make final § 773.21(a) consistent with § 773.20(b)(3), which precludes a finding of improvident issuance under similar circumstances.

Thus, a permittee generally may forestall suspension or rescission under a notice of proposed suspension and rescission by using the waiting period set by the regulatory authority to prove that the finding was erroneous or to remedy the defect in the permit. Again, from the standpoint of administrative efficiency it is consistent with section 510(c) of the Act to afford the permittee a reasonable period of time to submit this proof or correct the defect in the permit, and thereby achieve a state of compliance that neither would have blocked the permit initially or have led to a finding of improvident issuance under this rule.

Ninety-Day Notice Periods

Several commenters said that the proposed ninety-day notice periods prior to suspension and rescission under the rule were unjustified.

OSMRE disagrees. Contrary to the commenters' interpretation, these periods may not exceed ninety days, but can be shorter, as circumstances warrant. As explained in the preceding discussion of § 773.21(a), these notice periods were adopted to give the permittee adequate time in appropriate cases to gather and submit the proof required to forestall the proposed suspension and rescission or take necessary corrective action, to account for the diversity of circumstances under which a permit may be suspended or rescinded under this rule, and to enable the permittee to file an appeal as provided for by § 773.21(c) of this rule.

Several commenters said that the rescission procedures of the initial proposed rule were onerous and uneven, and provided preferential treatment to a permittee who consciously violated section 510(c) of the Act, as compared to one who in good faith provided all information on existing violations. Because the risk of agency error was small compared to the high degree of risk to the public and the environment, these commenters said, the rule should not give a permittee any time to enter into an abatement plan or payment schedule before a permit was rescinded, and that to do so would undercut compliance with section 510(c), encourage and reward fraud in permit application preparation, and place the public and the environment at risk.

OSMRE disagrees. As explained in detail elsewhere in this preamble, from the standpoint of administrative efficiency, and considering the multiple purposes of the Act, it is reasonable and appropriate to give a permittee a realistic period of time to bring his or her permit into compliance before permit suspension and rescission ultimately take effect.

The tiered approach of permit suspension followed by rescission was adopted to give the regulatory authority sufficient discretion to apply this remedial measure in a way that not only will fully protect the public and the environment, but also will reflect the underlying circumstances and the potential impact of these actions on the affected permittee.

Proof Required to Negate Notice

One commenter asked for examples of what would constitute satisfactory proof that the finding of the regulatory authority was erroneous, or that the permittee or other person responsible had abated the violation or paid the delinquent penalty or fee, or had entered into an abatement plan or payment schedule.

Because of the diversity of circumstances under which the rule will apply, it is not possible or appropriate to place strict limitations on what might constitute sufficient proof under § 773.20(a). OSMRE intends that the regulatory authority will evaluate the sufficiency of the proof submitted by a permittee on a case-by-case basis.

Generally, the proof should include a copy of some official written document which confirms that the defect in the permit has been or is in the process of being corrected. It may include, for example, a termination notice issued by a regulatory authority, indicating that the underlying violation had been

corrected; a cancelled check indicating payment of money owed; or a copy of a suitable abatement plan or payment schedule with accompanying evidence of compliance.

3. Section 773.21(b) Cessation of Operations

Section 773.21(b) requires a regulatory authority to state in a notice of proposed suspension and rescission that after permit suspension or rescission the permittee shall cease all surface coal mining and reclamation operations under the permit, except for violation abatement and for reclamation and other environmental protection measures as required by the regulatory authority. This section derives from later proposed § 773.21 (b).

The phrase "as required by the regulatory authority" in this section refers only to reclamation and other environmental protection measures, and not violation abatement, which is required in any case. This phrase was substituted for the proposed phrase, "required reclamation," to make it clearer that the regulatory authority has discretion to make the reclamation requirement consistent with any substantial likelihood that mining under the permit will resume, and thus relieve the permittee, under appropriate circumstances, from performing unproductive reclamation activities.

The phrase, "and other environmental protection measures," was added to the final rule to enable a regulatory authority to account for environmental effects which may arise where mining has ceased, but complete reclamation has not yet begun. Under such circumstances, the use of other protection measures may be needed to reduce or prevent environmental impacts caused by the cessation of mining or deferral of complete reclamation. The addition of this phrase is consistent with the requirement of later proposed § 773.21(b) that the permittee perform "required reclamation" because the discretion of the regulatory authority to defer complete reclamation necessarily includes discretion to impose measures needed to ensure that the exercise of this discretion does not lead to additional environmental harm.

The regulatory authority may specify in the notice itself any reclamation that the permittee is required to perform, or subsequently may inform the permittee regarding the reclamation requirement. This discretion is not intended to eliminate a reclamation requirement, but to allow temporary deferral of certain reclamation activities under circumstances where the resumption of mining appears probable.

Reclamation Responsibility After Permit Rescission

Several commenters said that since a permit is issued to conduct not only surface coal mining operations, but also reclamation, permit rescission terminates not only the right to mine, but also the right to reclaim. Thus, the commenters said, the requirement of the rule for a permittee to reclaim the site following permit rescission was unfounded.

OSMRE disagrees. As set out in section 102(e) of the Act, 30 U.S.C. 1202(e), it is a purpose of the Act to "assure that adequate procedures are undertaken to reclaim surface areas as contemporaneously as possible with * * * surface coal mining operations." In view of this purpose, OSMRE has a duty to interpret the remainder of the Act in a manner that will bring about the satisfactory completion of reclamation in situations where a permit is rescinded.

Following their inclusion in a regulatory program, the environmental protection performance standards in section 515(b) of the Act, 30 U.S.C. 1265(b), including those for reclamation, apply to "*all* surface coal mining and reclamation operations." (Emphasis added.) Thus, the reclamation requirements apply whether an operation is permitted or not.

A permittee who disturbs a site as a result of operating under an improvidently issued permit incurs a reclamation obligation under the applicable regulatory program, which terminates only upon satisfactory completion of reclamation. The rescinding of a permit does nothing to terminate or otherwise affect this obligation to reclaim.

Moreover, although section 506(a) of the Act, 30 U.S.C. 1256(a), requires that "no person shall engage in * * * *any surface coal mining operations* unless such person has first obtained a permit," this requirement for a permit is limited to surface coal mining operations, and does not extend to reclamation operations. (*See Alabama By-Products Corp. and Drummond Coal Co., Inc.* v. *OSMRE*, 103 IBLA 264, 271 72 (1988), and *Citizens for the Preservation of Knox County*, 81 IBLA 209, 218–219 (1984), which conclude that a permanent program permit is not needed to reclaim a site that was mined under an interim program permit; *and* the OSMRE proposed rule at 53 FR 36404 (September 19, 1988) concerning the removal of requirements that an operator obtain or renew a permit when only reclamation activities must be performed.)

Thus, it is consistent with the purpose set out in section 102(e) of the Act and the general authority provided by section 201(c)(2) of the Act for OSMRE to establish procedures requiring reclamation in conformance with the Act following permit rescission.

Postponing Reclamation Requirement

One commenter on the initial proposed rule said that where a permit is rescinded the operator should be given time to cure the defect in the permit before reclamation of all areas is required.

OSMRE agrees with the commenter that after receiving a notice of proposed suspension and rescission an operator should have a reasonable amount of time to cure the defect in the permit before complete reclamation of all areas for which a reclamation obligation exists is required. Thus, final § 773.21 gives a permittee up to ninety days before a permit is suspended, and up to ninety days more until it is rescinded, in which to cure the defect in the permit.

Following permit suspension or rescission, § 773.21(b) requires the permittee to undertake reclamation and other environmental protection measures as required by the regulatory authority. Depending on what the permittee is doing to correct the defect in a *suspended* permit, this would enable the regulatory authority under appropriate circumstances to make reasonable adjustments in the required reclamation schedule. Following permit *rescission*, however, any delay in the commencement or continuation of complete reclamation would not be appropriate.

Full Range of Enforcement Measures

Initial proposed § 773.20(b) provided for the issuance of a notice of violation (NOV) to a permittee as an initial step in the permit rescission process. Provision for this NOV was removed from the later proposed rule, and was not included in the permit rescission procedures of final § 773.21.

One commenter asked whether the full range of enforcement measures would be taken against a permittee issued an NOV under initial proposed § 773.20(b) if an outstanding violation at another site remained unabated. The commenter suggested that it would be inappropriate to do so since the underlying violation requiring rescission of the permit was the result of a failure to abate at a different operation, and presumably had been previously

subjected to the full range of alternative enforcement measures.

OSMRE agrees in part, which is one reason why the procedures of the initial proposed rule were changed in the later proposed and final rules.

The commenter is correct that a notice of proposed suspension and rescission, and any subsequent enforcement, would not directly apply to the reclamation of another site. For a violation at another site, alternative enforcement measures are governed by 30 CFR 723.15(b)(2) and 845.15(b)(2), not § 773.21.

