AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

6-27-89
Vol. 54 No. 122

federal register

Tuesday
June 27, 1989

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

SECOND CLASS NEWSPAPER

Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

6-27-89
Vol. 54 No. 122
Pages 26941-27150

federal register

Tuesday
June 27, 1989

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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Title 3—

The President

Proclamation 5994 of June 23, 1989

United States Coast Guard Auxiliary Day, 1989

By the President of the United States of America

A Proclamation

This year marks the 50th anniversary of one of our Nation's most effective voluntary organizations: the United States Coast Guard Auxiliary.

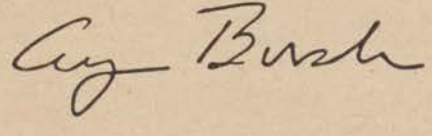
The United States Coast Guard Auxiliary is the civilian component of the U.S. Coast Guard. During the past 50 years, its members have helped to ensure the safety of those Americans who participate in water-related activities. Dedicated to promoting safe, efficient vessel operation and increased knowledge of the laws, rules, and regulations governing boating, the Coast Guard Auxiliary offers a variety of public education programs. It provides boating safety instruction from kindergarten to the college level, as well as a special course for physically challenged boaters. The Auxiliary also performs courtesy marine examinations of safety equipment on recreational boats.

Through its support of the Cooperative Charting Program conducted by the National Oceanic and Atmospheric Administration's National Ocean Survey, the Coast Guard Auxiliary assists in the updating of nautical charts. Auxiliary members also assist in search and rescue operations on the high seas or other navigable waters, even at the risk of their own safety.

As the popularity of recreational boating and other water-related activity increases, the voluntary efforts of the more than 35,000 members of the Coast Guard Auxiliary will become even more important. In recognition of the generosity, concern, and personal sacrifices of the members of the United States Coast Guard Auxiliary, the Congress, by House Joint Resolution 111, has designated June 23, 1989, as "United States Coast Guard Auxiliary Day" and has authorized and requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim June 23, 1989, as United States Coast Guard Auxiliary Day.

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



[FR Doc. 89-15340
Filed 6-23-89; 5:02 pm]
Billing code 3195-01-M

Presidential Documents

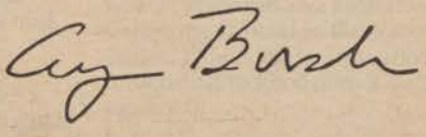
Presidential Determination No. 89–14 of May 31, 1989

Determination Under Section 402(d)(5) of the Trade Act of 1974—Continuation of Waiver Authority

Memorandum for the Secretary of State

Pursuant to the authority vested in me under the Trade Act of 1974 (Public Law 93–618), January 3, 1985 (88 Stat. 1978) (hereinafter "the Act"), I determine, pursuant to Subsection 402(d)(5) of the Act, that the further extension of the waiver authority granted by Subsection 402(c) of the Act will substantially promote the objectives of Section 402 of the Act. I further determine that the continuation of the waivers applicable to the Hungarian People's Republic and the People's Republic of China will substantially promote the objectives of Section 402 of the Act.

This determination shall be published in the **Federal Register.**



THE WHITE HOUSE,
Washington, May 31, 1989.

[FR Doc. 89–15334
Filed 6–23–89; 4:39 pm]
Billing code 3195–01–M

Editorial note: For the text of the President's message to the Congress, dated May 31, on the waiver continuation, see the *Weekly Compilation of Presidential Documents* (vol. 25, p. 810).

Rules and Regulations

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

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1951

Administrative Changes to Salary Offset Instructions

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its Federal salary offset regulations to increase internal management control of offset procedures. It is common practice to notify delinquent borrowers eligible for salary offset as soon as eligibility has been determined. These amendments formalize the notification time period in order to ensure uniform practice in the field offices. The salary offset requests to creditor agencies will be channelled through the Financial and Management Analysis Staff, FmHA. The intended effect is to more accurately and efficiently track and tabulate salary offset implementation, thus increasing internal management control.

EFFECTIVE DATE: June 27, 1989.

FOR FURTHER INFORMATION CONTACT: Jeanne Hudec, Financial Analyst, Financial and Management Analysis Staff, Farmers Home Administration, U.S. Department of Agriculture, Room 5503 South Building, 14th Street and Independence Avenue SW., Washington, DC 20250, telephone (202) 382–8356.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be exempt from those requirements because it involves only internal agency management.

It is the policy of this Department to publish for comment rules relating to public property, loans, grants, benefits, or contracts, notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This action, however, is not published for proposed rule making since it involves only internal agency management, making publication for comment unnecessary.

The document has been reviewed in accordance with FmHA Instruction 1940–G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal Action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, and Environmental Impact Statement is not needed.

List of Subjects in 7 CFR Part 1951

Account servicing, Loan programs—agriculture, accounting, credit, low and moderate income housing loans—servicing.

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

PART 1951—SERVICING AND COLLECTIONS

1. The authority citation for Part 1951 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; CFR 2.70.

Subpart C—Offsets of Federal Payments to FmHA Borrowers

2. Section 1951.111 of Subpart C of Part 1951 is amended by removing the words, "FmHA Form Letter 1951–4," and inserting in their place the words, "FmHA Guide Letter 1951–C–4," in the following places:

(a) Paragraphs (f)(2), (f)(3), (f)(6), and (f)(7)
(b) Paragraph (g)(2)
(c) Paragraphs (h)(1)(i) and (h)(1)(ii).

3. Section 1951.111 is amended by revising paragraph (d)(1), the introductory text of paragraph (h)(1), and paragraphs (h)(3), (m) and (p)(1) to read as follows:

§ 1951.111 Salary offset.

(d) * * *

(1) After the Certifying Official determines that collection by salary offset is feasible, FmHA Guide Letter 1951–C–4 should be sent within 15 calendar days after that determination. This Guide Letter will notify the debtor of intended salary offset at least 30 days before the salary offset begins. FmHA Guide Letter 1951–C–4 will be personally delivered to the debtor or sent certified mail, Return Receipt Requested, with a copy sent by regular mail on the same day. If the certified mail receipt is returned, the date the debtor received the letter will be established and the time limits set out in FmHA Guide Letter 1951–C–4 will run from that date. If delivery by certified mail is not accomplished, FmHA will assume that the debtor received the letter by regular mail on the day the certified mail was refused or was unable to be delivered.

* * * * *

(h) * * *

(1) Form AD–343, "Payroll Action Request," and FmHA Form Letter 1951–6 will be prepared and submitted by the Certifying Official to the National Office, FMAS, for coordination and forwarding to the debtor's employing agency if:

* * * * *

(3) If the debtor is an FmHA employee, Form AD–343 will be sent to the National Office, FMAS, and a copy to the Finance Office, St. Louis, MO, Attn: Account Settlement Unit. This form can be signed for the Certifying Official by an employment officer, an Administrative Officer, or a personnel management specialist, or signed by the Certifying Official.

* * * * *

(m) *Cancellation of offset.* If a debtor's name has been submitted to another agency for offset and the debtor's account is brought current or otherwise satisfied, the Certifying Official will complete Form AD–343 and send it to the National Office, FMAS. FMAS will notify the paying agency with Form AD–343 that the debtor is no longer delinquent or indebted and to cancel the offset. A copy of the cancellation document will be sent to the debtor and the Finance Office, Attn: Account Settlement Unit.

* * * * *

(p) * * *

(1) If FmHA is the creditor agency but not the paying agency, the Certifying Official will submit Form AD–343 to the National Office, FMAS, to begin salary offset against an indebted employee.

The request will include a certification as to the determination of indebtedness, and that FmHA has complied with applicable regulations and instruction for submitting the funds to the Finance Office. (See FmHA Form Letter 1951–6).

Dated: May 30, 1989.

Neal Sox Johnson,

Acting Administrator, Farmers Home Administration.

[FR Doc. 89–15077 Filed 6–26–89; 8:45 am]

BILLING CODE 3410–07–M

7 CFR Part 1980

RIN 0575–AA65

Drought and Disaster Guaranteed Loan Program

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) is amending its regulations to provide procedures for guaranteeing loans to rural businesses impacted by drought, hail, excessive moisture, or related conditions in 1988. This action is necessary to implement section 331 of the Disaster Assistance Act of 1988 ("the Act"). The intended effect of this action is to provide loan guarantees to businesses in rural areas which suffer losses or distress as a result of drought, hail, excessive moisture, or related conditions in 1988.

EFFECTIVE DATE: June 27, 1989.

FOR FURTHER INFORMATION CONTACT: Lawrence Bowles, Acting Branch Chief, Business and Industry Division, Farmers Home Administration, USDA, Washington, DC 20250, Telephone (202) 475–3811.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291 and has been determined to be non-major. This action will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR Part 1940 Subpart G, "Environmental Program." It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Intergovernmental Review

This program is listed in the catalog of Federal Domestic Assistance under number 10.422, and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (7 CFR Part 3105, Subpart V; 48 FR 29112, June 24, 1983; 40 FR 2267, May 31, 1984; 50 FR 14088, April 10, 1985.

Discussion of Final Rule

An interim rule was published in the January 3, 1989, issue of the **Federal Register** (54 FR 2). It authorized and implemented a program of loan guarantees, patterned on FmHA's Business and Industrial (B&I) guaranteed loans, to assist in alleviating financial distress caused, directly or indirectly, by drought, hail, excessive moisture or related conditions in 1988 and to assist such entities which refinance or restructure debt as a result of losses incurred because of such natural disasters. Except as regards specific requirements of the Act, FmHA, in the interim rule, adopted for Drought and Disaster (D&D) guaranteed loans the regulations and requirements applying to B&I guaranteed loans.

A correction of a typographical error was published in the April 13, 1989, issue of the **Federal Register** (54 FR 14791). It corrected a typographical error in the Interim Rule.

This rule adopts as final that interim rule, with the correction, with one change adopted on the basis of public comments. That change deals with the eligibility of hotels, motels, tourist and recreation facilities.

Comments on the interim rule were invited from the public until March 6, 1989. Four comments were received from the public and have been carefully considered.

Comments were received from a lender, a prospective borrower, and a U.S. Senator urging the eligibility of hotels, motels, resorts and recreation facilities for D&D loans.

Commenters provided information showing that in some areas, hotel, motel, resort and recreation facilities constitute the only significant private sector employers and do create a significant number of jobs for local residents and were particularly damaged by drought, resulting fires and drops in water levels.

As a result, FmHA opts to modify the interim rule, permitting D&D loans for hotels, motels, resort and recreation facilities. This modification applies only to D&D loans.

This final rule amends 7 CFR Subpart 1980–E, Appendix I, paragraphs B and C, to provide for D&D loan guarantees for hotel, motel, resort and recreation facilities.

One commenter, a lender, noted that the B&I regulations governing D&D loans require audited financial statements on an annual basis, and recommended eliminating or modifying that requirement because of the cost of an audit. While an audit is not inexpensive, an audit assures an independent review which not only provides additional security for FmHA and the lender, but also serves as a valuable management tool for the entrepreneur.

List of Subjects in 7 CFR Part 1980

Loan programs—Business and industry—Rural development assistance, Rural areas.

Accordingly, the interim rule published in the January 3, 1989, **Federal Register**, with the correction published in the April 13, 1989, issue, are adopted as final with the following amendments to Title 7, Chapter XVIII, of the Code of Federal Regulations.

PART 1980—GENERAL

1. The authority citation for Part 1980 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; P.L. 100–387; 7 CFR 2.23; 7 CFR 2.70.

Subpart E—Business and Industrial Loan Program

2. In Appendix I, paragraph B is amended by adding the following sentence at the end of the paragraph and by revising the introductory text of paragraph C to read as follows:

Appendix I—Instructions for Loan Guarantees for Drought and Disaster Relief

* * * * *

B. *Loan purposes.* * * * In addition, D&D loan proceeds may be used for hotels, motels, tourist or recreation facilities which meet the eligibility requirements for D&D guaranteed loans.

C. *Ineligible loan purposes.* See § 1980.412. Except for hotels, motels, tourist and

recreation facilities mentioned in section B of this appendix, purposes listed as ineligible B&I loan purposes are ineligible D&D loan purposes. In addition, D&D guaranteed loans may not be used for:

* * * * *

April 28, 1989.

Roland R. Vautour,

Under Secretary, Small Community and Rural Development.

[FR Doc. 89-15078 Filed 6-26-89; 8:45 am]

BILLING CODE 3410-07-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 7

RIN 3150-AD25

Advisory Committees; Policies and Procedures

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations that define the policies and procedures to be followed by the Nuclear Regulatory Commission (NRC) in the establishment, utilization, and termination of advisory committees. This amendment is intended to reflect administrative and management changes that have taken place since NRC's regulations were published in 1975 and to maintain consistency between NRC regulations and those issued by the General Services Administration in 1987.

EFFECTIVE DATE: June 27, 1989.

FOR FURTHER INFORMATION CONTACT: Susan Fonner, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-1632.

SUPPLEMENTARY INFORMATION: The Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C. App.) was enacted in 1972 to regulate the formation and operation of advisory committees by Federal agencies. Pursuant to authority provided by section 7(c) of the Act and Executive Order 12024 (42 FR 61445), the General Services Administration has the responsibility for providing government-wide guidelines on the subject. In implementation of this responsibility, GSA issued a final rule in late 1987 (effective January 4, 1988) providing administrative and interpretive guidelines and management controls for Federal agencies concerning the implementation of the Act.

Section 8(c) of the Federal Advisory Committee Act directs the head of each Federal agency to establish uniform administrative guidelines and management controls for advisory committees established by that agency. In 1975, the Nuclear Regulatory Commission implemented this requirement by issuing NRC's Advisory Committee regulations (10 CFR Part 7). The present revision of NRC's regulations is intended to reflect administrative and management changes that have taken place since NRC's regulations were published in 1975 and to maintain consistency between NCR regulations and those issued by the General Services Administration in 1987.

Because these amendments relate to matters of agency management or personnel, good cause exists for omitting notice of proposed rulemaking and public procedures thereon, as unnecessary, and for making the amendments effective upon publication in the **Federal Register.**

Environmental Impact: Categorical Exclusion

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

Paperwork Reduction Act Statement

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

Regulatory Analysis

In 1972, the Congress enacted the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C. App.) to regulate the formation and operation of advisory committees by Federal agencies. Section 8(a) of the Act directs the head of each Federal agency to establish uniform administrative guidelines and management controls for advisory committees established by that agency. NRC implemented this requirement by issuing Advisory Committee regulations (10 CFR Part 7) in 1975.

The Act also requires the establishment of administrative guidelines and of management controls on a government-wide basis (section 7(c)). In implementation of this requirement, the General Services Administration issued a final rule, effective January 4, 1988, providing administrative and interpretive guidelines and management controls for Federal agencies concerning the implementation of the Act.

Because most of NRC's regulations on the subject have not been revised since their issuance in 1975, they do not incorporate all of the requirements of the GSA rule. For example, GSA's regulations make it clear that whenever an agency proposes to establish an advisory committee, it is required to submit a written request for review of the proposal to GSA's Committee Management Secretariat, and the letter of request must contain certain prescribed information. While NRC's current regulations contain references to consultation with the GSA Secretariat, the form of consultation appears to be at the Commission's option.