Once permit rescission becomes effective, however, the permittee no longer will have the privilege of mining at the site for which the permit was rescinded. If the permittee of the rescinded permit does not comply with the requirement of § 773.21(b) for the cessation of mining operations and for reclamation and other environmental protection measures at the site of the rescinded permit, then the full range of enforcement measures, including the issuance of a cessation order and the assessment of civil penalties, may be taken against the permittee for mining without a valid permit.

4. Section 773.21(c) Right to Appeal

Section 773.21(c) requires a regulatory authority to state in a notice of proposed suspension and rescission the procedures by which the recipient may file an appeal from the notice. This section derives from later proposed § 773.21(c).

Under this section, an appeal from a notice of proposed suspension and rescission may be filed by a permittee under 43 CFR 4.1280–4.1286, or the State program equivalent. The referenced §§ 4.1280–4.1286 generally apply to appeals from those decisions of the Director of OSMRE for which the Act does not require formal adjudication under 5 U.S.C. 554.

Under § 773.21(c) the notice also must state that where OSMRE is the regulatory authority the procedures of 43 CFR 4.21(a) shall not apply to suspend the effect of the notice. This precludes a suspension of the notice both during the time when an appeal of the notice may be filed and while an appeal is pending.

The alternative of allowing the filing of an appeal to stay the effect of the notice pending a decision could defeat the purpose of the notice by enabling mining to proceed to completion. This provision makes the notice effective immediately when issued, and the maximum ninety-day periods before an automatic suspension or rescission are not affected by the filing of an appeal. Nothing in the rule will prevent the recipient of a notice of proposed suspension and rescission from seeking a temporary stay as part of the normal administrative review process.

In an appeal under § 773.21(c), the review authority may allow any person responsible for the underlying violation, penalty or fee through a relationship of ownership or control to intervene. If the permittee does not appeal, but instead chooses another way to forestall suspension and rescission, such as severing the link to the responsible person, any other person may contest in the appropriate forum his or her responsibility for the violation, penalty or fee if that opportunity was not previously provided.

As discussed in the ownership and control rule at 53 FR 38879, questions involving a Federal violation, penalty or fee must be resolved in a Federal forum, and both individuals and organizations may seek to amend incorrect information in the Applicant/ Violator System.

Scope of Appeal

Several commenters on the initial proposed rule said that an appeal of permit rescission should only concern whether the permittee or other person responsible in fact had been cited for the violation on which rescission was based, and not whether the citation itself was lawful, which should have been contested in a separate and timely appeal proceeding following issuance of the violation notice.

OSMRE agrees that an appeal from a notice of proposed suspension and rescission is not the proper forum for direct appeal of the underlying violation, penalty or fee when an earlier opportunity was provided. Generally, however, a permittee should be allowed to contest the basis for the notice. Whether any particular issue can be relitigated in a particular case will depend on the accepted legal principles of *res judicata* and collateral estoppel.

Cessation of Operations Pending Appeal

One commenter objected to later proposed § 773.21 (b) and (c) to the extent they required a permittee to cease operations pending an appeal of a notice of proposed suspension and rescission. The commenter said that since the violation would not have occurred under the permit that was subject to suspension or rescission, operations under that permit should not have to cease, and that when the Congress addressed permit suspension for a pattern of violations in section 521(a)(4) of the Act it provided for a hearing prior to the suspension.

Likewise, the commenter said, under section 521(a)(5) of the Act a cessation order expires if a hearing is not held within thirty days of actual notice to the operator. By not affording a hearing prior to suspension or rescission, the commenter concluded, the rule was contrary to the explicit provisions of the Act, as well as the guarantee of due process under the Fifth Amendment to the Constitution.

OSMRE disagrees. The commenter's objection concerns the provision in later proposed and final § 773.21(b) that requires the permittee to cease operations after permit suspension or rescission becomes effective, and the provision in later proposed and final § 773.21(c) that makes 43 CFR 4.21(a) inapplicable to a notice of proposed suspension and rescission. Absent that later provision, under § 4.21(a) the notice would not be effective during the time in which a person adversely affected might file an appeal, and the filing of an appeal would suspend the effect of the notice pending the decision on appeal, so the permittee could continue mining.

Contrary to the commenter's assertion, a notice of proposed suspension and rescission under § 773.21 is based not only on a previous violation, penalty or fee, but also on a violation associated with the permit in question—namely, operating under an improvidently issued permit. And § 4.21(a) expressly provides for exceptions to its provisions through other regulations such as this rule.

Since operations under an improvidently issued permit should not have commenced in the first place, it is appropriate to impose reasonable restrictions on how long they may continue after a notice of proposed suspension and rescission is issued. If § 4.21(a) applied, a permittee who appealed a notice could continue to mine until the appeal was decided, regardless of the consequences to the public and the environment.

Rather than risk the potentially harmful results that could ensue under an automatic stay under § 4.21(a), the rule gives the regulatory authority discretion to adopt, on a case-by-case basis, notice periods as long as ninety days before suspension and rescission take effect, or an overall maximum of one hundred and eighty days. This will enable the regulatory authority to reasonably balance the rights of the permittee against the need to protect society and the environment from potential adverse consequences. Moreover, it will add to the incentive provided by the rule for the permittee to bring about abatement or payment of

the violation, penalty or fee on which the notice is based.

As the commenter pointed out, section 521(a)(4) of the Act and the implementing regulations at 30 CFR 843.13 allow a permittee to request a public hearing before a suspension under their provisions becomes effective. Corresponding provisions in section 521(b) of the Act, however, only require the Secretary to give the permittee a reasonable time to conform ongoing operations to the requirements of the Act before suspending or revoking a State permit.

Thus, the Congress did not intend that the procedures in section 521(a)(4) pertaining to a pattern of violations would apply in all circumstances, and this rule legitimately may employ other appropriate procedures. The procedures governing cessation orders in section 521(a)(5) of the Act are limited to that specific context and do not apply to this rule.

Subject only to the limitation that the procedures of 43 CFR 4.21(a) do not apply where OSMRE is the regulatory authority, the rule affords a permittee a reasonable right to file an appeal for administrative review of a notice of proposed suspension and rescission, and does not preclude the granting of a temporary stay of the notice. This is fully consistent with the guarantee of due process under the Fifth Amendment to the Constitution.

D. Section 843.13 Suspension or Revocation of Permits: Pattern of Violations

This rule revises the heading of existing § 843.13, which governs the suspension and revocation of a surface coal mining and reclamation permit for a pattern of violations occurring under that permit. The revision adds at the end of the heading the phrase, "Pattern of violations."

The expanded heading will help to differentiate § 843.13 from new § 773.21, which governs permits that were improvidently issued as a result of an unabated violation or a delinquent penalty or fee at another operation prior to the time of permit issuance.

No comments were received on this revision, which is adopted as proposed.

E. Section 843.21 Procedures for Improvidently Issued State Permits

1. Overview

A State regulatory authority in some instances may not take the action required by § 773.20 of this rule, or the State program equivalent, with respect to an improvidently issued permit. This may result from a lack of equivalent regulations in the State program, or from other causes.

OSMRE is adding to the existing Federal enforcement procedures in 30 CFR Part 843 a new § 843.21 to provide a mechanism for Federal enforcement in these situations. Unless otherwise noted, the provisions of § 843.21 derive from the correspondingly numbered paragraphs of later proposed § 843.21.

If OSMRE has reason to believe that a State surface coal mining and reclamation permit meets the criteria of this rule, or the State program equivalent, for an improvidently issued permit, § 843.21 requires OSMRE to issue to the State an initial notice of that belief, requires the State to respond within a specified period of time, and where the State response is inadequate requires OSMRE to issue to the State a ten-day notice.

If the State does not take appropriate action under the ten-day notice, or show good cause for not doing so, the rule requires OSMRE to take appropriate remedial action, which may include the issuance of a notice of violation (NOV). Where an NOV is issued, the rule allows any person to submit information which may lead OSMRE to either vacate or terminate the NOV. Finally, the rule prohibits OSMRE from assessing a civil penalty for such an NOV.

Jurisdictional Considerations

One commenter said that the initial proposed rule gave the clear implication that it would be used to make the operator the pawn in a chess match between OSMRE and any State which failed to enforce its regulatory program. The commenter was concerned that the rule would enable OSMRE to impose on an operator requirements a State was unwilling to impose, which might result in a domino effect leading to the rescission of permits for other operations owned or controlled by that operator.

OSMRE disagrees that the rule involves any considerations other than legitimate oversight and enforcement of State regulatory programs under the Act.

Section 510(c) of the Act. imposes on an applicant an affirmative obligation to list all notices of violations of the Act and other specified environmental laws and regulations, and requires a regulatory authority to withhold a permit in appropriate circumstances. As revised on October 3, 1988 (53 FR 37165), 30 CFR 773.15(b)(1) requires a regulatory authority to withhold a permit if any operation owned or controlled by either the applicant or by any person who owns or controls the applicant currently is subject to certain unabated violations or delinquent penalties or fees.

This rule requires no more than does section 510(c) and 30 CFR 773.15. A permittee who obtains a permit in contravention of these requirements has no cause to complain that rescission of the permit makes it a pawn in any disagreement that may lie between OSMRE and the issuing State. Where the State should not have issued the permit in the first place, the remedial measures of this rule merely seek to place the permittee in its lawful status.

One commenter, who suggested a previously discussed alternative to §§ 773.20 and 773.21 of this rule based on an order to show cause, said that under the alternative no need would exist for proposed § 843.21 because adequate remedies existed under the Act for OSMRE to contest individual permits or to supersede the State permitting process. The commenter specifically referenced sections 513(b), 514(c), 521(b) and 526(e) of the Act, 30 U.S.C. 1263(b), 1264(c), 1271(b) and 1276(e).

OSMRE disagrees. This rule does not supersede the State permitting process. Neither the suggested alternative nor the cited provisions of the Act minimize the need for this rule, which will provide OSMRE and the States with specific procedures for dealing with improvidently issued permits. The Congress in enacting section 201(c)(2) of the Act recognized the need for OSMRE to "publish and promulgate such rules and regulations as may be necessary to carry out [its] purposes and provisions," and this rule is a necessary and legitimate exercise of that rulemaking authority.

AVS Memorandum of Understanding

One commenter said that initial proposed § 843.21 conflicted with a memorandum of understanding (MOU) between State regulatory authorities and OSMRE concerning the implementation of the Applicant/Violator System. The commenter said that under the MOU, until all necessary State and Federal rule changes have taken place a State is required only to enforce its existing statutes and regulations. If State law prohibited permit rescission, the commenter concluded, it was not appropriate for OSMRE to rescind a State permit.

OSMRE disagrees that this rule conflicts with the MOU. Section 773.20 of the rule applies to the violations review criteria of the regulatory program in force at the time a permit was issued. Section 843.21, which references § 773.20, also applies to the criteria in force at the time of permit issuance. Neither section requires a regulatory

authority to take any action that is inconsistent with its existing regulatory program.

While each primacy State, in due course, must adopt regulations consistent with this rule, the MOU was not intended to preclude the amendment of State programs. Prior to the adoption of consistent regulations by a State, the rule will give OSMRE necessary enforcement power to take appropriate remedial action on an improvidently issued State permit. Such remedial action does not include suspension or rescission of a State permit.

Extensions of Time

One commenter asked if the maximum ninety-day extension of time afforded by initial proposed § 773.20(b)(2) and (b)(3) also applied to the procedures under § 843.21.

As neither final § 773.20 nor § 773.21 any longer provide for an extension of time, this comment is moot. Where an NOV is issued under § 843.21, the deadlines normally associated with an NOV will apply.

Ownership and Control Relationships Covered

One commenter said that initial proposed § 843.21 failed to fully account for relationships of ownership or control, and that § 843.21(c), (c)(2) and (c)(3) should be revised to cover any person responsible for an unabated violation or a delinquent penalty or fee.

OSMRE agrees and has added the phrase, "other person responsible," to this and the later proposed rules where appropriate to cover a relationship of ownership or control.

Review of State Section 510(c) Findings

One commenter asked if OSMRE intended to review all State section 510(c) findings on a day-to-day basis.

OSMRE does not intend to review all section 510(c) findings made by State regulatory authorities, but may sample them in a random manner as part of its oversight role.

2. Section 843.21(a) Initial Notice

As the first step in the Federal enforcement of an improvidently issued State permit, § 843.21(a) requires OSMRE to issue to the State an initial notice. The notice must state in writing the reasons why OSMRE has reason to believe that a State surface coal mining and reclamation permit meets the criteria for an improvidently issued permit in § 773.20(b) of this rule, or the State program equivalent, and that the State must take appropriate action on the permit under State program equivalents of §§ 773.20 and 773.21 of this rule.

Although § 843.21(a) refers to the State program equivalents of both §§ 773.20 and 773.21, as do the subsequent provisions of § 843.21, action by a State under the equivalent to § 773.21 is discretionary. Reference to both sections is included for completeness because under § 773.20(c)(4) one of the appropriate actions a State may take against an improvidently issued permit is rescission, which if elected must occur under the State program equivalent to § 773.21.

This notice is called an "initial notice" to differentiate it from a ten-day notice issued under subsequently discussed § 843.21(c) of this rule. The rule also encourages, but does not require, OSMRE to provide to the permittee a copy of the notice. This discretion was included in the rule to forestall the possibility of invalidating any subsequent enforcement steps taken under this section due to an inadvertent lack of initial notice to the permittee.

Since the initial notice primarily is concerned with State compliance, and since the vacation and termination procedures in subsequently discussed § 843.2l(e) provide ample relief to a permittee in the event of an error, a permittee who fails to receive the initial notice should not suffer any significant hardship. OSMRE will mail, or otherwise deliver, a copy of the initial notice to the permittee at his or her last known address.

Mandatory Ten-Day Notice

Several commenters on the later proposed rule said, without further explanation, that OSMRE was obligated to take enforcement action within ten days after notifying a State that a permit was improvidently issued, and nothing would constitute "good cause" for the State not taking action to suspend the permit. Several commenters said that the initial proposed rule illegally converted the ten day notice under section 521 of the Act into a forty-plus day notice. These commenters said that there was no legal or practical justification for extending the period for State response beyond ten days.

OSMRE disagrees. Section 521(a)(1) of the Act, 30 U.S.C. 1271(a)(1), which applies to "any * * * violation of any requirement of [the] Act or any permit condition required by the Act," does require OSMRE to issue a notice to the applicable State regulatory authority, for which the State has ten days to respond. (For the OSMRE interpretation of the requirements of section 521(a), see the July 14, 1988 OSMRE final rule at 53 FR 26742, which this preamble incorporates by reference.) Section 521(b) of the Act, however, which applies to a deficiency in State enforcement of all or any part of an approved State program, requires OSMRE to give a State thirty days' notice before holding a public hearing.

Since a State's lack of appropriate action on an improvidently issued permit may involve both a potential deficiency in State enforcement of its regulatory program, as well as an individual violation of the Act, it is reasonable for this rule to employ a tiered notice approach which reflects the goals and timing of both sections 521(a)(1) and 521(b). The authority for this regulatory approach, which is consistent with paragraph No. 3 of the Revised Parker Order, is set out under the subsequent heading, II.F.1. Statutory Authority.

3. Section 843.21(b) State Response

Section 843.21(b) gives a State thirty days to respond to an initial notice issued under § 843.21(a) of this rule concerning a potential improvidently issued permit. To forestall further proceedings under this section, the State must demonstrate to OSMRE in writing either that (1) the permit does not meet the criteria of § 773.20(b) of this rule, or the State program equivalent, for an improvidently issued permit; or (2) that the State is in compliance with the State program equivalents of §§ 773.20 and 773.21 of this rule.

As is explicitly provided in subsequently discussed § 843.21(d), a State cannot meet this requirement by demonstrating that the State program lacks equivalents to §§ 773.20 and 773.21.

4. Section 843.21(c) Ten-Day Notice

If OSMRE finds that a State has not made the demonstration required by § 843.21(b) of this rule, § 843.21(c) requires OSMRE to issue to the State a ten-day notice stating in writing the reasons for that finding and requesting that within ten days the State take appropriate action under the State program equivalents of §§ 773.20 and 773.21 of this rule.

This section does not impose any time limit on when OSMRE may make the required finding. OSMRE may make this finding prior to expiration of the thirty-day response period of § 843.21(b) where the State inadequately has attempted to make the required demonstration. If a State does not respond, however, OSMRE will not issue a ten-day notice until after the thirty-day response period of § 843.21(b) has expired.

5. Section 843.21(d) Federal Enforcement

Section 843.21(d) requires OSMRE to take appropriate remedial action if after ten days a State which is issued a ten-day notice does not take appropriate action under the State program equivalents of §§ 773.20 and 773.21 of this rule, or show good cause for its inaction. Under this section, good cause does not include the lack of State program equivalents of §§ 773.20 and 773.21.

For OSMRE to find that a State is taking appropriate remedial action under this section, the State need not have completed the processing of an improvidently issued permit under the State program equivalents of §§ 773.20 and 773.21. As long as the State has begun a process as effective as that of § 773.20, and is making reasonable progress toward imposing and enforcing any appropriate remedial measures, the State is taking appropriate action.

Appropriate remedial action by OSMRE under § 843.21(d) may include, but is not limited to, the issuance of a notice of violation (NOV) requiring that by a specified date all mining operations shall cease and reclamation of all areas for which a reclamation obligation exists shall commence or continue unless, to the satisfaction of the responsible agency, any violation, penalty or fee on which the notice of violation was based is abated or paid, or an abatement plan or payment schedule is entered into, or any ownership or control link with the person responsible is severed and the permittee does not continue to be responsible for the violation, penalty or fee.

Provision for allowing the permittee to sever his or her link with the person responsible as a way to forestall an NOV if the permittee does not continue to be responsible for the violation, penalty or fee, was added to make § 843.21(d) consistent with § 773.20(b)(3), which precludes a finding of improvident issuance under similar circumstances. As previously discussed, for purposes of section 510(c) of the Act severing the link to the person responsible should have the same effect regardless of when it occurs.