NRC's current regulations also do not reflect many of the administrative and management changes that have taken place since 1975. For example, the NRC regulations do not reflect the fact that the principal functions of guiding and coordinating the administration of the Act, which the Act vested in the President and the Director of the Office of Management and Budget, were transferred to the Administrator of the General Services Administration by Executive Order 12024 of December 1, 1977 (42 FR 61445). They also do not reflect the current operational responsibilities of the Chairman of the Commission in such matters as personnel appointments and administrative support services.

In view of the above, the Commission has determined that NRC's Advisory Committee regulations should be revised to make them more consistent with current administrative and management practices and the Federal Advisory Committee Management regulations of the General Services Administration. The Commission believes that this alternative is to be preferred to the revised 10 CFR Part 7.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule and, therefore, that a backfit analysis is not required for this final rule because these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects in 10 CFR Part 7

Advisory committees, Sunshine Act.

For the reasons set out in the preamble and under the authority of the Federal Advisory Committee Act, as amended, 5 U.S.C. App., the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, 41 CFR Part 101-6, and 5

U.S.C. 553, the NRC is amending 10 CFR Part 7 as set forth below.

1. Part 7 is revised to read as follows:

PART 7—ADVISORY COMMITTEES

Sec.
7.1 Policy.
7.2 Definitions.
7.3 Interpretations.
7.4 Establishment of advisory committees.
7.5 Review of establishment of advisory committees by GSA Secretariat; Advisory committee charters.
7.6 Amendments to advisory committee charters.
7.7 Termination, renewal, and rechartering of advisory committees.
7.8 Charter filing requirements.
7.9 Public notice of advisory committee establishment, reestablishment, or renewal.
7.10 The NRC Advisory Committee Management Officer.
7.11 The Designated Federal Officer.
7.12 Public participation in and public notice of advisory committee meetings.
7.13 Minutes of advisory committee meetings.
7.14 Public information on advisory committees.
7.15 Procedures for closing an NRC advisory committee meeting.
7.16 Annual comprehensive review.
7.17 Reports required for advisory committees.
7.18 Compensation and expense reimbursement of advisory committee members, staffs, and consultants.
7.19 Handicapped members of advisory committees.
7.20 Conflict of interest reviews of advisory committee members' outside interests.
7.21 Costs of duplication of documents.
7.22 Fiscal and administrative responsibilities.

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); Pub. L. 92–463, 86 Stat. 770 (5 U.S.C. App.).

§7.1 Policy.

The regulations in this part define the policies and procedures to be followed by the Nuclear Regulatory Commission in the establishment, utilization, and termination of advisory committees. In general, it is the policy of the Commission that—

(a) Except where there is express legal authority to the contrary, the function of NRC advisory committees shall be advisory only.

(b) Each NRC advisory committee shall function in compliance with the Federal Advisory Commitee Act and this part.

(c) The number of NRC advisory committees shall be kept to the minimum necessary, and the number of members of each NRC advisory committee shall be limited to the fewest necessary to accomplish committee objectives.

(d) An NRC advisory committee shall be established only when establishment of the committee is required by law or when the Commission determines that the committee is essential to the conduct of NRC business. In making such a determination, the Commission shall consider whether committee deliberations will result in a significant contribution to the creation, amendment, or elimination of regulations, guidelines, or rules affecting NRC business; whether the information to be obtained is available through another source within the Federal Government; whether the committee will make recommendations resulting in significant improvements in service or reductions in cost; or whether the committee's recommendations will provide an important additional perspective or viewpoint relating to NRC's mission.

(e) Except where otherwise required by law, an NRC advisory committee shall be terminated whenever the stated objectives of the committee have been accomplished, the subject matter or work of the committee has become obsolete, the committee's main functions have been assumed by another entity within the Federal Government, or the cost of operating the committee has become excessive in relation to the benefits accruing to the Federal Government from its activities.

(f) NRC advisory committees shall be balanced in their membership in terms of the points of view represented and the functions to be performed.

(g) The Congress shall be kept informed of the number, purpose, membership, activities, and cost of NRC advisory committees.

(h) NRC advisory committee meetings shall be open to the public, except where closure is determined to be justified under §7.15.

§7.2 Definitions.

As used in this part:

(a) "Act" means the Federal Advisory Committee Act, as amended, 5 U.S.C. App.

(b) "Administrator" means the Administrator of General Services.

(c)(1) "Advisory committee" means any committee, board, commission, council, conference, panel, task force, or similar group, or any subcommittee or other subgroup thereof, that is established by statute for the purpose of providing advice or recommendations on issues of policy to an official, branch, or agency of the Federal Government, or that is established or utilized by the President or any agency official to obtain advice or recommendations on issues or policies that fall within the scope of his or her responsibilities; except that the term "advisory committee" shall not include the groups listed in paragraph (c)(3) of this section.

(2) For purposes of the definition of "advisory committee" in paragraph (c)(1) of this section, a group shall be considered to be "utilized by the President or any agency official to obtain advice or recommendations on issues or policies that fall within the scope of his or her responsibilities" if (i) the group is composed in whole or in part of other than full-time officers or employees of the Federal Government, (ii) the group has an established existence outside the agency seeking the advice, (iii) the group is a preferred source from which to obtain advice or recommendations on a specific issue or policy within the scope of the President's or agency official's responsibilities, and (iv) such advice or recommendations are obtained in the same manner as advice or recommendations obtained from established advisory committees.

(3) The following advisory meetings or groups are not included in the definition of "advisory committee" in paragraph (c)(1) of this section:

(i) Any group composed wholly of full-time officers or employees of the Federal Government;

(ii) Any group specifically exempted from the Act or these regulations by an Act of Congress;

(iii) Any local civic group whose primary function is that of rendering a public service with respect to a Federal program, or any State or local committee, council, board, commission, or similar group established to advise or make recommendations to any State or local government unit or an official thereof;

(iv) Any group that performs primarily operational functions specifically provided by law, as opposed to advisory functions;

(v) Any meeting initiated by the President or one or more Federal officials for the purpose of obtaining advice or recommendations from one individual;

(vi) Any meeting that is initiated by a Federal official and that is held with more than one individual for the purpose of obtaining the advice of individual attendees and not for the purpose of utilizing the group to obtain consensus advice or recommendations, except where the agency accepts the group's deliberations as a source of consensus advice or recommendations;

(vii) Any meeting initiated by a group with the President or one or more Federal officials for the purpose of expressing the group's view, provided

that the President or Federal official does not use the group recurrently as a preferred source of advice or recommendations;

(viii) Any meeting of two or more advisory committee members convened solely to gather information or conduct research for a chartered advisory committee to analyze relevant issues and facts for a chartered advisory committee, or to draft proposed position papers for deliberation by a chartered advisory committee; and

(ix) Any meeting with a group initiated by the President or by one or more Federal officials for the purpose of exchanging facts or information.

(d) "Agency" means an agency of the Government of the United States as defined in 5 U.S.C. 551(1).

(e) "Commission" means the Nuclear Regulatory Commission of five members, or a quorum thereof, sitting as a body, as provided by section 201 of the Energy Reorganization Act of 1974, 42 U.S.C. 5841 (88 Stat. 1242).

(f) "Committee member" means an individual who is appointed to serve on an advisory committee and has the full right and obligation to participate in the activities of the committee, including voting on committee recommendations.

(g) "Designated Federal Official" means a government employee appointed, pursuant to § 7.11(a), to chair or attend each meeting of an NRC advisory committee to which he or she is assigned.

(h) "GSA" means the General Services Administration.

(i) "NRC" means the agency established by title II of the Energy Reorganization Act of 1974, 42 U.S.C. 5801 (88 Stat. 1233), and known as the Nuclear Regulatory Commission.

(j) "NRC Advisory Committee Management Officer" means the individual appointed, pursuant to § 7.10(a), to supervise and control the establishment and management of NRC advisory committees.

(k) "NRC Public Document Room" means the Public Document Room maintained by the NRC at 2120 L Street, NW., Washington, DC.

(l) "Presidential advisory committee" means an advisory committee that advises the President.

(m) "GSA Secretariat" means the Committee Management Secretariat of the General Services Administration, which was established pursuant to the Act.

(n) "Staff member" means any individual who serves in a support capacity to an advisory committee.

§ 7.3 Interpretations.

Except as specifically authorized by the Commission in writing, no interpretation of the meaning of the regulations in this part by an NRC officer or employee, other than a written interpretation by the General Counsel, shall be binding upon the Commission.

§ 7.4 Establishment of advisory committees.

(a) An NRC advisory committee may be established under this part only if its establishment—

(1) Is specifically directed or authorized by statute or by Executive Order of the President; or

(2) Has been determined by the Commission to be in the public interest and essential to the performance of the duties imposed on the Commission by law.

The determination required by paragraph (a)(2) of this section shall be a matter of formal record, and shall include a statement of a clearly defined purpose for the advisory committee.

§ 7.5 Review of establishment of advisory committees by GSA Secretariat; Advisory committee charters.

(a) Whenever the NRC proposes to establish or utilize an advisory committee, a letter requesting review of the proposal and transmitting a proposed charter for the committee shall be submitted to the GSA Secretariat by the Commission. The letter shall contain the following information:

(1) An explanation of why the committee is essential to the conduct of NRC business and is in the public interest;

(2) An explanation of why the committee's functions cannot be performed by NRC, another existing NRC advisory committee, or other means (such as a public hearing); and

(3) A description of NRC's plan to attain balanced membership on the committee.

For purposes of attaining balance in an NRC advisory committee's membership, the Commission shall consider for membership interested persons and groups with professional, technical, or personal qualifications or experience to contribute to the functions and tasks to be performed.

(b) Each proposed committee charter submitted for review pursuant to paragraph (a) of this section shall contain the following information:

(1) The committee's official designation;

(2) The committee's objectives and the scope of its activity;

(3) The period of time necessary for the committee to carry out its purposes;

(4) The NRC official to whom the committee will report;

(5) The NRC office responsible for providing support for the committee;

(6) A description of the duties for which the committee will be responsible, and if such duties are not solely advisory, a specification of the authority for the functions that are not advisory;

(7) The estimated annual operating costs, in dollars and man-years, for the committee;

(8) The estimated number and frequency of committee meetings; and

(9) The committee's termination date, if less than two years from the date of the committee's establishment.

The date the charter is filed pursuant to § 7.8 shall be added to the charter when such filing takes place.

(c)(1) A subcommittee that does not function independently of its parent advisory committee shall be subject to the requirements of this part, except that it shall not be subject to the requirements of paragraphs (a) and (b) of this section. Such a subcommittee shall not, however, be subject to the requirements of this part with respect to any meeting of its members devoted solely to a function described in § 7.2(c)(3)(viii).

(2) The requirements of this part, including the requirements of paragraphs (a) and (b) of this section, shall apply to any subcommittee that functions independently of the parent advisory committee (such as by making recommendations directly to the agency rather than to the parent advisory committee), regardless of whether the subcommittee's members are drawn in whole or in part from the parent advisory committee.

(d) After the GSA Secretariat has notified the Commission of the results of its review of a proposal to establish or utilize an NRC advisory committee, submitted pursuant to paragraph (a) of this section, the Commission shall notify the GSA Secretariat in writing whether the advisory committee is actually being established. Filing of the advisory committee charter pursuant to § 7.8 shall be deemed to fulfill this notification requirement. If the advisory committee is not being established, the Commission shall so advise the GSA Secretariat in writing, stating whether NRC intends to take any further action with respect to the proposed advisory committee.

(e) The date of filing of an advisory committee charter pursuant to § 7.8 shall appear on the face of the charter and shall constitute the date of establishment, renewal, or reestablishment of the committee.

§ 7.6 Amendments to advisory committee charters.

(a) Final authority for amending the charter of an NRC advisory committee established or utilized by the NRC is vested in the Commission.

(b) Any proposed minor technical changes made to a current charter for an NRC advisory committee whose establishment is required or authorized by statute or by Executive Order of the President shall be coordinated with the General Counsel to ensure that they are consistent with the applicable statute or Executive Order. When the statute or Executive Order that directed or authorized the establishment of an advisory committee is amended to change the language that has been the basis for establishing the advisory committee, those sections of the current charter affected by the statute or Executive Order shall also be amended, and the amended charter shall be filed as specified in § 7.8.

(c)(1) The charter of an NRC advisory committee established under general agency authority may be amended when the Commission determines that the existing charter no longer reflects the objectives or functions of the committee. Such changes may be minor (such as revising the name of the advisory committee or modifying the estimated number or frequency of meetings), or they may be major (such as revising the objectives or composition of the committee). The procedures specified in paragraph (b) of this section shall be used in the case of charter amendments involving minor changes.

(2) In the case of a major amendment to the charter of an advisory committee established under general agency authority, a letter requesting review of the proposed amendment and transmitting the proposed amended charter shall be submitted to the GSA Secretariat. The letter shall explain the purpose of the changes and why they are necessary.

(3) A committee charter that has been amended pursuant to this paragraph is subject to the filing requirements set forth in § 7.8.

(4) Amendment of an existing advisory committee charter pursuant to this paragraph does not constitute renewal of the committee for purposes of § 7.7.

§ 7.7 Termination, renewal, and rechartering of advisory committees.

(a) Except as provided in paragraph (b)(1) of this section, each NRC advisory committee shall terminate two years after it is established, reestablished, or renewed, unless—

(1) It has been terminated sooner;

(2) It has been renewed or reestablished before the end of such period in accordance with the procedures set forth in paragraph (b) of this section; or

(3) Its duration has been otherwise designated by law.

The NRC Committee Management Officer shall notify the GSA Secretariat in writing of the effective date of termination of any advisory commitee that has been terminated by the NRC.

(b)(1) An NRC advisory committee that is established by statute shall require rechartering by the filing of a new charter every 2 years after the date of enactment of the statute establishing the committee. If a new charter is not filed, the committee is not terminated, but it may not meet or take any actions.

(2) Any other NRC advisory committee may be renewed, provided that such renewal is carried out in compliance with the procedures set forth in § 7.5 at least 30 and not more than 60 days before the committee would otherwise terminate; except that an advisory committee established by the President may be renewed by appropriate action of the President and the filing of a new charter. Renewal of an NRC advisory committee shall not be deemed to terminate the appointment of any committee member who was previously appointed to serve on the committee.

§ 7.8 Charter filing requirements.

(a) Except as provided in paragraph (b) of this section, an NRC advisory committee may not operate, meet, or take any action unless a copy of the committee's charter has been filed with (1) the Committee on Environment and Public Works of the United States Senate, and the Committee on Interior and Insular Affairs and the Committee on Energy and Commerce of the United States House of Representatives; (2) the Library of Congress, Exchange and Gift Division, Federal Documents Section, Federal Advisory Committee Desk, Washington, DC 20540; and (3) the GSA Secretariat. The copy filed with the GSA Secretariat shall indicate the Congressional filing date.