Reclamation Requirement

One commenter objected to the requirement of initial proposed § 843.21(b)(2) for the commencement or continuation of reclamation for all areas for which a reclamation obligation existed. The commenter said that the mere interruption of mining would be sufficient to induce compliance, and that it was unnecessarily harsh to require termination of the operation when interruption would achieve the desired result.

Where a notice of violation was issued under § 843.21, the commenter concluded, the permittee only should be required to meet contemporaneous reclamation requirements, but complete reclamation, such as backfilling the pit, removal or roads and sedimentation ponds, and dismantling of buildings and other structures, should not be required.

OSMRE disagrees in part. To the extent the commenter's concern is based on the requirement of initial proposed § 843.21(b) for the immediate cessation of mining and the commencement or continuation of reclamation upon issuance of a notice of violation (NOV) under that section, later proposed and final § 843.21(d) were revised to temper this excessively stringent requirement. Section 843.21(d) now allows OSMRE to postpone this requirement for "a specified time" following issuance of the NOV in order to give the permittee time to abate the violation.

While a notice of violation issued under § 843.21(d) must include a requirement that complete reclamation commence or continue after a specified date, prior to that date the permittee may continue mining. Thus, the permittee will have notice of, and an opportunity to correct, the defect in the permit before mining is either interrupted or terminated. Only after this reasonable period for abatement expires must mining cease and reclamation commence or continue.

If a substantial likelihood arises that the permittee will be able to correct the defect in the permit after the specified date, although mining must cease OSMRE may amend the reclamation requirement in the NOV to reflect this development. After the permittee has demonstrated an unwillingness or an inability to correct the defect in the permit, however, complete reclamation is in order.

Where an NOV is issued under § 843.21(d) and the permittee or other person responsible has failed to remedy the defect in the permit, a mere interruption of the mining operation would be insufficient to compel compliance. Thus, a requirement to commence reclamation is appropriate.

Cessation of Mining

One commenter said that OSMRE lacks authority to require the immediate cessation of mining, as required by initial proposed § 843.21, in the absence of an inspection which results in a finding of a violation causing "an imminent danger to the health and safety of the environment" or actual or potential "significant, imminent environmental harm to land, air, or water resources."

OSMRE disagrees. The circumstances quoted by the commenter, which are set out in section 521(a)(2) of the Act, 30 U.S.C. 1271(a)(2), govern the issuance of an imminent harm cessation order (CO). Under 30 CFR 843.11(a)(2) operating "without a valid surface coal mining permit constitutes a condition or practice which can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources * * *." Thus, OSMRE has the authority to issue an imminent harm CO to a permittee operating under such circumstances.

Nevertheless, initial proposed § 843.21 did not require, and this rule does not provide for the issuance of an imminent harm CO, but instead an NOV requiring the cessation of mining. And rather than requiring the cessation of mining immediately upon issuance of the NOV, as would have been required by the initial proposed rule, final § 843.21 requires the cessation of mining if by a specified date after the issuance of an NOV the underlying violation, penalty or fee is not abated or paid to the satisfaction of the responsible agency. Thus, a reasonable abatement period is provided.

Although an imminent harm CO and an NOV requiring the cessation of mining are similar in that both would require the cessation of mining, they differ in that they are based on different authority in the Act and are subject to different procedures with different consequences. For example, under section 518(a) of the Act and 30 CFR 845.12 a penalty for a CO is mandatory, but for an NOV may be discretionary. As provided in § 843.21(f) of this rule, no civil penalty will be assessed for an NOV issued under § 843.21.

Under section 521(a)(3) of the Act an NOV must require the permittee to abate the violation on which it is based. For the violation of operating under an improvidently issued permit, abatement may consist of either correcting the deficiency in the permit or ceasing operations.

To account for the alternative of abatement through correction of the deficiency in the permit, § 843.21 of this rule requires the cessation of mining only if the permittee does not correct the deficiency within a specified time. If the permittee does not cease mining as required under the NOV, OSMRE will issue a failure-to-abate cessation order with all of the associated consequences.

OSMRE Discretion

Several commenters said the discretion afforded to OSMRE by later proposed § 843.21(d) for the issuance of an NOV was inconsistent with enforcement actions under the regulatory program.

OSMRE disagrees. As explained in detail elsewhere in this preamble, the potential of this rule for causing economic disruption and hardship as a result of OSMRE action on an improvidently issued permit, as well as administrative considerations involved in the oversight and enforcement of a State permit, necessitate that OSMRE have reasonable discretion in imposing an appropriate remedy. As long as the purposes of the regulatory program are not compromised, it is reasonable for OSMRE to retain sufficient discretion to account for the overall effect of its action.

Meaning of "Good Cause"

One commenter on the initial proposed rule asked what OSMRE would consider good cause for a lack of State action under § 843.21(d).

Under the rule, good cause may consist of any reasonable factual or legal impediment to taking action under State program equivalents of §§ 773.20 and 773.21. As previously noted, however, good cause under § 843.21 does not include the lack of State program equivalents to §§ 773.20 and 773.21. For additional discussion of the types of circumstances which may constitute good cause under this rule, see the July 14, 1988, OSMRE final rule at 53 FR 26728.

Another commenter said that later proposed § 843.21(d) was inherently inconsistent in requiring OSMRE to determine whether a State had taken appropriate action under the State program equivalent of § 773.20, or had shown good cause for not doing so, while also providing that good cause does not include the lack of a State program equivalent to § 773.20. The commenter asked how a State could be considered as not showing good cause when it was not authorized to take such action.

Good cause does not include the lack of State program equivalents to §§ 773.20 and 773.21 because even without such specific procedures each primacy State has the power to correct errors and take remedial action on an improvidently issued State permit. Any other approach might give a State an incentive to delay the adoption of equivalent procedures, and thus decrease the effectiveness of this rule.

Modification of Revised Parker Order Procedures

Several commenters said that under the Revised Parker Order if a State does not initiate permit rescission proceedings OSMRE must issue an NOV to cause the operation to cease until all violations are abated or penalties paid. Later proposed § 843.21, the commenters said, would amend the clear action required by the Revised Parker Order, and allow the State to take "appropriate action" or show good cause why it did not do so. Referencing previous comments on the ten day notice rule and related litigation, the commenters concluded that the proposal was illegal.

OSMRE disagrees. Like §§ 773.20 and 773.21 of this rule, § 843.21 will facilitate compliance with the Act in a manner which is not unduly restrictive and which recognizes that different circumstances may necessitate different remedies. While this rule to a certain extent modifies the procedures of the Revised Parker Order, in many instances it will not interfere with the action specified by paragraph no. 3 of the order.

To the extent the rule modifies the procedures set out in paragraph no. 3 of the Revised Parker Order, it is authorized by paragraph no. 31 of the order, which provides that

> [n]othing in this Order shall in any fashion limit or otherwise interfere with the authority of the Secretary of the Interior to * * * revise, amend, or promulgate new regulations under the * * * Act. Once effective, such regulations shall apply to this Order.

6. Section 843.21(e) Remedies to Notice of Violation

Upon receipt from any person of information concerning the issuance of a notice of violation (NOV) under § 843.21(d) of this rule, § 843.21(e) requires OSMRE to review the information and either vacate or terminate the NOV in appropriate circumstances.

Vacation of an NOV issued under § 843.21(d) is required if the NOV resulted from an erroneous conclusion regarding the issuance of the permit.

Termination of an NOV issued under § 843.21(d) is required if (i) the permittee or other person responsible subsequently has, to the satisfaction of the responsible agency, abated any violation or paid any penalty or fee on which the notice of violation was based; (ii) the permittee or other person responsible has filed and is pursuing a good faith appeal of the underlying violation, penalty or fee, or has entered into and is complying with an abatement plan or payment schedule to the satisfaction of the responsible agency; or (iii) subsequent to issuance of the NOV the permittee severs any ownership or control link with the person responsible for, and does not continue to be responsible for, the underlying violation, penalty or fee.

Provision for allowing any person to demonstrate that the permittee has severed his or her link with the person responsible for the violation, penalty or fee as a way to terminate an NOV issued under this rule where the permittee does not continue to be responsible for the violation, penalty or fee was added to make § 843.21(e)(2) consistent with § 773.20(b)(3), which precludes a finding of improvident issuance under similar circumstances. As previously discussed, for purposes of section 510(c) of the Act severing the link to the person responsible should have the same effect regardless of when it occurs.

Incorrect Terminology

One commenter said that the preamble to the initial proposed rule (51 FR 25827) incorrectly stated that OSMRE "could" vacate or terminate a notice of violation issued under § 843.21(c)(1)–(3) for specified reasons, when it should have said "shall," since vacation or termination was mandatory.

OSMRE agrees, and that is the correct interpretation of the word *shall* in final § 843.21(e).

7. Section 843.21(f) No Civil Penalty

Section 843.21(f) bars OSMRE from assessing a civil penalty for an NOV issued under § 843.21(d). If the permittee does not cease mining or otherwise comply by the specified date, however, OSMRE will issue a failure-to-abate cessation order (FTACO) with all of the associated consequences, including any appropriate penalty, and may use other alternative enforcement measures available under the Act.

OSMRE has adopted this provision because as a matter of policy it concludes that any penalty should derive directly from the underlying violation, penalty or fee, and not indirectly through an NOV issued to remedy an improvidently issued permit. This is consistent with section 518(a) of the Act, which does not require a penalty for every NOV, because a penalty would have been assessed where appropriate on the underlying violation.

If an FTACO is issued, however, OSMRE concludes that the failure of the permittee to comply with the NOV constitutes independent justification for any resulting penalty.

Commenter Support for Similar Provision

One commenter on initial proposed § 773.20 said that since permit rescission was not necessarily the permittee's fault, a penalty should not be assessed for an NOV under that section. Another commenter said that an order for the cessation of operations and reclamation following permit rescission should not lead to additional penalties if complied with by the permittee.

While § 773.20 of this rule no longer provides for an NOV, the issues raised by these commenters also apply to the prohibition of a penalty under § 843.21(f). OSMRE agrees with these commenters, and has revised the later proposed and final rules accordingly.

F. Statutory Authority and General Comments

1. Statutory Authority

A number of commenters on the proposed rule said that the Act did not authorize the rescission of an improvidently issued permit or the promulgation of regulations for that purpose. Other commenters said that the Act provided such authority.

OSMRE concludes that it has the necessary statutory authority to suspend or rescind an improvidently issued permit where it is the regulatory authority, to take oversight and enforcement action on an improvidently State permit, and for this rule in general.

As noted in the preamble to the initial proposed rule (52 FR 25823), sections 201(c)(2) and 412(a) of the Act, 30 U.S.C. 1211(c)(2) and 1242(a), confer upon OSMRE broad rulemaking authority. Moreover, section 201(c)(1) of the Act, 30 U.S.C. 1211(c)(1), authorizes OSMRE to "order the *suspension, revocation*, or *withholding* of any permit for failure to comply with any of the provisions of this Act or any rules and regulations adopted pursuant thereto." (Emphasis added.)

Sections 201(c) and 510(c) of the Act, 30 U.S.C. 1211(c) and 1260(c), authorize a regulatory authority to withhold a permit from any applicant who either directly, indirectly or through a relationship of ownership or control is in violation of the Act or certain other environmental laws. The Congress could not have intended that OSMRE and State regulatory authorities would withhold a permit in accordance with these provisions from an applicant responsible for or linked to an unabated violation or delinquent penalty or fee, but do nothing to remedy a permit that was improvidently issued.

Since section 201(c)(1) covers a failure to comply with any of the provisions of the Act or its implementing regulations, it authorizes the suspension, rescission or taking of other remedial measures against a permit for a failure to comply with the permit withholding requirements of 30 CFR 773.15, or the State program equivalent. Moreover, the underlying failure to abate a violation or to pay a civil penalty or reclamation fee when due also is a "failure to comply" within the purview of this section of the Act.

As stated by the Act in section 102(a), 30 U.S.C. 1202(a), the Act was passed "to protect society and the environment from the adverse effects of surface coal mining operations." As one means to achieve this protection, the Act denies certain persons the privilege of mining. Where through fraud, mistake or otherwise, such a person improvidently is issued a permit, the regulatory authority is required by the Act to protect society and the environment by taking appropriate measures to bring the permittee into compliance. The remedial measures of this rule, with the ultimate sanctions of permit suspension and rescission, will provide an incentive for the permittee or other person responsible to abate any violation or pay any delinquent penalty or fee which should have caused the regulatory authority to withhold the permit.

Authority for this rule also is provided by sections 101, 412(a), 501(b), 504, 506, 507, 511, 518 and 701 of the Act, 30 U.S.C. 1201, 1242(a), 1251(b), 1254, 1256, 1257, 1261, 1268 and 1291.

General Authority

One commenter said that section 201(c)(1) of the Act does not provide general authority for permit suspension and revocation, but only under the circumstances set out in the specific implementing provisions of the Act. For each delegation of authority in section 201(c), the commenter said, the Act included a specific provision governing the circumstances and manner under which OSMRE may exercise that authority. Thus, the commenter concluded, the authority to order the suspension or revocation of a permit under section 201(c)(1) applied only to suspension or revocation under section 521(a)(4) of the Act for a pattern of violations.

OSMRE disagrees. There is nothing in the Act or its legislative history to support the commenter's constrained reading of section 201(c)(1).

If the Congress had intended to give section 201(c)(1) the limited scope suggested by the commenter, it would not have drafted that section as it did in far broader terms than section 521(a)(4). Section 201(c)(1) authorizes the revocation of a permit generally for a "failure to comply with any of the provisions of this Act or any rules and regulations adopted pursuant thereto." Section 521(a)(4) addresses only the limited circumstances where there exists a pattern of violations caused by the permittee, either willfully or by an unwarranted failure to comply with the Act. Since the Congress used broader language in section 201(c)(1) than it did in section 521(a)(4), OSMRE concludes that the Congress intended to give section 201(c)(1) broader scope.

Contrary to the commenter's analysis, section 201(c) is not a mere summary of the subsequent detailed provisions of the Act, but an independent mandate for OSMRE to take the specified actions in appropriate circumstances. Section 201(c)(1), like the general authority for promulgating regulations in section 201(c)(2), is prefaced by the statement, "The Secretary, acting through [OSMRE], shall * * *." (Emphasis added.) This use of the word *shall* gives section 201 independent force and effect which is not subservient to any other provision of the Act.

If the Congress had intended section 201(c) as a summary of other specific provisions, it would have introduced section 201(c) with descriptive language more like that used to set out the purposes of the Act in section 102. Since the Congress did not do so, however, but instead chose to use the term *shall*, OSMRE concludes that the Congress intended section 201(c)(1) as general authority for permit suspension and rescission for a failure to comply with the Act or its implementing regulations.

This conclusion regarding the scope of section 201(c)(1) is consistent with the decision of the U.S. Court of Appeals for the District of Columbia Circuit in *In re: Permanent Surface Mining Regulation Litigation* (*In re: Permanent*), 653 F.2d 514 (D.C. Cir. 1981), *cert. denied*, 454 U.S. 822 (1981). There the court examined the authority of the Secretary of the Interior to require a permit applicant to submit information not specifically identified in section 507(b) of the Act, 30 U.S.C. 1257(b). In analysing the authority provided to the Secretary by section 201(c)(2) of the Act, the court said:

> Appellant urges as a proposition of administrative law that the existence of specific grants must eviscerate a general grant of rulemaking power. That proposition cannot be squared with recent Supreme Court decisions relying on general rulemaking grants to uphold rulemaking authority despite the presence of specific grants in the statutes scrutinized.

Id. at 523 (citations omitted). In view of the general rulemaking authority provided by section 201(c)(2), the court held that

> The Act's explicit listings of information required of permit applicants are not exhaustive, and do not preclude the Secretary from requiring the states to secure additional information needed to insure compliance with the Act.

Id. at 527. Thus, OSMRE may rely on section 201(c)(1) and the broad rulemaking authority provided by section 201(c)(2) to provide for the rescission of an improvidently issued permit under circumstances not specifically set out in the Act.

Notice of Violation

Initial proposed §§ 773.20 and 843.21 included a notice of violation (NOV) as a preliminary step in the permit rescission process. In this final rule, as in the later proposed rule, an NOV is included only in § 843.21, which authorizes OSMRE to issue a Federal NOV to a State permittee if the State does not take appropriate action on an improvidently issued permit or show good cause for its lack of action.

Provision for the issuance of an NOV was deleted from § 773.20 because it is not needed where the regulatory authority can directly impose on a permittee the alternative remedial measures of § 773.20(c). Where OSMRE is enforcing an improvidently issued State permit under § 843.21, however, it cannot directly impose these remedial measures and an NOV is needed if the State does not take appropriate action or show good cause for not doing so. Since OSMRE will not have issued the State permit, and thus cannot rescind it or impose the other remedial measures of § 773.20, a Federal NOV may be needed to bring the permittee into compliance with the applicable regulatory program.

A number of commenters said that the issuance of an NOV for an improvidently issued permit was not authorized by the Act. Some said that OSMRE was not authorized to issue an NOV in a primacy State, that the proposed rule was an unauthorized intrusion into State authority vested by the Act over permitting issues and decisions, and that the rule conflicted with OSMRE regulations recognizing the exclusive jurisdiction of primacy States as regulatory authorities under the Act.

Another commenter said there can be only one regulatory authority at a time in a primacy State, and before OSMRE can issue an NOV it must divest the State of primacy. The commenter said that the rule would require a permittee to meet two different requirements because OSMRE and the State were unable to agree on a single interpretation of the Act.

OSMRE disagrees. To begin with, the violation on which an NOV under § 843.21 is based is not the improvident issuance of the permit, but the permittee's continuing to operate under a permit that is not authorized by the regulatory program. Because the permittee can abate this violation by ceasing to operate or by securing abatement of the violation or payment of the delinquent penalty or fee which should have prevented the issuance of the permit, in the absence of permit rescission or another appropriate remedial measure the issuance of an NOV is a valid enforcement mechanism.