(b) When either the President or the Congress establishes an advisory committee that advises the President and for which NRC is responsible, the Commission shall—

(1) File the committee's charter with the GSA Secretariat;

(2) File a copy of the committee's charter with the Library of Congress at the address listed in paragraph (a) of this section; and

(3) If specifically directed by law, file with the Congressional Committees listed in paragraph (a) of this section a copy of the charter that shows its date of filing with the GSA Secretariat.

(c) For purposes of the filing requirements established by this section, the filing date of an advisory committee charter shall be the date on which the charter, or a copy of the charter where appropriate, is offered for filing at the office in which it is required to be filed (in the case of hand delivery), or on which it is deposited in the mail (in the case of delivery by mail).

(d) The charter filing requirements established by this section are subject to the public notice requirements of § 7.9.

§ 7.9 Public notice of advisory committee establishment, reestablishment, or renewal.

(a) After the Commission has received the GSA Secretariat's response to a request (in accordance with § 7.5) for review of a proposal to establish, reestablish, renew, or utilize an NRC advisory committee, the Commission shall publish a notice in the **Federal Register** that the committee is being established, reestablished, renewed, or utilized. In the case of a new committee, the notice shall also describe the nature and purpose of the committee and shall include a statement that the committee is necessary and in the public interest. This notice requirement does not apply to any committee whose establishment is required by statute or which is established by Executive Order of the President.

(b) Notices required to be published pursuant to paragraph (a) of this section shall be published at least 15 calendar days before the committee charter is filed pursuant to § 7.8, except that the GSA Secretariat may approve less than 15 days for good cause shown. The 15-day advance notice requirement does not apply to committee renewals, notices of which may be published concurrently with the filing of the charter.

§7.10 The NRC Advisory Committee Management Officer.

(a) The Chairman of the Commission shall appoint an NRC Advisory Committee Management Officer to carry out the functions specified in paragraph (b) of this section.

(b) The NRC Advisory Committee Management Officer shall—

(1) Carry out all responsibilities relating to NRC advisory committees delegated to such officer by the Commission;

(2) Ensure that administrative guidelines and management controls are issued that apply to all NRC advisory committees;

(3) Exercise control and supervision over the establishment, procedures, and accomplishments of NRC advisory committees;

(4) Assemble and maintain the reports, records, and other papers of any such committee during this existence;

(5) Carry out, on behalf of NRC, the provisions of the Freedom of Information Act (5 U.S.C. 552) and NRC's Freedom of Information Act Regulations (10 CFR Part 9, Subpart A) with respect to such reports, records, and other papers;

(6) Ensure that, subject to the Freedom of Information Act and NRC's Freedom of Information Act Regulations, copies of the records, reports, transcripts minutes, appendices, working papers, drafts, studies, agenda, or other documents which were made available to or prepared for or by each NRC advisory committee shall be available for public inspection and copying at the NRC Public Document Room until the advisory committee ceases to exist;

(7) Ensure that, subject to the Freedom of Information Act and NRC's Freedom of Information Act Regulations, at least eight copies of each report made by each NRC advisory committee and, where appropriate, background papers prepared by consultants, shall be filed with the Library of Congress;

(8) Ensure that NRC keeps such records as will fully disclose the disposition of any funds that may be at the disposal of NRC advisory committees and the nature and extent of their activities; and

(9) Ensure that NRC keeps such other records and provides such support services as are required by § 7.22.

(b) For purposes of paragraph (a) of this section, the term "records" includes (but is not limited to):

(1) At set of approved charters and membership lists for each NRC advisory committee;

(2) Copies of NRC's portion of the President's annual report to the Congress on Federal advisory committees required by section 6(c) of the Act;

(3) NRC guidelines on committee management operations and procedures as maintained and updated; and

(4) NRC determinations to close advisory committee meetings made pursuant to § 7.15.

§ 7.11 The Designated Federal Officer.

(a) The Chairman of the Commission shall appoint a Designated Federal Officer for each NRC advisory committee and its subcommittees. The individual holding this position must be employed by the Federal Government on either a full-time or a permanent part-time basis.

(b) All meetings of an NRC advisory committee must be convened or approved by the committee's Designated Federal Officer, and the agenda for each committee meeting (expect a meeting of a Presidential advisory committee) must be approved by that individual.

(c) An NRC advisory committee may not hold a meeting in the absence of its Designated Federal Officer.

(d) It shall also be the responsibility of the Designated Federal Officer to—

(1) Attend all meetings of the committee for which he or she has been appointed;

(2) Adjourn the meetings of the committee when such adjuornment is in the public interest;

(3) Chair the meetings of the committee when so directed by the Commission;

(4) Ensure compliance with the requirements of § 7.13 regarding minutes of meetings of the committee; and

(5) Provide to the NRC Public Document Room copies of committee documents required to be maintained for public inspection and copying pursuant to § 7.14(b).

§ 7.12 Public participation in and public notice of advisory committee meetings.

(a) Each meeting of an NRC advisory committee shall be held at a reasonable time and in a place reasonably accessible to the public. The size of the meeting room must be sufficient to accomodate advisory committee members, committee or agency staff, and interested members of the public; except that, the provisions of this paragraph shall not apply where an entire NRC advisory committee meeting has been closed pursuant to § 7.15.

(b) Any member of the public who wishes to do so shall be permitted to file a written statement with an NRC advisory committee regarding any matter discussed at a meeting of the committee. The committee chairman may also permit members of the public to speak at meetings of the committee in accordance with procedures established by the committee.

(c) Except when the President or his designee determines in writing that no notice should be published for reasons of national security, at least 15 days prior to an NRC advisory committee meeting, a notice that includes the following information shall be published in the **Federal Register:**

(1) The exact name of the advisory committee as chartered;

(2) The time, date, place, and purpose of the meeting;

(3) A summary of the agenda of the meeting; and

(4) Whether all or part of the meeting is open to the public.

If any part of the meeting is closed, the notice shall provide the reasons for the closure, citing the specific matter that has been determined to justify the closure under § 7.15.

(d) In exceptional circumstances, less than 15 days notice of an advisory committee meeting may be given, provided that there is as much prior notice as possible and the reasons for the shorter time are included in the committee meeting notice published in the **Federal Register.**

(e) In addition to notice required by paragraph (c) of this section, the NRC may also use other forms of notice, such as public releases and notice by mail, to inform the public of advisory committee meetings. To that end, the Designated Federal Officer of each NRC advisory committee will, to the extent practicable, maintain lists of people and organizations interested in that advisory committee and notify them of meetings by mail.

§ 7.13 Minutes of advisory committee meetings.

(a) Detailed minutes shall be kept of each NRC advisory committee meeting. The minutes shall include the following information:

(1) The time, date, and place of the meeting;

(2) A list of the attendees at the meeting who are advisory committee members or staff, agency employees, or members of the public who presented oral or written statements;

(3) An estimate of the number of other members of the public who were present;

(4) The extent of public participation; and

(5) An accurate description of each matter discussed during the meeting and its resolution, if any, by the committee.

(b) The minutes of an NRC advisory committee meeting shall include a copy of each report or other document received, issued, or approved by the committee in connection with the meeting. If it is impracticable to attach a document to the minutes, the minutes shall describe the document in sufficient detail to permit it to be identified readily.

(c) The chairperson of an NRC advisory committee shall certify to the accuracy of the minutes of each of the committee's meetings. In the case of a subgroup of an advisory committee, the chairperson of the subgroup shall certify to the accuracy of the minutes.

(d) A verbatim transcript of an advisory committee meeting may be substituted for minutes required by this section, providing that the use of such a transcript is in accordance with the requirements of paragraphs (a), (b), and (c) of this section.

§ 7.14 Public information on advisory committees.

(a) The Nuclear Regulatory Commission shall maintain systematic information on the nature, functions, and operations of each NRC advisory committee. A complete set of the charters of NRC advisory committees and copies of the annual reports required by § 7.17(a) shall be maintained for public inspection in the NRC Public Document Room.

(b) Subject to the provisions of the Freedom of Information Act (5 U.S.C. 552) and NRC's Freedom of Information Act Regulations (10 CFR Part 9, Subpart A), copies of NRC advisory committees' records, reports, transcripts, minutes, appendices, working papers, drafts, studies, agenda, and other documents shall be maintained for public inspection and copying in the NRC Public Document Room.

§ 7.15 Procedures for closing an NRC advisory committee meeting.

(a) To close all or part of a meeting of an NRC advisory committee, the committee shall submit a written request for closure to the Chairman of the Commission, citing specific matter listed in the Government in the Sunshine Act (5 U.S.C. 552b), as implemented by 10 CFR 9.104, to justify the closure. The request shall provide the Chairman sufficient time for review in order to make a determination prior to publication of the meeting notice pursuant to § 7.12.

(b) The General Counsel shall review all requests to close meetings of NRC advisory committees.

(c) If the Chairman of the Commission agrees that the request is consistent with the policies of this part, a determination shall be issued in writing that all or part of the meeting will be closed. The determination shall include a statement of the reasons for the closing.

(d) Except when the President or his designee determines in writing that no notice should be published for reasons of national security, the Chairman of the Commission shall make a copy of the determination to close all or part of an NRC advisory committee meeting available to the public upon request, and shall state the reasons why all or part of the meeting is closed, citing the specific matter listed in the Government in the Sunshine Act (as implemented by 10 CFR 9.104) in the meeting notice published in the **Federal Register** pursuant to § 7.12.

(e) The Chairman of the Commission may delegate the Chairman's functions under paragraphs (c) and (d) of this section to such officer of the Commission as the Chairman considers appropriate. The General Counsel shall review any determination to close a meeting made by a delegate.

§ 7.16 Annual comprehensive review.

(a) The Chairman of the Commission shall conduct an annual comprehensive review of the activities and responsibilities of each NRC advisory committee to determine whether the committee—

(1) Is carrying out its purposes or, consistent with the provisions of applicable statutes, its responsibilities should be revised.

(2) Should be merged with another advisory committee.

(3) Should be terminated.

(b) The comprehensive review required by paragraph (a) of this section shall include consideration of such information regarding the committee as is required for the Commission's annual report to the GSA Secretariat pursuant to § 7.27(a) and such other information as may be requested from the Committee by the NRC Advisory Committee Management Officer. The results of such review shall be included in the annual report to the GSA Secretariat.

(c) If, as a result of the review required by this section, the Commission determines that an advisory committee is no longer needed, the committee shall be terminated; except that in the case of an advisory committee established by an Act of Congress or the President, the committee's termination shall be recommended to the President or the Congress, as the case may be.

§ 7.17 Reports required for advisory committees.

(a) The Commission shall furnish a report on the activities of NRC advisory committees annually to the Administrator and the GSA Secretariat. The report shall be on a fiscal year basis. It shall contain such information regarding NRC advisory committees as is required by section 6(c) of the Act for the President's annual report to the Congress and shall be consistent with instructions provided by the GSA Secretariat. A copy of the report shall be placed in the NRC Public Document Room.

(b) Any NRC advisory committee holding closed meetings shall issue a report, at least annually, setting forth a summary of its activities consistent with the policy of the Government in the Sunshine Act (5 U.S.C. 552b), as implemented by 10 CFR 9.104. A copy of the report shall be placed in the NRC Public Document Room.

(c) Subject to the Freedom of Information Act (5 U.S.C. 552) and NRC's Freedom of Information Act Regulations (10 CFR Part 9, Subpart A), eight copies of each report made by an advisory committee, including any report on closed meetings pursuant to paragraph (b) of this section, and, where appropriate, background papers prepared by consultants, shall be filed for public inspection and use with the Library of Congress, Exchange and Gift Division, Federal Documents Section, Federal Advisory Committee Desk, Washington, DC 20540.

§ 7.18 Compensation and expense reimbursement of advisory committee members, staffs, and consultants.

(a) Except where otherwise provided by law, the Commission may accept the gratuitous services of an NRC advisory committee member, staff member, or consultant who agrees in advance to serve without compensation.

(b)(1) Subject to the provisions of paragraph (b)(2) of this section, if the Commission determines that compensation of a member of an NRC advisory committee is appropriate, the amount that will be paid shall be fixed by the Chairman of the Commission at a rate that is the daily equivalent of a rate of NRC's General Salary Schedule, unless the member is appointed as a consultant and compensated at a rate applicable to NRC consultants. (See NRC Manual for NRC's General Salary Schedule and rates applicable to NRC consultants.)

(2) In determining an appropriate rate of pay for a member of an NRC advisory committee, the Chairman of the Commission shall give consideration to the significance, scope, and technical complexity of the matters with which the advisory committee is concerned and the qualifications required of the committee member; provided that the Chairman may not set the rate of pay for an NRC advisory committee member higher than the daily equivalent of the maximum rate for a GG–15 under NRC's General Salary Schedule, unless a higher rate is mandated by statute or the Commission itself has determined that a higher rate is justified and necessary. The Commission may not delegate the responsibility for making a determination that such a higher rate of pay is necessary and justified for an

NRC advisory committee member, and such a determination must be reviewed annually.

(3) An advisory committee member may not be paid at a rate higher than the daily equivalent of the maximum rate for a GG–18 under NRC's General Salary Schedule.

(c)(1) Each NRC advisory committee staff member may be paid at a rate that is the daily equivalent of a rate of NRC's General Salary Schedule in which the staff member's position would appropriately be placed.

(2) A staff member of an NRC advisory committee may not be paid at a rate higher than the daily equivalent of the maximum rate for a GG–15 under NRC's General Salary Schedule, unless the Chairman of the Commission determines that the staff member's position would appropriately be placed at a grade higher than GG–15; provided that in establishing rates of compensation, the Chairman shall comply with any applicable statutes, regulations, Executive Orders, and administrative guidelines.

(3) A determination to set the rate of pay of a staff position at a grade higher than GG–15 under the NRC's General Salary Schedule rate of pay shall be reviewed annually by the Chairman of the Commission.

(4) A Federal employee may serve as a staff member of an NRC advisory committee only with the knowledge of the Designated Federal Officer for the committee and the approval of the employee's direct supervisor. A staff member who is not otherwise a Federal employee shall be appointed in accordance with applicable agency procedures, following consultation with the advisory committee.

(d) The following factors shall be considered in determining an appropriate rate of pay for a consultant to an NRC advisory committee:

(1) The qualifications required of the consultant, and

(2) The significance, scope, and technical complexity of the work for which his services are required;

Provided that the rate of pay for an NRC advisory committee consultant may not be higher than the maximum rate of pay applicable to NRC consultants. In establishing such a rate of pay, NRC shall comply with any applicable statutes, regulations, Executive Orders, and administrative guidelines.

(e) A member or staff member of an NRC advisory committee engaged in the performance of duties away from his or her home or regular place of business may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703, title 5, United States Code, for persons employed intermittently in the Government service.

(f) Nothing in this section shall—

(1) Prevent any full-time Federal employee who provides services to an NRC advisory committee from receiving compensation at a rate at which he or she would otherwise be compensated as a full-time Federal employee.

(2) Prevent any individual who provides services to an NRC advisory committee, and who immediately before providing such services was a full-time Federal employee, from receiving compensation at a rate at which he or she was compensated as a full-time Federal employee.

(3) Affect a rate of pay or a limitation on a rate of pay that is specifically established by law or a rate of pay established under the NRC's General Salary Schedule and evaluation system (see NRC Manual).