Federal authority for State program oversight and enforcement, including the issuance of a Federal NOV, is well-established. For an OSMRE statement of policy on this general issue, see 48 FR 9199 (March 3, 1983). For detailed analyses of this issue, see the OSMRE "Notice of availability of petition to initiate rulemaking and request for comment," 51 FR 27197 (July 30, 1986); the "Notice of decision on petition for rulemaking," 52 FR 21598 (June 8, 1987) (The denial of this petition with respect to Federal NOV's in primacy States is under appeal in the case of *N.C.A. v Gentile*, No. 87-2076 (D.D.C. 1987)); and the final rule on the evaluation of State responses to ten-day notices (Ten Day Notice Rule), 53 FR 26728 (July 14, 1988). OSMRE incorporates these documents by reference into this preamble.

Thus, OSMRE has the authority to issue a Federal NOV in a State where operations are conducted unlawfully under an improvidently issued State permit.

Another commenter said that OSMRE has no direct authority to interject itself into the State permitting process or to require State action, except through the substitution of Federal enforcement of the State program under section 521(b) of the Act.

OSMRE disagrees that Federal oversight and enforcement of a State program is limited to the specific process set out in section 521(b) of the Act. As discussed in detail in the previously cited references, sections 201 and 521(b) and other provisions of the Act authorize OSMRE to take the individual oversight and enforcement actions provided for in this rule.

Oversight of State Permitting Decisions

One commenter said that even assuming that OSMRE retained authority to issue a Federal NOV in a primacy State, that authority did not extend to enforcement action resulting from OSMRE reevaluation of a State permitting decision. Where a State does not take appropriate action on an improvidently issued permit, the commenter said, OSMRE must either appeal the State decision to issue the permit or initiate Federal enforcement under section 521(b) of the Act.

The commenter said that to read section 521 of the Act as authorizing Federal oversight of individual State permitting decisions disregarded the Federalist scheme of the Act which granted primacy States exclusive jurisdiction to administer and enforce their programs. Citing case law and statutory authority which authorized another agency to veto individual permits, the commenter concluded that OSMRE did not have similar authority, and that primacy States retained complete independence in individual permitting decisions.

OSMRE disagrees. The enforcement provisions of § 843.21 of this rule are in accordance with section 521 of the Act, which provides for Federal enforcement where a State does not take appropriate enforcement action, and section 201(c)(1) of the Act, which gives to the Secretary of the Interior acting through OSMRE broad powers to suspend, revoke or withhold any permit for noncompliance with the provisions of the Act or its implementing regulations. The noncompliance in this instance is both the act of operating under an improvidently issued permit and the underlying noncompliance by the permittee or those owning or controlling the permittee.

Another commenter cited the case of *Haydo v. Amerikol Mining, Inc.*, 830 F.2d 494 (3rd Cir. 1987), to support its contention that the rule was an unauthorized intrusion into the State permitting process. The portion of *Haydo* relied on by the commenter states that

> In the SMCRA, the state is expressly offered "exclusive" jurisdiction to enforce its regulatory program. We have encountered nothing in the statute or the legislative history which leads us to believe that anything other than the ordinary meaning of "exclusive" was intended by the enactors of the SMCRA.

Id. at 497. Citing *In re: Permanent*, 653 F.2d at 519, the commenter said that the decision in *Haydo* followed the views of the U.S. District Court for the District of Columbia that "permit decisions are matters of state jurisdiction in which the Secretary plays no role."

OSMRE disagrees, both with the commenter's characterization of the rule as an intrusion into the State permitting

process, and that these out-of-context quotations, or the decisions themselves, diminish the legal authority for this rule.

This rule does not improperly intrude into or displace State permitting responsibilities, nor does it in any way modify the permit issuance process. In primacy States, the States themselves will continue to issue and revise permits. Section 773.20 of the rule establishes minimum national standards for State regulatory authorities to implement for dealing with an improvidently issued State permit. State regulatory authorities will suspend, revoke or take the other remedial measures of this rule against an improvidently issued State permit following corresponding State program amendments.

This rule does not authorize OSMRE to take any action that would interfere with State permitting activities. Section 843.21 requires OSMRE to request that the State regulatory authority take the lead role in curing a defective permit. Only where a State does not demonstrate that it has acted appropriately, or show good cause for not doing so, will OSMRE take action.

OSMRE oversight action in such circumstances will not include suspension or rescission of the State permit, a "permitting" action, but instead may include the issuance of a notice of violation, an enforcement action. This limited Federal role is intended to respect the lead role assumed by the States in administering State programs.

With respect to the court decisions cited by the commenter, neither addresses the scope of section 201(c)(1) of the Act, which provides authority for this rule. The sentence from *In re: Permanent*, which the commenter quoted only in part, begins with the qualifying phrase, "Administrative and judicial appeals * * *," which significantly limits its scope. *Id.* at 519. This is consistent with the prior statement of the court in the same decision that

> [o]ur inquiry is narrow. We are called upon to determine only whether the Secretary has rulemaking authority to require that permit applicants submit any items of information beyond those enumerated in the Act.

Id. at 517 (latter emphasis in original, footnote omitted). As noted previously, the court held that section 201(c)(2) of the Act provided authority for requesting information not specifically enumerated in Title V of the Act.

And contrary to the commenter's broad reading, *Haydo* involved the limited procedural

> Question of whether there is subject matter jurisdiction in the federal district court to hear a claim for damages arising from an alleged violation [of the Act] by an operator * * * where a state has submitted and the Secretary of the Interior has approved a program for state regulation as contemplated by the Act.

Haydo, 830 F.2d at 495.

Because *Haydo* concerns a citizen's suit brought under section 520 of the Act, it does not address the Secretary's enforcement responsibilities under section 521 of the Act. The word *"exclusive,"* which the court in *Haydo* quotes, appears in section 503 of the Act, which contains an exception for OSMRE actions under section 521. This exception was not relevant in *Haydo*, but is relevant to and supports this rule.

In view of their limited applicability, neither of these court decisions cited by the commenter supports any limitation on OSMRE authority for adopting this rule.

Good Faith Reliance

One commenter said that the Act did not authorize permit rescission or other enforcement action for a mistake made by a regulatory authority where the permittee was operating in good faith reliance on the regulatory authority's own findings. Another commenter said that where a permit was improvidently issued any responsibility for that occurrence rested with the State regulatory authority and not the permittee.

OSMRE disagrees. Since section 201(c)(1) of the Act uses the term "a failure" generally, without regard to cause, it authorizes the revocation of a permit regardless of whether ultimate responsibility for noncompliance with section 510(c) of the Act in issuing a permit lies with the permittee, the regulatory authority, or some third party, and regardless of any subsequent good-faith reliance on the part of the permittee.

As noted in the preceding discussions of §§ 773.20 and 773.21, however, OSMRE recognizes that under this rule a potential exists for adversely affecting permittees who otherwise are complying with the regulatory program. To limit that potential, while at the same time ensuring that serious violations are abated and delinquent penalties and fees are paid, § 773.20(b) includes carefully selected criteria governing the circumstances under which a regulatory authority may find that a permit was improvidently issued; § 773.20(c) includes alternative remedial measures which will enable a regulatory authority to respond in a manner consistent with those circumstances; and § 773.21 includes a number of safeguards to protect the legitimate interests of the permittee in the rescission process.

Given these features, this rule strikes a reasonable balance between the rights of permittees and the benefits to be derived from abating violations and collecting delinquent penalties and fees associated with improvidently issued permits.

Permit Rescission vs. Revocation

Several commenters said that the Act did not authorize rescission of a permit, only revocation.

OSMRE disagrees. Although section 201(c)(1) of the Act uses the term *revocation* and not *rescission*, these two terms are equivalent.

To differentiate between the revocation of a permit for reasons that existed at the time of permit issuance, and revocation for reasons that subsequently arose, OSMRE applies the term *rescind* to the former and *revoke* to the latter. In either case the ultimate effect of rescission or revocation is identical—the loss of the permit—and the choice of different terms for each is simply a matter of administrative convenience.

Revision of Federal and State Programs

One commenter said that the proposed rule would revise existing State and Federal programs, a result which was not authorized by the sections of the Act cited in the preamble to the initial proposed rule. Another commenter said that until a State amended its regulatory program or OSMRE amended the Federal program for a State, OSMRE had no authority to implement in a particular State the permit rescission process set out in initial proposed §§ 773.20 and 843.21.

As one commenter correctly pointed out, however, section 504 of the Act, 30 U.S.C. 1254, provides specific authority for the promulgation of a Federal program. Likewise, section 504 authorizes OSMRE to revise a Federal program. Thus, to the extent this rule revises Federal programs it is authorized by section 504 of the Act.

As stated in the preamble to the initial proposed rule (51 FR 25827) and in this preamble under the subsequent headings, III. Procedural Matters, Effect in Federal Program States and on Indian Lands, this rule will apply through cross-referencing to the Federal program States. Thus, no further action is needed to incorporate its requirements into Federal programs.