§ 7.19 Handicapped members of advisory committees.

An NRC advisory committee member who is blind or deaf or otherwise handicapped may be provided services by a personal assistant for handicapped employees while performing advisory committee duties, if the member—

(a) Qualifies as a handicapped individual as defined by section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 794); and

(b) Does not otherwise qualify for assistance under 5 U.S.C. 3102 by reason of being an employee of NRC.

§ 7.20 Conflict of interest reviews of advisory committee members' outside interests.

The Designated Federal Officer of each NRC advisory committee and the General Counsel shall review the interests and affiliations of each member of the Designated Federal Officer's advisory committee annually, and upon the commencement and termination of the member's appointment to the committee, for the purpose of ensuring that such appointment is consistent with the laws and regulations on conflict of interest applicable to that member.

§ 7.21 Cost of duplication of documents.

Copies of the records, reports, transcripts, minutes, appendices, working papers, drafts, studies, agenda, or other documents that were made available to or prepared for or by an NRC advisory committee shall be made available to any person at the actual cost of duplication prescribed in Part 9 of this chapter. (For availability of information on advisory committees, see § 7.14.)

§ 7.22 Fiscal and administrative responsibilities.

(a) The Controller shall keep such records as will fully disclose the disposition of any funds which may be at the disposal of NRC advisory committees.

(b) The Office of Information Resources Management shall keep such records as will fully disclose the nature and extent of activities of NRC advisory committees.

(c) NRC shall provide support services (including staff support and meeting space) for each advisory committee established by or reporting to it unless the establishing authority provides otherwise. Where any such advisory committee reports to another agency in addition to NRC, only one agency shall be responsible for support services at any one time, and the establishing authority shall designate the agency responsible for providing such services.

Dated at Rockville, MD, this 21st day of June 1989.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 89–15080 Filed 6–26–89; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88–ASW–09; Amendment 39–6249]

Airworthiness Directives; Bell Helicopter Textron, Inc. (BHTI), Model 206A, 206B, 206B–1, 206L, 206L–1, and 206L–3 Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the **Federal Register** and makes effective as to all persons an amendment adopting a new Airworthiness Directive (AD) 88–23–03, which was previously made effective as to all known U.S. owners and operators of certain Bell Helicopter Textron, Inc. (BHTI), Model 206A, 206B, 206B–1, 206L, 206L–1, and 206L–3 helicopters by individual letters. The AD required an inspection of the tail rotor yoke assembly to determine the part number and serial number of the yoke assembly. If the numbers were listed in the body of the AD, replacement of the

tail rotor yoke assembly was required prior to further flight. The AD was necessary to prevent failure of the tail rotor yoke, loss of a tail rotor blade, and subsequent loss of the helicopter.

EFFECTIVE DATE: Effective July 25, 1989, as to all persons except those persons to whom it was made immediately effective by Priority Letter AD 88–23–03, issued November 15, 1988, which contained this amendment.

Compliance: Required before further flight, after the effective date of this AD, unless already accomplished.

ADDRESSES: Applicable AD related material may be examined at the Regional Rules Docket, Office of the Assistant Chief Counsel, FAA, 4400 Blue Mound Road, Room 158, Bldg. 3B, Fort Worth Texas.

FOR FURTHER INFORMATION CONTACT: Ms. Michelle M. Corning, Rotorcraft Directorate, Rotorcraft Certification Office, ASW–170, FAA, Southwest Region, Fort Worth, Texas 76193–0170, telephone (817) 624–5126.

SUPPLEMENTARY INFORMATION: On November 15, 1988, Priority Letter AD 88–23–03 was issued and made effective immediately as to all known U.S. owners and operators of certain Bell Helicopter Textron, Inc., Model 206A, 206B, 206B–1, 206L, 206L–1, and 206L–3 helicopters. The AD required an inspection of the tail rotor yoke assembly to determine the part number and serial number of the yoke assembly. If the numbers were listed in the body of the AD, replacement of the tail rotor yoke assembly was required prior to further flight. The AD was prompted by a report that certain serial number tail rotor yoke assemblies, Part Number (P/N) 206–011–819–101, have the four tail rotor blade attach bolt holes machined in the wrong locations. These tail rotor yoke assemblies, if installed on the helicopter, may result in tail rotor vibration and failure of the tail rotor yoke. AD action was necessary to prevent failure of the tail rotor yoke, loss of a tail rotor blade, and subsequent loss of the helicopter.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued November 15, 1988, to all known U.S. owners and operators of certain Bell Helicopter Textron, Inc., Model 206A, 206B, 206B–1, 206L, 206L–1, and 206L–3 helicopters. These conditions still exist, and the AD is hereby published in the Federal Register as an amendment to § 39.13 of Part 39 of the Federal Aviation Regulations to make it effective as to all persons.

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.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Regional Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, and Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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 AD:

Bell Helicopter Textron, Inc. (BHTI): Applies to all BHTI Model 206A, 206B, 206B–1, 206L, 206L–1, and 206L–3 helicopters certificated in any category, with tail rotor yoke assembly, P/N 206–011–819–101, identified with the following serial numbers:

A–2009	A–2087	A–2203
A–2070	A–2150	A–2221
A–2078	A–2189	A–2229
A–2243	A–2213	A–2144
A–2010	A–2223	A–2173
A–2073	A–2234	A–2198
A–2079	A–2262	A–2219
A–2133	A–2023	A–2227
A–2167	A–2077	A–2236
A–2195	A–2084	

Compliance is required as indicated, unless already accomplished.

To prevent the failure of the tail rotor yoke assembly, loss of the tail rotor blade, and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight, inspect the aircraft to determine the part number and serial number of the installed tail rotor yoke assembly. If P/N 206–011–819–101 with a serial number listed above is installed on the helicopter, remove and replace the assembly with an airworthy yoke assembly.

(b) An alternate method of compliance or adjustment of the compliance time, which provides an equivalent level of safety, may be used when approved by the Manager, Rotorcraft Certification Office, Rotorcraft Directorate, Aircraft Certification Service, FAA, Southwest Region.

(c) In accordance with FAR Part 21.197 and 21.199, flight is permitted to a base where removal and replacement of the affected tail rotor yoke required by this AD may be accomplished.

This amendment becomes effective July 25, 1989, as to all persons except those persons to whom it was made immediately effective by Priority Letter AD 88–23–03, issued November 15, 1988, which contained this amendment.

Issued in Fort Worth, Texas, on June 13, 1989.

James D. Erickson,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 89–15124 Filed 6–26–89; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 773, 779, and 799

[Docket Nos. 71149–7249, 80464–8064, 71024–7224, 80590–8090, 80980–8180, 80513–8113, 80982–8182, 71028–7228, 80863–8163]

Export Administration Regulations: Technical Corrections

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule; Correction.

SUMMARY: This final rule makes several technical corrections to the Export Administration Regulations (EAR). These corrections address inconsistencies contained in the amendatory instructions of certain amendments to the EAR that were published since the 1988 revision of 15

CFR Parts 768–799. These changes, which neither expand nor limit the provisions of the EAR, affect § 773.3(d)(2)(iv), Supplement No. 4 to Part 779 (Additional Specifications for Certain Technical Data Requiring a Validated License to all Destinations Except Canada), and Supplement No. 1 to § 799.1 (the Commodity Control List).

EFFECTIVE DATE: This rule is effective January 1, 1989.

FOR FURTHER INFORMATION CONTACT: Willard Fisher, Regulations Branch, Bureau of Export Administration, Telephone: (202) 377–3856.

SUPPLEMENTARY INFORMATION

Background

The specific technical corrections made by this final rule are listed below.

(a) A final rule, published on November 27, 1987 (52 FR 45309), added a new ECCN 6598F to the Commodity Control List. The phrase "Controls for ECCN 6598F" incorrectly read "Controls for ECCN 6568F." This final rule corrects the regulatory text by revising the phrase to read "Controls for ECCN 6598F".

(b) A final rule, published on November 18, 1987 (52 FR 44101), amended ECCN 1533A by adding a new paragraph (c) to (Advisory) Note 7 for the People's Republic of China. Another final rule, published on May 13, 1988 (53 FR 17021), also contained amendatory instructions for adding a new paragraph (c) to (Advisory) Note 7. This final rule clarifies the amendatory instructions in the final rule of May 13, 1988 by indicating that the rule revises existing paragraph (c), rather than adding a new paragraph (c).

(c) A final rule, published on March 10, 1988 (53 FR 7733), amended Supplement No. 1 to § 799.1 (the Commodity Control List) by redesignating paragraph (b)(ii) as (b)(iii) and adding a new paragraph (b)(ii) to the list of commodities controlled by ECCN 1091A. Another final rule, published on May 23, 1988 (53 FR 18271), also amended the list of commodities controlled by ECCN 1091A by revising paragraph (b)(ii) and adding a new paragraph (b)(iii). The amendatory language in the final rule of May 23, 1988 should have contained instructions revising paragraph (b)(iii) and adding a new paragraph (b)(iv). This final rule corrects the amendatory language in the final rule of May 23, 1988 by revising the references to paragraphs (b)(ii)(2) and (b)(iii) to read (b)(iii)(2) and (b)(iv), respectively.

(d) A final rule, published on July 5, 1988 (53 FR 25146), contained amendatory instructions to revise ECCN 1537A by redesignating the Advisory Note for the People's Republic of China as Advisory Note 8 for the People's Republic of China and by moving that Advisory Note to the end of text. The Advisory Note had already been placed at the end of the text when it was added to ECCN 1537A by a final rule published on December 27, 1985 (50 FR 52907). This final rule corrects the amendatory language in the final rule on July 5, 1988 by removing the instruction to place the Advisory Note at the end of the text.

(e) A final rule, published on September 14, 1988 (53 FR 35459) amended § 779.4(d) by redesignating paragraph (d)(21) as paragraph (d)(24) and by adding new paragraphs (d)(21), (d)(22), and (d)(23). Another final rule, published on September 15, 1988 (53 FR 35803) redesignated paragraph (d)(21) as (d)(22) and added a new paragraph (d)(21). The amendatory language in the final rule on September 15, 1988 failed to take into account the changes to § 779.4(d) that were made by the final rule of September 14, 1988. This final rule corrects the amendatory language in the September 15, 1988 rule to indicate that paragraph (d)(24) is redesignated as paragraph (d)(25) and a new paragraph (d)(24) is added.

The September 14, 1988 (53 FR 35459) final rule amended Supplement No. 4 to Part 779 (Additional Specifications for Certain Technical Data Requiring a Validated License to all Destinations Except Canada) by adding new paragraphs (5) through (9). The September 15, 1988 (53 FR 35803) final rule also added a new paragraph (5) to Supplement No. 4. The amendatory language in the final rule of September 15, 1988 should have indicated that a new paragraph (10) was added. This final rule corrects the amendatory language of the September 15, 1988 rule by including an instruction to designate the new paragraph as paragraph (10).

The September 14, 1988 (53 FR 35465) final rule amended ECCN 1746A by adding new paragraphs (k) and (l). The September 15, 1988 (53 FR 53805) final rule also added paragraphs (k) and (l), but with a text that differed slightly from that contained in the earlier rule. This final rule corrects the amendatory language for the final rule of September 15, 1988 to indicate that existing paragraphs (k) and (l) are revised.

(f) A final rule, published on September 19, 1988 (53 FR 36272), included amendatory instructions to revise ECCN 1460A by adding the phrase "and the People's Republic of China" after the phrase "Country Groups QSWYZ", in paragraphs (b), (c)(1) and (c)(2) of the list of equipment controlled. This change had already been made in a final rule published on September 14, 1988 (53 FR 35459). This final rule corrects the amendatory language in the final rule of September 19, 1988 by removing the instruction adding the phrase "and the People's Republic of China".

(g) A final rule, published on September 20, 1988 (53 FR 36439), included amendatory instructions to revise ECCN 1501A by changing the reference to "db" that appeared in paragraph (e) of the Technical Note following paragraph (c)(2)(iii) to read "dB". The amendatory instruction should have referenced paragraph (c), instead of paragraph (e), since there was no paragraph (e) in the Technical Note. This final rule corrects the amendatory instruction to indicate that ECCN 1501A is amended by revising the phrase "db" in paragraph (c) of the Technical Note following paragraph (c)(2)(iii) to read "dB".

(h) A final rule, published on September 21, 1988 (53 FR 36560), revised the "GLV $ Value Limit" paragraph for a number of Export Control Commodity Numbers (ECCNs). This rule inadvertently included nine ECCNs that had been removed from the Commodity Control List (CCL) by final rules published earlier in the month. ECCN 1133A was removed from the CCL by a final rule published on September 15, 1988 (53 FR 35799). ECCNs 4460B and 1801A were removed from the CCL by a final rule published on September 14, 1988 (53 FR 35459). ECCNs 1603A, 1649A, 1658A, 1670A, 1671A, and 1674A were removed from the CCL by a final rule published on September 15, 1988 (53 FR 35803). This final rule corrects the amendatory language in the final rule of September 21, 1988 by removing the references to these ECCNs.

(i) A final rule, published on October 27, 1988 (53 FR 43427), amended § 773.3 by removing paragraph (d)(4), which addressed processing data rate exception requests for distribution license applications. Paragraph (d)(2)(iv), which also addresses these requests and contains a reference to paragraph (d)(4), was not removed. This rule corrects the amendatory language of the October 27, 1988 rule by adding an instruction removing paragraph (d)(2)(iv).

Accordingly, the following corrections are made:

1. "Export Controls on Iran; Expansion of Foreign Policy Controls", which was published in the **Federal Register** on November 27, 1987 (52 FR 45309), is corrected as follows:

On page 45311, in the second column, under item 10, in the regulatory text,

revise the phrase "Controls for ECCN 6568F" that follows the heading for ECCN 6598F to read "Controls for ECCN 6598F".

2. "Amendments to the Commodity Control List Based on COCOM Review; Exports to the People's Republic of China", which was published in the Federal Register on May 13, 1988 (53 FR 17021), is corrected as follows:

On page 17021, in the third column, under item 6, lines 11 and 12 of the amendatory language are corrected to read "and by revising paragraph (c) to (Advisory) Note 7 for".

3. "Amendments to the Commodity Control List Based on Coordinating Committee Review", which was published in the Federal Register on May 23, 1988 (53 FR 18271), is corrected as follows:

On page 18272, in the first column, under item 2, in line 15 of the amendatory language, revise the reference to "(b)(ii)(2)" to read "(b)(iii)(2)".

On page 18272, in the second column, under item 2, in line 18 of the amendatory language, revise the reference to "(b)(iii)" to read "(b)(iv)".

On page 18272, in the second column, under item 2, correctly designate paragraph (b)(ii) of the regulatory text that follows the amendatory language as paragraph (b)(iii).

On page 18272, in the third column, under item 2, correctly designate paragraph (b)(iii) of the regulatory text that follows the amendatory language as paragraph (b)(iv).

4. "Revisions to the Export Administration Regulations Based on COCOM Review; Electronics and Precision Instruments", which was published in the Federal Register on July 5, 1988 (53 FR 25146), is corrected as follows:

On page 25149, in the third column, under item 7, lines 31 to 34 of the amendatory language are corrected to read "appears after paragraph (1) as 'Advisory Note 8 for the People's Republic of China', as follows:".

5. "Revisions to the Commodity Control List Based on COCOM Review: Metals, Minerals and Their Manufactures; Chemicals, Metalloids, Petroleum Products and Related Materials", which was published in the Federal Register on September 15, 1988 (53 FR 35803), is corrected as follows:

On page 35804, in the first column, under item 2, in the amendatory language, in the third line, revise the reference to "(d)(20)" to read "(d)(23)", in the fourth line, revise the reference to "(d)(21)" to read "(d)(24)" and the reference to "(d)(22)" to read "(d)(25)", and in the fifth line, revise the reference to "(d)(21)" to read "(d)(24)". Under item 2, in § 779.4 (formerly § 379.4), correctly designate paragraph (d)(21) as paragraph (d)(24) and revise the reference to "paragraph (5)" in line 4 of correctly designated paragraph (d)(24) to read "paragraph (10)";

On page 35804, in the first column, under item 3, in the seventh line of the amendatory language, revise the reference to "(5)" to read "(10)" and correctly designate paragraph (5) of the regulatory text that follows the amendatory language as paragraph (10); and

On page 35805, in the first column, under item 10, lines six and seven of the amendatory language are corrected to read "revising paragraphs (k) and (l) to read as follows: ".

6. "Editorial Clarifications and Corrections to the Export Administration Regulations", which was published in the Federal Register on September 19, 1988 (53 FR 36271), is corrected as follows:

On page 36272, in the second column, item 6 is removed and items 7 and 8 are redesignated as items 6 and 7, respectively.

7. "Revisions to the Commodity Control List Based on COCOM Review; Electronics and Precision Instruments", which was published in the Federal Register on September 20, 1988 (53 FR 36439), is corrected as follows:

On page 36440, in the second column, under item 3, in line 24 of the amendatory language, revise the reference to "paragraph (e)" to read "paragraph (c)".

8. "Revisions to General License GLV Dollar Value Limits", which was published in the Federal Register on September 21, 1988 (53 FR 36560), is corrected as follows:

On page 36561, in the second column, under item 2A, in the amendatory language, remove the reference to ECCN 1133A in Group 1 and remove the references to ECCNs 1649A, 1658A, 1670A, and 1671A in Group 6.

On page 36561, in the third column, under item 2A, in the amendatory language, remove the reference to "Group 8—Rubber and Rubber Products ECCN: 1601A".

On page 36561, in the third column, under item 2B, in the amendatory language, remove the reference to ECCN 4460B in Group 4 and remove the reference to ECCN 1603A in Group 6.

On page 36562, in the first column, under item 2D, in the amendatory language, remove the reference to ECCN 1674A in Group 6.

9. "Computers; Exports Under Special Licenses", which was published in the Federal Register on October 27, 1988 (53 FR 43427), is corrected as follows:

On page 43428, in the third column, under item 2, the amendatory language is corrected to read as follows:

2. In § 773.3, paragraphs (d)(2)(iv), (d)(4), and (l)(4)(ix) are removed.

Dated: June 21, 1989.

James M. LeMunyon,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 89-15113 Filed 6-26-89; 8:45 am]

BILLING CODE 3510-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

[T.D. 89-63]

Change in Customs Service Field Organization—Front Royal, Virginia (Virginia Inland Port)

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to establish a new port of entry to be known as the Virginia Inland Port (VIP) near Front Royal in the Norfolk, Virginia, Customs District of the Southeast Region. The change is part of a Customs continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the public.

EFFECTIVE DATE: July 27, 1989.

FOR FURTHER INFORMATION CONTACT: Joseph E. O'Gorman, Office of Inspection and Control (202-566-8157).

SUPPLEMENTARY INFORMATION:

Background

As part of Customs continuing program to obtain more efficient use of its personnel, facilities and resources, and to provide better service to carriers, importers, and the public, Customs published a notice in the Federal Register on March 22, 1989 (54 FR 11742) proposing to amend § 101.3, Customs Regulations (19 CFR 101.3), to change the Customs field organization by establishing a new Customs port of entry at the Virginia Inland Port (VIP) near Front Royal, Virginia, in the Norfolk, Virginia, Customs District, Southeast Region.

Discussion of Comments

Four comments were received in response to the Federal Register notice.

Two commenters supported the proposal, but wanted the limits of the proposed port of entry to be expanded, one asking that the Winchester Regional Airport be included within the port limits, the other that an International Port Center being developed adjacent to the VIP location be included. It has been decided that these proposed expansions should not be approved at this time. This decision may be subject to reevaluation later, particularly if growing workload requirements make the suggested changes desirable.

Two commenters opposed the proposal. One questioned the basis for the finding that the VIP would meet the minimum annual formal entry workload to qualify for port of entry status. The other commenter essentially raised the following points against granting Customs port of entry status: current activity does not warrant it; it violates Customs stated intention to reduce ports of entry nationwide; and it is contrary to Customs efforts to have all cargo cleared at the first port of arrival. In this latter regard, it is specifically asserted that the proposed port designation is inconsistent with the PAIRED program ("Port of Arrival Immediate Release and Enforcement Determination" System), which allows an importer or broker to make entry at the destination port with examination and release at the initial port of arrival. This commenter also asked what the cost will be to establish Customs processing services at the VIP, whether this will have an impact on service levels at other locations, and whether similar locations on the East Coast have been considered for inland port status.

The workload projection for the VIP was provided by the Virginia Port Authority (VPA), which indicated that the annual formal entry count will be approximately 3000. The VPA established this projection on the basis of customer contacts to identify work that would be processed at the port.

Generally, Customs bases a decision to establish a port of entry on both existing and potential workload. But at locations where Customs services are not currently available, the decision must, of course, be made solely on the basis of the potential work volume. Customs practice, then, is to accommodate those communities that demonstrate that the criteria for port designation have been, or are very likely to be met if resources are available. As observed, this potential has been clearly demonstrated to be approximately 3000 formal entries per year. The PAIRED program, as noted above, allows entries to be made at the port of destination, and it calls for compliance inspections to be performed there. In this connection, the establishment of port status at the VIP will permit local importers to conduct business directly with Customs, and importers taking delivery further down the transportation chain will first be able to have their goods processed by Customs at the VIP, which would, in either case, be, for Customs purposes, the port of destination. No other comparable communities have requested Customs services along these lines.

In order to provide the necessary service levels at the VIP, a port director will be assigned there. The assignment of a port director at this location, however, will not result in service reductions at other locations.

Therefore, after further review of the matter, Customs has determined that it is in the public interest to establish a Customs port of entry at the VIP near Front Royal, Virginia.

Geographical Description

The geographical limits of the VIP will specifically be defined by the metes and bounds of the VIP of the Virginia Port Authority, located near Front Royal, Warren County, Virginia, on U.S. Route 340 and 522.

Authority

This change is made under the authority vested in the President by Section 1 of the Act of August 1, 1914, 38 Stat. 623, as amended (19 U.S.C. 2), and delegated to the Secretary of the Treasury by E.O. 10289, September 17, 1951 (3 CFR 1949–1953 Comp., Ch. II), and pursuant to the authority provided by Treasury Department Order No. 1010–5 (47 FR 2449).

Executive Order 12291 and Regulatory Flexibility Act

Because this document is related to agency management and organization, it is not subject to E.O. 12291. Accordingly, a regulatory impact analysis and the review prescribed by that E.O. are not required. Although Customs solicited public comments, no notice of proposed rulemaking was required pursuant to 5 U.S.C. 553(a)(2). Accordingly, this document is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Customs routinely establishes and expands Customs ports of entry throughout the U.S. to accommodate the volume of Customs-related activity in various parts of the country. Although the proposal may have a limited effect upon some small entities in the area affected, it is not expected to be significant because establishing and expanding port limits at Customs ports of entry in other areas has not had a significant economic impact upon a substantial number of small entities to the extent contemplated by the Act. Nor is it expected to impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Drafting Information

The principal author of this document was Russell Berger, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 101

Customs duties and inspection, Exports, Imports, Organization and functions (Government agencies).

Amendments to the Regulations

Part 101, Customs Regulations (19 CFR 101) is amended as set forth below.

PART 101—GENERAL PROVISIONS

1. The authority citation for Part 101 continues to read as follows:

Authority: 5 U.S.C. 2, 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1624; Reorganization Plan 1 of 1965; 3 CFR 1965 Supp.

§ 101.3 [Amended]

2. The list of Customs regions, districts, and ports of entry in § 101.3(b), Customs Regulations (19 CFR 101.3(b)), is amended by inserting in appropriate alphabetical order "Front Royal, Va., as described in T.D. 89–63." in the column headed, "Ports of entry" in the Norfolk, Virginia, District of the Southeast Region.

Approved June 22, 1989.

William von Raab,
Commissioner of Customs.
Salvatore R. Martoche,
Assistant Secretary of the Treasury.

[FR Doc. 89–15192 Filed 6–26–89; 8:45 am]
BILLING CODE 4820–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 555

Animal Drugs, Feeds, and Related Products; Change of Sponsor Name

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor of a new animal drug application (NADA) from Drummer Division of Phoenix Pharmaceuticals, Inc., to Vitarine Pharmaceuticals, Inc.

EFFECTIVE DATE: June 27, 1989.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1414.

SUPPLEMENTARY INFORMATION: The agency has been informed by Phoenix Pharmaceuticals, Inc., sponsor of NADA 65–345, which provides for use of chloramphenicol capsules in dogs, that it has transferred the ownership of the NADA from its subsidiary, Drummer Division of Phoenix Pharmaceuticals, Inc., to another subsidiary, Vitarine Pharmaceuticals, Inc. The agency is amending the lists of sponsors of approved NADA's in 21 CFR 510.600(c) to remove the entries for Drummer Division of Phoenix Pharmaceuticals, Inc., and to add entries for Vitarine Pharmaceuticals, Inc. The agency is also amending 21 CFR 555.110b(c) to reflect the change of sponsor name.

List of Subjects

21 CFR Part 510

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

21 CFR Part 555

Animal drugs, Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Parts 510 and 555 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. 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.

2. Section 510.600 is amended in paragraph (c)(1) by removing the entry "Drummer Division of Phoenix Pharmaceuticals, Inc.," and by alphabetically adding an entry "Vitarine Pharmaceuticals, Inc.," and in paragraph (c)(2) by removing the entry "052492" and by numerically adding an entry "000185" to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * *	*
Vitarine Pharmaceuticals, Inc., 227–15 North Conduit Ave., Springfield Gardens, NY 11413.	000185
* * * *	*

(2) * * *

Drug labeler code	Firm name and address
* * * *	*
000185	Vitarine Pharmaceuticals, Inc., 227–15 North Conduit Ave., Springfield Gardens, NY 11413.
* * * *	*

PART 555—CHLORAMPHENICOL DRUGS FOR ANIMAL USE

1. The authority citation for 21 CFR Part 555 continues to read as follows:

Authority: Sec. 512 (i) and (n), 82 Stat. 347, 350–351 (21 U.S.C. 360b (i) and (n)); 21 CFR 5.10 and 5.83.

§ 555.110b [Amended]

4. Section 555.110b *Chloramphenicol capsules* is amended in paragraph (c)(2) by removing ", and 052492" and adding "000185, and" after "000172,".

Dated: June 16, 1989.

Robert C. Livingston,

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

[FR Doc. 89–15138 Filed 6–26–89; 8:45 am]

BILLING CODE 4160–01–M

21 CFR Parts 864, 866, 868, 870, 876, 880, 882, 884, and 890

[Docket No. 87N–0005]

Medical Devices; Exemptions from Premarket Notifications for Certain Classified Devices; Correction

AGENCY: Food and Drug Administration.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting the inadvertent omission of an effective date in the final rule published in the **Federal Register** of June 12, 1989 (54 FR 25042). This document corrects that error by establishing the effective date as July 12, 1989, 30 days after the date of publication of the final rule. In the proposed rule upon which the final rule is based (53 FR 1574; January 20, 1988), FDA proposed that any final rule be effective 30 days after the date of its publication in the **Federal Register**.

EFFECTIVE DATE: The final rule will become effective on July 12, 1989.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4874.

In FR Doc. 89–13802, appearing on page 25042, first column, in the **Federal Register** of Monday, June 12, 1989, the "**EFFECTIVE DATE**" caption is added before the caption "**FOR FURTHER INFORMATION CONTACT:**" to read as follows: **EFFECTIVE DATE:** The final rule will become effective on July 12, 1989.

Dated: June 20, 1989.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 89–15094 Filed 6–26–89; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 159a

[DoD 5200.1–R]

Information Security Program Regulation

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This document updates established policies of the Department of Defense (DOD) Information Security Program and outlines its objectives in compliance with, and in implementation of, Executive Order 12356, "National Security Information," Information Security Oversight Directive No. 1, National Security Information" (32 CFR Part 2001), and DoD Directive 5200.1, "DoD Information Security Program" (32 CFR Part 159). This part delegates authority and assigns responsibilities to ensure that the DoD Information Security Program is administered effectively.

EFFECTIVE DATE: June 1, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. D. Whitman, Office of the Deputy Under Secretary of Defense (Policy), the Pentagon, Washington, DC 20301–2200, telephone (202) 695–2289.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 159a

Classified information; Security.

Accordingly, Title 32, Subchapter D, is amended to add Part 159a as follows:

PART 159a—INFORMATION SECURITY PROGRAM REGULATION

Subpart A—Policy

Sec.
159a.1 Purpose.
159a.2 Applicability.
159a.3 Nongovernment Operations.
159a.4 Combat Operations.
159a.5 Atomic Energy Material.
159a.6 Sensitive Compartmented and Communications Security Information.
159a.7 Automatic Data Processing Systems.

Subpart B—General Provisions

159a.9 Definitions.
159a.10 Policies.
159a.11 Security Classification Designations.
159a.12 Authority to Classify, Downgrade, and Declassify.

Subpart C—Classification

159a.14 Classification Responsibilities.
159a.15 Classification Principles, Criteria, and Considerations.
159a.16 Duration of Original Classification.
159a.17 Classification Guides.
159a.18 Resolution of Conflicts.
159a.19 Obtaining Classification Evaluations.
159a.20 Information Developed by Private Sources.
159a.21 Regrading.
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Subpart D—Declassification and Downgrading

159a.24 General Provisions.
159a.25 Systematic Review.
159a.26 Mandatory Declassification Review.
159a.27 Declassification of Transferred Documents or Material.
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159a.31 General Provisions.
159a.32 Specific Markings on Documents.
159a.33 Markings on Special Categories of Material.
159a.34 Classification Authority, Duration, and Change in Classification Markings.
159a.35 Additional Warning Notices.
159a.36 Remarking Old Material.

Subpart F—Safekeeping and Storage

159a.37 Storage and Storage Equipment.
159a.38 Custodial Precautions.
159a.39 Activity Entry and Exit Inspection Program.