Contrary to the commenters' assertions, this rule does not revise any State program. While § 843.21 refers to

"the State program equivalents of §§ 773.20 and 773.21," this rule does not establish any such equivalents, which must be done, where appropriate, in accordance with the procedures set out at 30 CFR 732.17.

Nor does § 843.21 implement in any State program a permit rescission process. While initial proposed § 843.21 was predicated on a State not taking appropriate action under proposed § 772.20(b), and thus appeared to require State compliance with that section, later proposed and final § 843.21 require a State to take appropriate action under the State program equivalents of §§ 773.20 and 773.21.

Finally, § 843.21 does not include procedures for permit suspension or rescission, either at the State or Federal level. Section 843.21 only authorizes OSMRE to impose appropriate remedial measures, including the issuance of an NOV, if a State does not have and does not take appropriate action under State program equivalents of §§ 773.20 and 773.21. Under this rule, only a State may suspend or rescind an improvidently issued State permit.

Need for Inspection

One commenter said that OSMRE authority to issue an NOV generally is predicated on the outcome of a Federal inspection. Thus, for example, the ten-day notice procedures of existing § 843.12(a)(2) came into play "on the basis of any Federal inspection other than one described in paragraph (a)(1) of this section."

OSMRE disagrees. The basis for an NOV is a determination by the regulatory authority that a violation exists, which need not come about as a result of an actual on-site review.

Applicant Information

One commenter said that to the extent initial proposed § 773.20(a)(1) requested information on parties who own or control the applicant it exceeded the authority provided by section 510(c) of the Act.

Neither initial proposed § 773.20(a)(1) nor its final counterpart directly require a permittee to provide any information. The requirements of § 773.20 apply where a regulatory authority has information which gives it reason to believe that it improvidently issued a surface coal mining and reclamation permit. Section 773.20 does not, however, require the permittee to submit any additional information.

2. Relationship to OSMRE Rule on Ownership and Control

Several commenters said that it was not appropriate to propose this rule until after OSMRE published the final ownership and control rule. Some said it was not possible to comment adequately on the proposed rule in the absence of that final rule. Some suggested that OSMRE extend the comment period on the rule until ninety days after the ownership and control rule was promulgated.

OSMRE disagrees, and declined to adopt the commenters' suggestion. Although this rule relates to the concurrently proposed ownership and control rule, for which the final rule was published by OSMRE on October 3, 1988 (53 FR 38868), it does not depend on the specific wording of that rule.

Moreover, the commenters on the August 4, 1988, later proposed rule had the benefit of the last proposal for the ownership and control rule, published on October 5, 1987 (52 FR 37164). Based on the comments received, it is evident that even without the final ownership and control rule interested persons were able to submit focused and meaningful comments on this rule.

One commenter, who had read the preamble to the initial proposed rule as indicating that OSMRE intended to apply the definitions in the final ownership and control rule retroactively, said that the later proposed rule appeared to address this objection, but fell short of resolving the problem completely. The commenter said that the ownership and control criteria set out in the rule did not reflect the date when the underlying violations review criteria became effective in a particular regulatory program.

Citing *United States v. Shelton Coal Corp.*, 829 F.2d 1336, 1339–40 (4th Cir. 1987), the commenter said that operators reasonably relied on the rules in force at the time of permit issuance, and applying a different standard would be unfair and unconscionable. Thus, the commenter concluded, the rule should apply a particular violations review criterion only after it was included in the regulatory program.

OSMRE appreciates the commenter's concern, which is one reason why it published the later proposed rule. As stated in the preceding discussion of § 773.20, this rule applies only to those ownership and control links covered by the applicable regulatory program at the time the permit was issued.

To the extent the commenter may have cited the decision in *Shelton* as precedent for the position that OSMRE lacks authority to adopt a rule requiring the suspension or rescission of permits issued prior to its effective date, OSMRE disagrees that the decision has any bearing on this issue. In *Shelton*, which concerned the liability of an operator under the approved Virginia State program for the payment of reclamation fees, the court said

> [t]here was a basis for * * * reasonable reliance, upon Virginia's exemption, and Virginia's interpretation of the statute was a rational one. There was no indication that the interpretation contravened any federal rule.

Id. at 1339. In the case of an improvidently issued permit, however, there is no corresponding basis for a permittee's reliance on noncompliance with the requirements of section 510(c) of the Act, which directly contravenes the related Federal and State procedures.

3. The Rule is Not Retroactive

Several commenters on the initial proposed rule were opposed to its alleged retroactive application. The commenters said that while some operators temporarily would escape action as a result of not applying the rule to existing permits, this would avoid a tendency of the regulatory authority to reexamine every previously issued permit application, which would cause chaos in the regulated community.

The commenters, concerns are not well-founded. This rule is targeted only at improvidently issued permits, and is not intended to disrupt any permittee operating under a permit that was validly issued.

In response to commenter concern over retroactive application of the initial proposed rule, the later proposed rule included several alternatives. One commenter said that these alternatives should not be considered because they would provide for the rescission of permits properly issued under the regulatory program.

OSMRE is sensitive to such concerns over changes in regulatory program standards after permit issuance. This rule requires no remedial action against a permit that was properly issued in accordance with the regulatory program in effect at the time the permit was issued.

The same commenter said that permit rescission should apply only to permits issued after the effective date of the rule or any corresponding State program amendments. The commenter said that numerous permanent program permits have been issued for ongoing operations, and it would not be fair to subject them to rescission through retroactive application of the rule.

OSMRE disagrees that the rule as adopted is retroactive. This rule does not change any permitting standard, either retroactively or prospectively, but requires the regulatory authority to apply the violations review criteria of

the regulatory program at the time of permit issuance in determining the current violations review status of a permit. It will not affect any permit for which a previous violations review defect has been corrected or otherwise has ceased to exist.

The rule will apply prospectively to existing Federal permits, and to State permits whenever consistent regulations are approved as amendments to State regulatory programs. *The rule will operate only with respect to violations, penalties and fees that remain outstanding.* Violations may be abated at any time, and once abated their past existence will not result in any proceedings under this rule. Thus, the rule recognizes the commenter's concern and enables the permittee to legitimize activities under an improvidently issued permit through abatement of the underlying violation or payment of the delinquent penalty or fee.

III. Procedural Matters

Effect in Federal Program States and on Indian Lands

Sections 773.20 and 773.21 of this rule will apply, through cross-referencing, to the following Federal program States: California, Georgia, Idaho, Massachussetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee and Washington. The Federal programs for these States appear at 30 CFR Parts 905, 910, 912, 921, 922, 933, 937, 939, 941, 942 and 947, respectively. No comments were received concerning unique conditions in any of these States which would require changes to the national rules or to any of the Federal programs.

The same sections of this rule also will apply, through cross-referencing at 30 CFR Part 750, to surface coal mining and reclamation operations on Indian lands.

By its own terms, § 843.21 of this rule does not apply to Federal program States or on Indian lands, but only to those States with State programs.

Federal Paperwork Reduction Act

This rule contains no information collection requirements, and thus does not require Office of Management and Budget approval under 44 U.S.C. 3501 *et seq.*

Executive Order 12291

The Department of the Interior has examined this rule according to the criteria of Executive Order 12291 (February 17, 1981) and has determined that it is not major and does not require a regulatory impact analysis.

This rule will impose only minor costs on the coal industry and coal consumers. It will not impose any significant new regulatory burden on operators because it does not change the existing permitting obligations of OSMRE, State regulatory authorities, permit applicants, and operators, but provides regulatory authorities with supplemental procedures for ensuring that operators are in full compliance with existing regulations.

Thus, this rule should not add appreciably to the cost of operating a mine in compliance with an approved regulatory program.

Regulatory Flexibility Act

For the reasons discussed in the previous paragraph, the Department of the Interior also has determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that this rule will not have a significant economic impact on a substantial number of small entities.

Some initial commenters said that OSMRE did not comply with the Regulatory Flexibility Act in proposing this rule. Others said that OSMRE did not comply with Executive Order 12291. They said that the proposed rule would make it more difficult for United States-based industry to meet foreign competition, and would impose major new costs on the coal industry and on consumers. Another commenter said that the rule would reduce the number of jobs in the surface coal mining industry.

OSMRE disagrees. Executive Order 12291 and the Regulatory Flexibility Act were complied with in promulgating the rule. This rule imposes no new regulatory burden on operators, and will not affect the ability of United States-based industry to compete with foreign operators, nor will it add to the costs of industry or of consumers. OSMRE analyzed the effect of this rule on jobs, small entities, and on other economic factors, and found that it will have only minimal effect, if any.

OSMRE also considered possible significant economic effects on small entities—those operators whose surface and underground coal production does not exceed 100,000 tons annually. Because this rule imposes no direct regulatory burden on operators, the effect of the rule will not be major, and it should have little or no economic effect on small entities who otherwise are in compliance with the Act.