Subpart G—Compromise of Classified Information

159a.41 Policy.
159a.42 Cryptographic and Sensitive Compartmented Information.
159a.43 Responsibility of Discoverer.
159a.44 Preliminary Inquiry.
159a.45 Investigation.
159a.46 Responsibility of Authority Ordering Investigation.
159a.47 Responsibility of Originator.
159a.48 System of Control of Damage Assessments.
159a.49 Compromises Involving More Than One Agency.
159a.50 Espionage and Deliberate Compromise.
159a.51 Unauthorized Absentees.

Subpart H—Access, Dissemination, and Accountability

159a.53 Access.
159a.54 Dissemination.
159a.55 Accountability and Control.

Subpart I—Transmission

159a.57 Methods of Transmission or Transportation.
159a.58 Preparation of Material For Transmission, Shipment, or Conveyance.
159a.59 Restrictions, Procedures, and Authorization Concerning Escort or Handcarrying of Classified Information.

Subpart J—Disposal and Destruction

159a.61 Policy.
159a.62 Methods of Destruction.
159a.63 Destruction Procedures.
159a.64 Records of Destruction.
159a.65 Classified Waste.
159a.66 Classified Document Retention.

Subpart K—Security Education

159a.68 Responsibility and Objectives.
159a.69 Scope and Principles.
159a.70 Initial Briefings.
159a.71 Refresher Briefings.
159a.72 Foreign Travel Briefings.
159a.73 Termination Briefings.

Subpart L—Foreign Government Information

159a.75 Classification.
159a.76 Declassification.
159a.77 Marking.
159a.78 Protective Measures.

Subpart M—Special Access Programs

159a.80 Policy.
159a.81 Establishment of Special Access Programs.
159a.82 Review of Special Access Programs.
159a.83 Control and Central Office Administration.
159a.84 Codewords and Nicknames.
159a.85 Reporting of Special Access Programs.
159a.86 Accounting for Special Access Programs.
159a.87 Limitation on Access.
159a.88 "Carve-Out" Contracts.
159a.89 Oversight Reviews.

Subpart N—Program Management

159a.91 Executive Branch Oversight and Policy Direction.
159a.92 Department of Defense.
159a.93 DoD Components.
159a.94 Information Requirements.
159a.95 Defense Information Security Committee.

Subpart O—Administration Sanctions

159a.97 Individual Responsibility.
159a.98 Violation Subject to Sanctions.
159a.99 Corrective Action.
159a.100 Administrative Discrepancies.
159a.101 Reporting Violations.
Appendix A—Equivalent Foreign and International Pact Organization Security Classifications.
Appendix B—General Accounting Office Officials Authorized to Certify Security Clearances.
Appendix C—Instructions Governing Use of Code Words, Nicknames, and Exercise Terms.
Appendix D—Federal Aviation Administration Air Transportation Security Field Offices.
Appendix E—Transportation Plan.

Authority: E.O. 12356, 5 U.S.C. 301.

Subpart A—Policy

§ 159a.1 Purpose.

Information of the Department of Defense relating to national security shall be protected against unauthorized disclosure as long as required by national security considerations. This part establishes a system for classification, downgrading and declassification of information; sets forth policies and procedures to safeguard such information; and provides for oversight and administrative sanctions for violations.

§ 159a.2 Applicability.

This part governs the DoD Information Security Program and takes precedence over all DoD Component regulations that implement that Program. Under 32 CFR Part 159, E.O. 12356, and Information Security Oversight Office (ISOO) Directive No. 1, it establishes, for the Department of Defense, uniform policies, standards, criteria, and procedures for the security classification, downgrading, declassification, and safeguarding of information that is owned by, produced for or by, or under the control of the Department of Defense or its Components.

§ 159a.3 Nongovernment operations.

Except as otherwise provided herein, the provisions of this part that are relevant to operations of nongovernment personnel entrusted with classified information shall be made applicable thereto by contracts or other legally binding instruments. (See DOD Directive 5220.22 [1], DoD 5220.22–R [2], and DoD 5220.22–M [3].

[1] Copies may be obtained, if needed, from the Naval Publications and Forms Center, Attn: Code 106, 5801 Tabor Avenue, Philadelphia, PA 19120.

[2] Copies may be obtained at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[3] Copies may be obtained, at cost, from the Government Printing Office.

§ 159a.4 Combat operations.

The provisions of this part relating to accountability, dissemination, transmission, or safeguarding of classified information may be modified by military commanders but only to the extent necessary to meet local conditions in connection with combat or combat-related operations. Classified information should be introduced into forward combat areas or zones or areas of potential hostile activity only when essential to accomplish the military mission.

§ 159a.5 Atomic energy material.

Nothing in this part supersedes any requirement related to "Restricted Data" in the Atomic Energy Act of August 30, 1954, as amended, or the regulations of the Department of Energy under that Act. "Restricted Data" and material designated as "Formerly Restricted Data," shall be handled, protected, classified, downgraded, and declassified to conform with Pub. L. 83–703 and the regulations issued pursuant thereto.

§ 159a.6 Sensitive compartmented and communications security information.

(a) Sensitive Compartmented Information (SCI) and Communications Security (COMSEC) Information shall be handled and controlled in accordance with applicable national directives and DOD Directives and Instructions. Other classified information, while in established SCI or COMSEC areas, may be handled in the same manner as SCI or COMSEC information. Classification principles and procedures, markings, downgrading, and declassification actions prescribed in this part apply to SCI and COMSEC information.

(b) Pursuant to 32 CFR Part 159, the Director, National Security Agency/Chief, Central Security Service may prescribe special rules and procedures for the handling, reporting of loss, storage, and access to classified communications security devices, equipments, and materials in mobile, hand-held or transportable systems, or that are used in conjunction with commercial telephone systems, or in similar circumstances where operational demands preclude the application of standard safeguards. These special rules may include procedures for safeguarding such devices and materials, and penalties for the negligent loss of government property.

§ 159a.7 Automatic Data Processing systems.

This part applies to protection of classified information processed, stored or used in, or communicated, displayed or disseminated by an automatic data processing (ADP) system. Additional security policy, responsibilities, and requirements applicable specifically to ADP systems are contained in DoD Directive 5200.28 [4] and DoD 5200.28–M.

Subpart B—General Provisions

§ 159.9 Definitions.

(a) *Access.* The ability and opportunity to obtain knowledge of classified information.

(b) *Apllicable Associated Markings.* The markings, other than classfication markings, and warning notices listed or refered to in § 159a.31(d).

(c) *Carve-Out.* A classified contract issued in connection with an approved Special Access Program in which the Defense Investigative Service has been relieved of inspection, responsibility in whole or in part under the Defense Industrial Security Program.

(d) *Classification Authority.* The authority vested in an official of the Department of Defense to make an initial determination that information requires protection against unauthorized disclosure in the interest of national security.

(e) *Classification Guide.* A document issued by an authorized original classifier that prescribes the level of classification and appropriate declassification instructions for specified information to be classified derivatively. For purposes of this part, this term does not include DD Form 254, "Contract Security Classification Specification."

(f) *Classified Information.* Information or material that is:

(1) Owned by, produced for or by, or under the control of the U.S. Government; and

(2) Determined under E.O. 12356 or prior orders and this part to require protection against unauthorized disclosure; and

(3) So designated.

(g) *Classifier.* An individual who makes a classification determination and applies a security classification to information or material. A classifier may be an original classification authority or a person who derivatively assigns a security classification based on a property classified source or a classification guide.

(h) *Communications Security (COMSEC).* The protection resulting from all measures designed to deny unauthorized persons information of value which might be derived from the possession and study of telecommunications and to ensure the authenticity of such communications. COMSEC includes cryptosecurity, emission security, transmission security, and physical security of COSMEC material and information.

(i) *Compromise.* The disclosure of classified information to persons not authorized access thereto.

(j) *Confidential Source.* Any individual or organization that has provided, or that may reasonably be expected to provide, information to the United States on matters pertaining to the national security with the expectation, expressed or implied, that the information or relationship, or both, be held in confidence.

(k) *Continental United States (CONUS).* United States territory, including adjacent territorial waters, located within the North American continent between Canada and Mexico.

(l) *Controlled Cryptographic Item (CCI).* A secure telecommunications or information handling equipment ancillary device, or associated cryptographic component, which is unclassified but controlled.

(Note: Equipments and components so designated bear the designator "Controlled Cryptographic Item" or "CCI.")

(m) *Critical Nuclear Weapon Design Information.* That Top Secret Restricted Data or Secret Restricted Data revealing the theory of operation or design of the components of a thermo-nuclear or implosion-type fission bomb, warhead, demolition munition or test device. Specifically excluded is information concerning arming, fuzing, and firing systems; limited life components; and total contained quantities of fissionable, fusionable, and high explosive materials by type. Among these excluded items are the components which DoD personnel set, maintain, operate, test, or replace.

(n) *Custodian.* An individual who has possession of or is otherwise charged with the responsibility for safeguarding or accounting for classified information.

(o) *Declassification.* The determination that classified information no longer requires, in the interest of national security, any degree of protection against unauthorized disclosure, together with a removal or cancellation of the classification designation.

(p) *Declassification Event.* An event that eliminates the need for continued classification of information.

(q) *Derivative Classification.* A determination that information is in substance the same as information currently classified, and the application of the classification markings.

[4] See footnote 1 to § 159a.3.

(r) *Document.* Any recorded information regardless of its physical form or characteristics, including, without limitation, written or printed matter, data processing cards and tapes, maps, charts, paintings, drawings, engravings, sketches, working notes and papers, or reproductions by any means or process, and sound, voice, magnetic or electronic recordings in any form.

(s) *DoD Component.* The Office of the Secretary of Defense (OSD), the Military Departments, the Organization of the Joint Chiefs of Staff (OJCS), the Unified and Specified Commands, and the Defense Agencies.

(t) *Downgrade.* A determination that classified information requires, in the interest of national security, a lower degree of protection against unauthorized disclosure than currently provided, together with a changing of the classification designation to reflect such lower degree of protection.

(u) *Foreign Government Information.* Information that is:

(1) Provided to the United States by a foreign government or governments, an international organization of governments, or any element thereof with the expectation, expressed or implied, that the information, the source of the information, or both, are to be held in confidence; or

(2) Produced by the United States pursuant to or as a result of a joint arrangement with a foreign government or governments or an international organization of governments, or any element thereof, requiring that the information, the arrangement, or both, are to be held in confidence.

(v) *Formerly Restricted Data.* Information removed from the Restricted Data category upon a joint determination by the Department of Energy (or antecedent agencies) and the Department of Defense that such information relates primarily to the military utilization of atomic weapons and that such information can be safeguarded adequately as classified defense information. For purposes of foreign dissemination, however, such information is treated in the same manner as Restricted Data.

(w) *Information.* Knowledge that can be communicated by any means.

(x) *Information Security.* The result of any system of policies and procedures for identifying, controlling, and protecting from unauthorized disclosure, information whose protection is authorized by executive order or statute.

(y) *Intelligence Activity.* An activity that an agency within the Intelligence Community is authorized to conduct under E.O. 12333.

(z) *Limited Dissemination.* Restrictive controls for classified information established by an original classification authority to emphasize need-to-know protective measures available within the regular security system.

(aa) *Material.* Any product or substance on, or in which, information is embodied.

(bb) *National Security.* The national defense and foreign relations of the United States.

(cc) *Need-to-know.* A determination made by a possessor of classified information that a prospective recipient, in the interest of national security, has a requirement for access to, or knowledge, or possession of the classified information in order to accomplish lawful and authorized Government purposes.

(dd) *Original Classification.* An initial determination that information requires, in the interest of national security, protection against unauthorized disclosure, together with a classification designation signifying the level of protection required.

(ee) *Regrade.* A determination that classified information requires a different degree of protection against unauthorized disclosure than currently provided, together with a change of classification designation that reflects such different degree of protection.

(ff) *Restricted Data.* All data concerning:

(1) Design, manufacture or utilization of atomic weapons;

(2) The production of special nuclear material; or

(3) The use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category under Section 142 of Pub. L. 83–703.

(gg) *Security Clearance.* A determination that a person is eligible under the standards of DoD 5200.2–R for access to classified information.

(hh) *Senior Information Security Authority.* A senior official designated in writing by the head of each DoD Component to be responsible for implementation of the Information Security Program within the Component.

(ii) *Sensitive Compartmented Information.* Information and material that requires special controls for restricted handling within compartmented intelligence systems and for which compartmentation is established.

(jj) *Special Access Program.* Any program approved in accordance with subpart M of this part which imposes need-to-know or access controls beyond those normally required for access to Confidential, Secret, or Top Secret information.

(kk) *Special Activity.* An activity, or functions in support of such activity, conducted in support of national foreign policy objectives abroad that is planned and executed so that the role of the U.S. Government is neither apparent nor acknowledged publicly; but that is not intended to influence U.S. political processes, public opinion, policies, or media, and does not include diplomatic activities or the collection and production of intelligence or related support functions.

(ll) *Unauthorized Disclosure.* A communication or physical transfer of classified information to an unauthorized recipient.

(mm) *United States and Its Territories, Possessions, Administrative, and Commonwealth Areas.* The 50 States; the District of Columbia; the Commonwealth of Puerto Rico; the Territories of Guam, American Samoa, and the Virgin Islands; the Trust Territory of the Pacific Islands; and the Possessions, Midway and Wake Islands.

(nn) *Upgrade.* A determination that certain classified information requires, in the interest of national security, a higher degree of protection against unauthorized disclosure than currently provided, together with a changing of the classification designation to reflect such higher degree.

§ 159a.10 Policies.

(a) *Classification*—(1) *Basic Policy.* Except as provided in the Atomic Energy Act of 1954, as amended, E.O. 12356, as implemented by the ISOO Directive No. 1, and this part, provides the only basis for classifying information. It is the policy of the Department of Defense to make available to the public as much information concerning its activities as possible consistent with the need to protect the national security. Accordingly, security classification shall be applied only to protect the national security.

(2) *Resolution of Doubts.* Unnecessary classification and higher than necessary classification should be avoided. If there is reasonable doubt about the need to classify information, it shall be safeguarded as if it were classsified "Confidential" pending a determination by an original classification authority, who shall make this determination within 30 days. If there is reasonable doubt about the appropriate level of classification, it shall be safeguarded at the higher level of classification pending a determination by an original classification authority, who shall make

this determination within 30 days. Upon a classification determination, markings shall be applied in accordance with Subpart E of this part.

(3) *Duration.* Information shall be classified as long as required by national security considerations. Each decision to classify requires a simultaneous determination of the duration such classification must remain in force or that the duration of classification cannot be determined.

(b) *Declassification.* Decisions concerning declassification shall be based on the loss of the information's sensitivity with the passage of time or upon the occurrence of a declassification event.

(c) *Safeguarding.* Information classified under this part shall be afforded the level of protection against unauthorized disclosure commensurate with the level of classification assigned under the varying conditions that may arise in connection with its use, dissemination, storage, movement or transmission, and destruction.

§ 159a.11 Security classification designations.

(a) *General.* Information or material that requires protection against unauthorized disclosure in the interest of national security shall be classified in one of three designations, namely: "Top Secret," "Secret," or "Confidential." The markings "For Official Use Only," and "Limited Official Use" shall not be used to identify classified information. Moreover, no other term such as "Sensitive," "Conference," or "Agency" shall be used in conjunction with the authorized classification designations to identify classified information.

(b) *Top Secret.* "Top Secret" shall be applied only to information or material the unauthorized disclosure of which reasonably could be expected to cause exceptionally grave damage to the national security. Examples of exceptionally grave damage include armed hostilities against the United States or its allies; disruption of foreign relations vitally affecting the national security; the compromise of vital national defense plans or complex cryptologic and communications intelligence systems; the revelation of sensitive intelligence operations; and the disclosure of scientific or technological developments vital to national security.

(c) *Secret.* "Secret" shall be applied only to information or material the unauthorized disclosure of which reasonably could be expected to cause serious damage to the national security. Examples of serious damage include disruption of foreign relations significantly affecting the national security; significant impairment of a program or policy directly related to the national security; revelation of significant military plans or intelligence operations; compromise of significant military plans or intelligence operations; and compromise of significant scientific or technological developments relating to national security.

(d) *Confidential.* "Confidential" shall be applied only to information or material the unauthorized disclosure of which reasonably could be expected to cause damage to the national security. Examples of damage include the compromise of information that indicates strength of ground, air, and naval forces in the United States and overseas areas; disclosure of technical information used for training, maintenance, and inspection of classified munitions of war; revelation of performance characteristics, test data, design, and production data on munitions of war.

§ 159a.12 Authority to classify, downgrade, and declassify.

(a) *Original Classification Authority*—(1) *Control.* Authority for original classification of information as Top Secret, Secret, or Confidential may be exercised only by the Secretary of Defense, the Secretaries of the Military Departments, and by officials to whom such authority is specifically delegated in accordance with and subject to the restrictions of this Section of the part. In the absence of an original classification authority, the person designated to act in his or her absence may exercise the classifier's authority.

(2) *Delegation of Classification Authority.* Original classification authority shall not be delegated to persons who only reproduce, extract, or summarize classified information, or who only apply classification markings derived from source material or as directed by a classification guide. Delegations of original classification authority shall be limited to the minimum number required for efficient administration and to those officials whose duties involve the origination and evaluation of information warranting classification at the level stated in the delegation.

(i) *Top Secret.* Only the Secretary of Defense, the Secretaries of the Military Departments, and the senior official designated by each under § 5.3(a) of E.O. 12356, provided that official has original Top Secret classification authority, may delegate original Top Secret classification authority. Such delegation may only be made to officials who are determined to have a demonstrable and continuing need to exercise such authority.

(ii) *Secret and Confidential.* Only the Secretary of Defense, the Secretaries of the Military Departments, the senior official designated by each under § 5.3(a) of E.O. 12356, and officials with original Top Secret classification authority, may delegate original Secret and Confidential classification authority to officials whom they determine respectively to have a demonstrable and continuing need to exercise such authority.

(iii) Each delegation of original classification authority shall be in writing and shall specify the title of the position held by the recipient.

(3) *Requests for Classification Authority.* (i) A request for the delegation of original classification authority shall be made only when there is a demonstrable and continuing need to exercise such authority and the following conditions exist:

(A) The normal course of operations or missions of the organization results in the origination of information warranting classification;

(B) There is a substantial degree of local autonomy in operations or missions as distinguished from dependence upon a higher level of command or supervision for relatively detailed guidance;

(C) There is adequate knowledge by the originating level to make sound classification determinations as distinguished from having to seek such knowledge from a higher level of command or supervision; and

(D) There is a valid reason why already designated classification authorities in the originator's chain of command or supervision have not issued or cannot issue classification guidance to meet the originator's normal needs.

(ii) Each request for a delegation of original classification authority shall:

(A) Identify the title of the position held by the nominee and the nominee's organization;

(B) Contain a description of the circumstances, consistent with paragraph (a)(3)(i) of this section, that justify the delegation of such authority; and

(C) Be submitted through established channels to the Secretary of Defense, the Secretary of the Military Department concerned, the senior official designated by each under § 5.3(a) of E.O. 12356, or the appropriate Top Secret classification authority.

(4) *Training Requirements for Original Classification Authorities.* Heads of DoD Component shall establish procedures to ensure that all

original classification authorities in their Component, to include themselves, are indoctrinated in the fundamentals of security classification, limitations on their authority to classify information, and their responsibilities as such. This indoctrination shall be a prerequisite to the exercise of such authority and shall be a matter of record that is subject to audit. Heads of DoD Components shall ensure this indoctrination is given to all present original classification authorities within 12 months of the effective date of this part.

(b) *Derivative Classification Responsibility.* Derivative application of classification markings is a responsibility of those who incorporate, paraphrase, restate, or generate in new form, information that is already classified, or those who apply markings in accordance with guidance from an original classification authority. Persons who apply derivative classifications should take care to determine whether their paraphrasing, restating, or summarizing of classified information has removed all or part of the basis for classification. Persons who apply such derivative classification markings shall:

(1) Respect original classification decisions;

(2) Verify the information's current level of classification as far as practicable before applying the markings; and

(3) Carry forward to any newly created documents the assigned dates or events for declassification and any additional authorized markings.

(c) *Record and Report Requirements.* (1) Records of designations of original classification authority shall be maintained as follows:

(i) *Top Secret Authorities.* A current listing by title and organization of officials designated to exercise original Top Secret classification authority shall be maintained by:

(A) The Office of the Deputy Under Secretary of Defense (Policy) (ODUSD(P)) for the Office of the Secretary of Defense; the Organization of the Joint Chiefs of Staff; the headquarters of each Unified Command and the headquarters of subordinate Joint Commands; and the Defense Agencies.

(B) The Offices of the Secretaries of the Military Departments for the officials of their respective departments, including Specified Commands but excluding officials from their respective departments wo are serving in headquarters elements of Unified Commands and headquarters of Joint Commands subordinate thereto.

(ii) *Secret and Confidential Authorities.* A current listing by title and organization of officials designated to exercise original Secret and Confidential classification authority shall be maintained by:

(A) The ODUSD(P) for the Office of the Secretary of Defense.

(B) The offices of the Secretaries of the Military Departments for the officials of their respective departments, including Specified Commands but excluding officials from their respective departments who are serving in headquarters elements of Unified Commands and headquarters elements of Joint Commands subordinate thereto.

(C) The Director, Joint Staff, for the OJCS.

(D) The Commanders-in-Chief of the Unified Commands, for their respective headquarters and the headquarters of subordinate Joint Commands.

(E) The Directors of the Defense Agencies, for their respective agencies.

(iii) If the listing of titles of positions and organizations prescribed in paragraphs (c)(1) (i) and (ii) of this section discloses intelligence or other information that either qualifies for security classification protection or otherwise qualifies to be withheld from public release under statute, some other means may be recommended by the DoD Component by which original classification authorities can be readily identified. Such recommendations shall be submitted to ODUSD(P) for approval.

(iv) The listings prescribed in paragraphs (c)(1) (i) and (ii) of this section shall be reviewed at least annually by the senior official designated in or pursuant to § 159a.92(a)(1), § 159a.93 (a) or (b) or designee to ensure that officials so listed have demonstrated a continuing need to exercise original classification authority.

(2) The DoD Components that maintain listings of designated original classification authorities shall, upon request, submit copies of such listings to ODUSD(P).

(d) *Declassification and Downgrading Authority.* (1) Authority to declassify and downgrade information classified under provisions of this part shall be exercised as follows:

(i) By the Secretary of Defense and the Secretaries of the Military Departments, with respect to all information over which their respective Departments exercise final classification jurisdiction;

(ii) By the official who authorized the original classification, if that official is still serving in the same position, by a successor, or by a supervisory official of either; and

(iii) By other officials designated for the purpose in accordance with paragraph (d)(2) of this section.

(2) The Secretary of Defense, the Secretaries of the Military Departments, the Chairman of the Joint Chiefs of Staff, the Directors of the Defense Agencies, or their senior officials designated under § 159a.93 (b) or (c) may designate additional officials at the lowest practicable echelons of command and supervision to exercise declassification and downgrading authority over classified information in their functional areas of interest. Records of officials so designated shall be maintained in the same manner as prescribed in § 159a.12(c)(1)(i) for records of designations of original classification authority.

Subpart C—Classification

§ 159a.14 Classification responsibilities.

(a) *Accountability of Classifiers.* (1) Classifiers are accountable for the propriety of the classifications they assign, whether by exercise of original classification authority or by derivative classification.

(2) An official who classifies a document or other material and is identified thereon as the classifier is and continues to be an accountable classifier even though the document or material is approved or signed at a higher level in the same organization.

(b) *Classification Approval.* (1) When an official signs or approves a document or other material already marked to reflect a particular level of classification, he or she shall review the information contained therein to determine if the classification markings are appropriate. If, in his or her judgment, the classification markings are not supportable, he or she shall, at that time, cause such markings to be removed or changed as appropriate to reflect accurately the classification of the information involved.

(2) A higher level official through or to whom a document or other material passes for signature or approval becomes jointly responsible with the accountable classifier for the classification assigned. Such official has discretion to decide whether a subordinate who has classification authority shall be identified as the accountable classifier when he or she has exercised that authority.

(c) *Classification Planning.* (1) Advance classification planning is an essential part of the development of any plan, operation, program, research and development project, or procurement action that involves classified information. Classification must be considered from the outset to assure adequate protection for the information

and for the activity itself, and to eliminate impediments to the execution or implementation of the plan, operations order, program, project or procurement action.

(2) The official charged with developing any plan, program or project in which classification is a factor, shall include under an identifiable title or heading, classification guidance covering the information involved. The guidance shall conform to the requirements contained in § 159a.17.

(d) *Challenges to Classification.* If holders of classified information have substantial reason to believe that the information is classified improperly or unnecessarily, they shall communicate that belief to their security manager or the classifier of the information to bring about any necessary correction.

(1) Each DoD Component shall establish procedures whereby holders of classified information may challenge the decision of the classifier.

(2) Challenges to classification made under this subsection shall include sufficient description of the information being challenged to permit identification of the information and its classifier with reasonable effort. Challenges to classification shall also include the reason or reasons why the challenger believes that the information is classified improperly or unnecessarily.

(3) Challenges received under this subsection shall be acted upon within 30 days of receipt. The challenger shall be notified of any changes made as a result of the challenge or the reasons why no change is made.

(4) Pending final determination of a challenge to classification, the information or document in question shall be safeguarded as required for the level of classification initially assigned.

(5) The fact that an employee or military member of the Department of Defense has issued a challenge to classification shall not in any way result in or serve as a basis for adverse personnel action.

(6) The provisions of this paragraph do not apply to or affect declassification review actions undertaken under the mandatory review requirements of § 159a.26 of this part or under the provisions of 32 CFR Part 285.

§ 159a.15 Classification principles, criteria, and considerations.

(a) *Reasoned Judgment.* Reasoned judgment shall be exercised in making classification decisions. A positive basis must exist for classification. Both advantages and disadvantages of classification must be weighed. If, after consideration of the provisions of this section, there is reasonable doubt, the provisions of § 159a.10(a)(2) apply.

(b) *Identification of Specific Information.* Before a classification determination is made, each item of information that may require protection shall be identified. This requires identification of that specific information that comprises the basis for a particular national advantage or advantages that, if the information were compromised, would or could be damaged, minimized, or lost, thereby adversely affecting national security.

(c) *Specific Classifying Criteria.* A determination to classify shall be made only by an original classification authority when, *first*, the information is within paragraphs (c) (1) through (10) of this section; and *second*, the unauthorized disclosure of the information, either by itself or in the context of other information, reasonably could be expected to cause damage to the national security. The determination involved in the first step is separate and distinct from that in the second. Except as provided in paragraph (d) of this section, the fact that the information falls under one or more of the criteria shall not mean that the information *automatically* meets the damage criteria. Information shall be considered for classification if it concerns:

(1) Military plans, weapons, or operations;
(2) Vulnerabilities or capabilities of systems, installations, projects, or plans relating to the national security;
(3) Foreign government information;
(4) Intelligence activities including special activities, or intelligence sources or methods;
(5) Foreign relations or foreign activities of the United States;
(6) Scientific, technological, or economic matters relating to the national security;
(7) U.S. Government programs for safeguarding nuclear materials or facilities;
(8) Cryptology;
(9) A confidential source; or
(10) Other categories of information that are related to national security and that require protection against unauthorized disclosure as determined by the Secretary of Defense or Secretaries of the Military Departments. Recommendations concerning the need to designate additional categories of information that may be considered for classification shall be forwarded through channels to the appropriate Secretary for determination. Each such determination shall be reported promptly to the Director of Security Plans and Programs, ODUSD(P), for promulgation in an Appendix to this part and reporting to the Director, ISOO.

(d) *Presumption of Damage.* Unauthorized disclosure of foreign government information, the identity of a confidential foreign source, or intelligence sources or methods is presumed to cause damage to the national security.

(e) *Limitations on Classification.* (1) classification may not be used to conceal violations of law, inefficiency, or administrative error, to prevent embarrassment to a person, organization or agency, or to restrain competition.

(2) Basic scientific research information not clearly related to national security may not be classified.

(3) A product of nongovernment research and development that does not incorporate or reveal classified information to which the producer or developer was given prior access may not be classified until and unless the government acquires a proprietary interest in the product. This prohibition does not affect the provisions of the Patent Secrecy Act of 1952.

(4) References to classified documents that do not reveal classified information may not be classified or used as a basis for classification.

(5) Classification may not be used to limit dissemination of information that is not classifiable under the provisions of E.O. 12356 or this part or to prevent or delay public release of such information.

(6) Information may be classified or reclassified after receiving a request for it under the Freedom of Information Act, the Privacy Act, or the mandatory review provisions of this part (§ 159a.26) if such classification is consistent with this part and is accomplished personally and on a document-by-document basis, except as provided in paragraph (e)(7) of this section, by the Secretary or Deputy Secretary of Defense, by the Secretaries or Under Secretaries of the Military Departments, by the senior official designated by each Secretary under § 5.3(a) of E.O. 12356, or by an official with original Top Secret classification authority.

(7) The Secretary of Defense and the Secretaries of the Military Departments may reclassify information previously declassified and disclosed, and they may classify unclassified information that has been disclosed, if they determine in writing that the information requires protection in the interest of national security and the information may reasonably be recovered. Any such reclassification or

classification shall be reported to the DUSD(P) for subsequent reporting to the Director, ISOO.

(f) *Classifying Scientific Research Data.* Ordinarily, except for information that meets the definition of Restricted Data, basic scientific research or its results shall not be classified. However, classification would be appropriate if the information concerns an unusually significant scientific breakthrough and there is sound reason to believe that it is not known or within the state-of-the-art of other nations, and it supplies the United States with an advantage directly related to national security.

(g) *Classifying Documents.* Each document and portion thereof shall be classified on the basis of the information it contains or reveals. The fact that a document makes reference to a classified document is not a basis for classification unless the reference citation, standing alone, reveals classified information. The overall classification of a document or group of physically-connected documents shall be at least as high as that of the most highly classified component. The subject or title of a classified document normally should be unclassified. When the information revealed by a subject or title warrants classification, an unclassified short title should be added for reference purposes.