Executive Order 12612

In accordance with section 6(b) of Executive Order 12612, OSMRE has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

One commenter said that the later proposed rule conflicted with OSMRE regulations recognizing the exclusive jurisdiction of primacy States as regulatory authorities, and failed to satisfy the agency's obligations under Executive Order 12612 regarding federalism principles.

OSMRE disagrees. The rule fully recognizes and is consistent with the primary role of State regulatory authorities in administering and enforcing State regulatory programs. The rule does nothing to alter any State program requirement in force at the time of permit issuance. In keeping with the Federalism principles embodied in the Act, the rule gives a State a reasonable opportunity to take appropriate action on an improvidently issued permit.

As discussed elsewhere in this preamble, this rule does not unnecessarily intrude into activities delegated to States, but facilitates the Secretary's mandatory role in the oversight of State regulatory programs as required by the Act.

National Environmental Policy Act

OSMRE has prepared an environmental assessment (EA) and has made a finding (FONSI) that this rule will not significantly affect the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). The rule should result in better compliance with the environmental standards of the Act, and therefore result in enhanced protection of the environment.

The EA and FONSI are on file in the OSMRE Administrative Record at the address specified previously (see "**ADDRESSES**").

Author

The author of this rule is Albert A. Kashinski, Division of Surface Mining, Office of the Solicitor, U.S. Department of the Interior, Washington, DC 20240.

List of Subjects

30 CFR Part 773

Administrative practice and procedure, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 843

Administrative practice and procedure, Coal mining, Law enforcement, Reporting requirements, Surface mining, Underground mining.

Accordingly, 30 CFR Parts 773 and 843 are amended as follows:

Date: November 7, 1988.

James E. Cason,

Acting Assistant Secretary—Land and Minerals Management.

PART 773—REQUIREMENTS FOR PERMITS AND PERMIT PROCESSING

1. The authority citation for Part 773 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, 16 U.S.C. 470 *et seq.*, 16 U.S.C. 1531 *et seq.*, 16 U.S.C. 661 *et seq.*, 16 U.S.C. 703 *et seq.*, 16 U.S.C. 668a *et seq.*, 16 U.S.C. 469 *et seq.*, 16 U.S.C. 470aa *et seq.*, and Pub L. 100–34.

2. Section 773.20 is added to read as follows:

§ 773.20 Improvidently issued permits: General procedures.

(a) *Permit review.* A regulatory authority which has reason to believe that it improvidently issued a surface coal mining and reclamation permit shall review the circumstances under which the permit was issued, using the criteria in paragraph (b) of this section. Where the regulatory authority finds that the permit was improvidently issued, it shall comply with paragraph (c) of this section.

(b) *Review criteria.* A regulatory authority shall find that a surface coal mining and reclamation permit was improvidently issued if:

(1) Under the violations review criteria of the regulatory program at the time the permit was issued:

(i) The regulatory authority should not have issued the permit because of an unabated violation or a delinquent penalty or fee; or

(ii) The permit was issued on the presumption that a notice of violation was in the process of being corrected to the satisfaction of the agency with jurisdiction over the violation, but a cessation order subsequently was issued; and

(2) The violation, penalty or fee:

(i) Remains unabated or delinquent; and

(ii) Is not the subject of a good faith appeal, or of an abatement plan or payment schedule with which the permittee or other person responsible is complying to the satisfaction of the responsible agency; and

(3) Where the permittee was linked to the violation, penalty or fee through ownership or control, under the violations review criteria of the regulatory program at the time the permit was issued an ownership or control link between the permittee and the person responsible for the violation, penalty or fee still exists, or where the link was severed the permittee continues to be responsible for the violation, penalty or fee.

(c) *Remedial measures.* A regulatory authority which, under paragraph (b) of this section, finds that because of an unabated violation or a delinquent penalty or fee a permit was improvidently issued shall use one or more of the following remedial measures:

(1) Implement, with the cooperation of the permittee or other person responsible, and of the responsible agency, a plan for abatement of the violation or a schedule for payment of the penalty or fee;

(2) Impose on the permit a condition requiring that in a reasonable period of time the permittee or other person responsible abate the violation or pay the penalty or fee;

(3) Suspend the permit until the violation is abated or the penalty or fee is paid; or

(4) Rescind the permit under § 773.21 of this part.

3. Section 773.21 is added to read as follows:

§ 773.21 Improvidently issued permits: Rescission procedures.

A regulatory authority which, under § 773.20(c)(4) of this part, elects to rescind an improvidently issued permit shall serve on the permittee a notice of proposed suspension and rescission which includes the reasons for the finding of the regulatory authority under § 773.20(b) of this part and states that:

(a) *Automatic suspension and rescission.* After a specified period of time not to exceed 90 days the permit automatically will become suspended, and not to exceed 90 days thereafter rescinded, unless within those periods the permittee submits proof, and the regulatory authority finds, that:

(1) The finding of the regulatory authority under § 773.20(b) of this part was erroneous;

(2) The permittee or other person responsible has abated the violation on which the finding was based, or paid the penalty or fee, to the satisfaction of the responsible agency;

(3) The violation, penalty or fee is the subject of a good faith appeal, or of an abatement plan or payment schedule with which the permittee or other person responsible is complying to the satisfaction of the responsible agency; or

(4) Since the finding was made, the permittee has severed any ownership or control link with the person responsible for, and does not continue to be responsible for, the violation, penalty or fee;

(b) *Cessation of operations.* After permit suspension or rescission, the permittee shall cease all surface coal mining and reclamation operations under the permit, except for violation abatement and for reclamation and other environmental protection measures as required by the regulatory authority; and

(c) *Right to appeal.* The permittee may file an appeal for administrative review of the notice under 43 CFR 4.1280–4.1286, or the State program equivalent, but where OSMRE is the regulatory authority the procedures of 43 CFR 4.21(a) shall not apply to suspend the effect of the notice.

PART 843—FEDERAL ENFORCEMENT

4. The authority citation for Part 843 continues to read as follows:

Authority: Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*, and Pub. L. 100–34.

5. Section 843.13 is amended by revising the heading to read as follows:

§ 843.13 Suspension or revocation of permits: Pattern of violations.

6. Section 843.21 is added to read as follows:

§ 843.21 Procedures for improvidently issued State permits.

(a) *Initial notice.* If OSMRE has reason to believe that a State surface coal mining and reclamation permit meets the criteria for an improvidently issued permit in § 773.20(b) of this chapter, or the State program equivalent, and the State has failed to take appropriate action on the permit under State program equivalents of §§ 773.20 and 773.21 of this chapter, OSMRE shall issue to the State, and should provide to the permittee, an initial notice stating in writing the reasons for that belief.

(b) *State response.* Within thirty days of the date on which an initial notice is issued under paragraph (a) of this section, the State shall demonstrate to OSMRE in writing either that:

(1) The permit does not meet the criteria of § 773.20(b) of this chapter, or the State program equivalent; or

(2) The State is in compliance with the State program equivalents of §§ 773.20 and 773.21 of this chapter.

(c) *Ten-day notice.* If OSMRE finds that the State has failed to make the demonstration required by paragraph (b) of this section, OSMRE shall issue to the State a ten-day notice stating in writing the reasons for that finding and requesting that within ten days the State take appropriate action under the State

program equivalents of §§ 773.20 and 773.21 of this chapter;

(d) *Federal enforcement.* After ten days from the date on which a ten-day notice is issued under paragraph (c) of this section, if OSMRE finds that the State has failed to take appropriate action under the State program equivalents of §§ 773.20 and 773.21 of this chapter, or to show good cause for such failure, OSMRE shall take appropriate remedial action. Such remedial action may include the issuance to the permittee of a notice of violation requiring that by a specified date all mining operations shall cease and reclamation of all areas for which a reclamation obligation exists shall commence or continue unless, to the satisfaction of the responsible agency, any violation, penalty or fee on which the notice of violation was based is abated or paid, an abatement plan or payment schedule is entered into, or any ownership or control link with the person responsible for the violation, penalty or fee is severed and the permittee does not continue to be responsible for the violation, penalty or fee. Under this paragraph, good cause shall not include the lack of State program equivalents of §§ 773.20 and 773.21 of this chapter.

(e) *Remedies to notice of violation.* Upon receipt from any person of information concerning the issuance of a notice of violation under paragraph (d) of this section, OSMRE shall review the information and:

(1) Vacate the notice of violation if it resulted from an erroneous conclusion under this section; or

(2) Terminate the notice of violation if:

(i) The permittee or other person responsible has, to the satisfaction of the responsible agency, abated any violation or paid any penalty or fee on which the notice of violation was based;

(ii) The permittee or other person responsible has filed and is pursuing a good faith appeal of the violation, penalty or fee, or has entered into and is complying with an abatement plan or payment schedule to the satisfaction of the responsible agency; or

(iii) Since the notice of violation was issued, the permittee has severed any ownership or control link with the person responsible for, and does not continue to be responsible for, the violation, penalty or fee;

(f) *No civil penalty.* OSMRE shall not assess a civil penalty for a notice of violation issued under this section.

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