(h) *Classifying Material Other Than Documents.* (1) Items of equipment or other physical objects shall be classified only when classified information may be derived from them by visual observation of their internal or external appearance or structure, or by their operation, test, application, or use. The overall classification assigned to end items of equipment or objects shall be at least as high as the highest classification of any of its integrated parts.

(2) If mere knowledge of the existence of the item of equipment or object would compromise or nullify its national security advantage, its existence would warrant classification.

(i) *State of the Art and Intelligence.* Classification requires consideration of the information available from intelligence sources concerning the extent to which the same or similar information is known or is available to others. It is also important to consider whether it is known, publicly or internationally, that the United States has the information or even is interested in the subject matter. The state-of-the-art in other nations may often be a vital consideration.

(j) *Effect of Open Publication.* Classified information shall not be declassified automatically as a result of any unofficial publication or inadvertent or unauthorized disclosure in the United States or abroad of identical or similar information. Appearance in the public domain of information currently classified or being considered for classification does not preclude initial or continued classification. However, such disclosures require immediate determination of the degree of damage to the national security and reevaluation of the information to determine whether the publication has so compromised the information that downgrading or declassification is warranted. Similar consideration must be given to related items of information in all programs, projects, or items incorporating or pertaining to the compromised items of information. Holders should continue classification until advised to the contrary by a competent government authority.

(k) *Reevaluation of Classification Because of Compromise.* Classified information, and information related thereto, that has been lost or possibly compromised, shall be reevaluated and acted upon as follows:

(1) The original classifying authority, upon learning that a loss or possible compromise of specific classified information has occurred, shall prepare a written damage assessment and;

(i) Reevaluate the information involved and determine whether (A) Its classification should be continued without change; (B) The specific information, or parts therof, should be modified to minimize or nullify the effects of the reported compromise and the classification retained; (C) Declassification, downgrading, or upgrading is warranted; and (D) Counter-measures are appropriate and feasible to negate or minimize the effect of the compromise.

(ii) Give prompt notice to all holders of such information when the determination is within categories (A), (C), or (D) of paragraph (k)(1)(i) of this section.

(2) Upon learning that a compromise or probable compromise has occurred, any official having original classification jurisdiction over related information shall reevaluate the related information and determine whether one of the courses of action enumerated in paragraph (k)(1)(i) of this section should be taken or, instead, whether upgrading of the related information is warranted. When such a determination is within categories (B), (C), or (D) of paragraph (k)(1)(i) of this section, that upgrading of the related items is warranted, prompt notice of the determination shall be given to all holders of the related information.

(l) *Compilation of Information.* Certain information that would otherwise be unclassified may require classification when combined or associated with other unclassified information. However, a compilation of unclassified items of information should normally not be classified. In unusual circumstances, classification may be required if the combination of unclassified items of information provides an added factor that warrants classification under paragraph (c) of this section. Classification on this basis shall be fully supported by a written explanation that will be provided with the material so classified.

(m) *Extracts of Information.* Information extracted from a classified source shall be derivatively classified or not classified in accordance with the classification markings shown in the source. The overall and internal markings of the source should supply adequate classification guidance. If internal markings or classification guidance are not found in the source, and no reference is made to an applicable and available classification guide, the extracted information shall be classified according either to the overall marking of the source, or guidance obtained from the classifier of the source material.

§ 159a.16 Duration of original classification.

(a) *General.* When a determination is made by an official with authority to classify originally information as Top Secret, Secret, or Confidential, such official must also determine how long the classification shall remain in effect.

(b) *Duration of Classification.* (1) Information shall be classified as long as required by national security considerations.

(2) When it can be determined, a specific date or event for declassification shall be set by the original classification authority at the time the information is classified originally. Such dates or events shall be consistent with national security. Any event specified for declassification shall be an event certain to occur.

(3) Original classification authorities may not be able to predetermine a date or event for automatic declassification in which case they shall provide for the indefinite duration of classification.

(4) Information classified under predecessor orders and marked for declassification review shall remain classified until reviewed for declassification under the provisions of this part.

(c) *Subsequent Extension of Duration of Classification.* The duration of classification specified at the time of original classification may be extended only by officials with requisite original classification authority and only if all known holders of the information can be notified of such action before the date or event previously set for declassification. Any decision to continue classification of information designated for automatic declassification under E.O. 12065 or predecessor orders, other than on a document-by-document basis, shall be reported to the DUSD(P) who shall, in turn, report to the Director, ISOO.

§ 159a.17 Classification guides.

(a) *General.* (1) A classification guide shall be issued for each classified system, program, plan, or project as soon as practicable before the initial funding or implementation of the system, program, plan or project. Successive operating echelons shall prescribe more detailed supplemental guides that are considered essential to assure accurate and consistent classification. In preparing classification guides, originators shall review DoD 5200.1–H [5].

(2) Classification guides shall:

(i) Identify the information elements to be protected, using categorization to the extent necessary to ensure that the information involved can be identified readily and uniformly;

(ii) State which the classification designations (that is, Top Secret, Secret, or Confidential) applies to each element or category of information;

(iii) State declassification instructions for each element or category of information in terms of a period of time, the occurrence of an event, or a notation that the information shall not be declassified automatically without approval of the originating agency; and

(iv) State any special public release procedures and foreign disclosure considerations.

(3) Each classification guide shall be approved personally and in writing by an official who:

(i) Has program or supervisory responsibility over the information or is the senior agency official designated by the Secretary of Defense or Secretaries of the Military Departments in accordance with § 5.3(a) of E.O. 12356; and

(ii) Is authorized to classify information originally at the highest level of classification prescribed in the guide.

(b) *Multiservice Interest.* For each classified system, program, project, plan, or item involving more than one DoD Component, a classification guide shall be issued by: (1) The element in the Office of the Secretary of Defense that assumes or is expressly designated to exercise overall cognizance over it; or (2) The DoD Component that is expressly designated to serve as the executive or administrative agent for the particular effort. When there is doubt which Component has cognizance of the information involved, the matter shall be referred to the DUSD(P) for resolution.

(c) *Research, Development, Test, and Evaluation.* A program security classification guide shall be developed for each system and equipment development program that involves research, development, test, and evaluation (RDT&E) of classified technical information. For each such program covered by an approved Decision Coordinating Paper (DCP) or Program Objective Memorandum (POM), initial basic classification guidance applicable to technical characteristics of the system or equipment shall be developed and submitted with the proposed DCP or POM to the Director, Defense Research and Engineering for approval. A detailed classification guide shall be developed and issued as near in time as possible to the approval of the DCP or POM.

(d) *Project Phases.* Whenever possible, classification guides shall cover specifically each phase of transition, that is, RDT&E, procurement, production, service use, and obsolescence, with changes in assigned classifications to reflect the changing sensitivity of the information involved.

(e) *Review of Classification Guides.* (1) Classification guides shall be reviewed by the originator for currency and accuracy not less than once every 2 years. Changes shall be issued promptly. If no changes are made, the originator shall so annotate the record copy and show the date of the review.

(2) Classification guides issued before August 1, 1982, that are in current use must be updated to meet the requirements of paragraph (a)(2) of this section. Such updating shall be accomplished by the next biennial review. Converting previous declassification determinations directed by classification guides shall be accomplished in accordance with the following:

(i) Automatic declassification dates or events remain in force unless changed by competent authority in accordance with § 159a.16(c).

(ii) Dates for declassification review shall be changed to automatic declassification dates or provide for the indefinite duration of classification.

(f) *Distribution of Classification Guides.* (1) A copy of each approved classification guide and changes thereto other than those covering SCI or a Special Access Program and which discloses information that require special access, shall be sent to the Director of Freedom of Information and Security Review, Office of the Assistant Secretary of Defense (Public Affairs), and to the Director of Security Plans and Programs, ODUSD(P). A copy of each approved classification guide covering SCI shall be submitted to and maintained by the Senior Intelligence Officer who has security cognizance over the issuing activity.

(2) Two copies of each approved classification guide and its changes shall be sent by the originator to the Administrator, Defense Technical Information Center (DTIC), Defense Logistic Agency, unless such guide is classified Top Secret, or covers SCI, or is determined by the approval authority of the guide to be too sensitive for automatic secondary distribution to DoD Components, such as a Special Access Program guide revealing the nature of the Program. Each classification guide forwarded to DTIC must bear distribution statement B, C, D, E, F, or X from DoD Directive 5230.24 [6] on its front cover or first page if there is no cover.

(g) *Index of Security Classification Guides.* (1) All security classification guides, except as provided in paragraph (g)(2) of this section, issued under this part shall be listed in DoD 5200.1–I [7], on the basis of information provided on DD Form 2024, "DoD Security Classification Guide Data Elements." The originator of each guide shall execute DD Form 2024 when the guide is approved, changed, revised, reissued, or canceled, and when its biennial review is accomplished. The original copy of each executed DD Form 2024 shall be forwarded to the Director of Security Plans and Programs, ODUSD(P) who will maintain the Index. Report Control Symbol DD–POL (B&AR)1418 applies to this information collection system.

(2) Any classification guide that because of classification considerations is not listed in accordance with paragraph (g)(1) of this section, shall be reported by the originator to the Director of Security Plans and Programs, ODUSD(P). The report shall include the title of the guide, its date, the classification of the guide, and identification of the originating activity. A separate classified list of such guides will be maintained. Report Control

[5] See footnote 2 to § 159a.3.

[6] See footnote 1 to § 159a.3.

[7] Controlled distribution.

Symbol DD-POL(B&AR)1418 applies to this information collection system.

§ 159a.18 Resolution of conflicts.

(a) *General.* When two or more offices, headquarters, or activities disagree concerning a classification, declassification, or regrading action, the disagreement must be resolved promptly.

(b) *Procedures.* If agreement cannot be reached by informal consultation, the matter shall be referred for decision to the lowest superior common to the disagreeing parties. If agreement cannot be reached at the major command (or equivalent) level, the matter shall be referred for decision to the headquarters office having overall classification management responsibilities for the Component. That office shall also be advised of any disagreement at any echelon if prompt resolution is not likely to occur.

(c) *Final Decision.* Disagreements between DoD Component headquarters, if not resolved promptly, shall be referred for final resolution to the ODUSD(P).

(d) *Timing.* Action under this section at each level of consideration shall be completed within 30 days. Failure to reach a decision within 30 days shall be cause for referral to the next level for consideration.

§ 159a.19 Obtaining classification evaluations.

Procedures. If a person not authorized to classify originates or develops information that he or she believes should be safeguarded, he or she shall:

(a) Safeguard the information in the manner prescribed for the intended classification.

(b) Mark the information (or cover sheet) with the intended classification designation prescribed in § 159a.11;

(c) Transmit the information under appropriate safeguards to an appropriate classification authority for evaluation. The transmittal shall state that the information is tentatively marked to protect it in transit. If such authority is not readily identifiable, the information should be forwarded to a headquarters activity of a DoD Component, to the headquarters office having overall classification management responsibilities for a DoD Component, or to the DUSD(P). A determination whether to classify the information shall be made within 30 days of receipt;

(d) Upon decision by the classifying authority, the tentative marking shall be removed. If a classification is assigned, appropriate markings shall be applied; but

(e) In an emergency requiring immediate communication of the information, after taking the action prescribed by paragraphs (a) and (b) of this section transmit the information and then proceed in accordance with paragraph (c) of this section.

§ 159a.20 Information developed by private sources.

(a) *General.* There are some circumstances in which information not meeting the definition in § 159a.9(f) may warrant protection in the interest of national security.

(b) *Patent Secrecy Act.* The Patent Secrecy Act of 1952 provides that the Secretary of Defense, among others, may determine that disclosure of an invention by granting of a patent would be detrimental to national security. See DoD Directive 5535.2 *. A patent application on which a secrecy order has been imposed shall be handled as follows within the Department of Defense:

(1) If the patent application contains information that warrants classification, it shall be assigned a classification and be marked and safeguarded accordingly.

(2) If the patent application does not contain information that warrants classification, the following procedures shall be followed:

(i) A cover sheet (or cover letter for transmittal) shall be placed on the application with substantially the following language:

The attached material contains information on which secrecy orders have been issued by the U.S. Patent Office after determination that disclosure would be detrimental to national security (Patent Secrecy Act of 1952, 35 U.S.C. 181–188). Its transmission or revelation in any manner to an unauthorized person is prohibited by law. Handle as though classified CONFIDENTIAL (or such other classification as would have been assigned had the patent application been within the definition provided in § 159a.9(f)).

(ii) The information shall be withheld from public release; its dissemination within the Department of Defense shall be controlled; the applicant shall be instructed not to disclose it to any unauthorized person; and the patent application (or other document incorporating the protected information) shall be safeguarded in the manner prescribed for equivalent classified material.

(3) If filing of a patent application with a foreign government is approved under provisions of the Patent Secrecy Act of 1952 and agreements on interchange of patent information for defense purposes, the copies of the patent application prepared for foreign registration (but only those copies) shall be marked at the bottom of each page as follows:

Withheld under the Patent Secrecy Act of 1952 (35 U.S.C. 181–188). Handle as CONFIDENTIAL (or such other level as has been determined).

(c) *Independent Research and Development.* (1) Information in a document or material that is a product of government-sponsored independent research and development conducted without access to classified information may not be classified unless the government first acquires a proprietary interest in such product.

(2) If no prior access was given but the person or company conducting the independent research or development believes that protection may be warranted in the interest of national security, the person or company should safeguard the information in accordance with § 159a.19 and submit it to an appropriate DoD element for evaluation. The DoD element receiving such a request for evaluation shall make or obtain a determination whether a classification would be assigned if it were government information. If the determination is negative, the originator shall be advised that the information is unclassified. If the determination is affirmative, the DoD element shall make or obtain a determination whether a proprietary interest in the research and development will be acquired. If so, the information shall be assigned proper classification. If not, the originator shall be informed that there is no basis for classification and the tentative classification shall be canceled.

(d) *Other Private Information.* The procedure specified in § 159a.19 shall apply in any case not specified in paragraph (c) of this section, such as an unsolicited contract bid, in which private information is submitted to a DoD element for a determination of classification.

§ 159a.21 Regrading.

(a) *Raising to a Higher Level of Classification.* The upgrading of classified information to a higher level than previously determined by officials with appropriate classification authority and jurisdiction over the subject matter is permitted only when all known holders of the information:

(1) Can be notified promptly of such action, and

(2) Are authorized access to the higher level of classification, or the information can be retrieved from those not authorized access to information at the contemplated higher level of classification.

* See footnote 1 to § 159a.3.

(b) *Classification of Information Previously Determined to be Unclassified.* Unclassified information, once communicated as such, may be classified only when the classifying authority:

(1) Makes the determination required for upgrading in paragraph (a) of this section;

(2) Determines that control of the information has not been lost by such communication and can still be prevented from being lost; and

(3) In the case of information released to secondary distribution centers, such as the DTIC, determines that no secondary distribution has been made and can still be prevented (see also § 159a.15(e) (6) and (7)).

(c) *Notification.* All known holders of information that has been upgraded shall be notified promptly of the upgrading action.

(d) *Downgrading.* When it will serve a useful purpose, original classification authorities may, at the time of original classification, specify that downgrading of the assigned classification will occur on a specified date or upon the occurrence of a stated event.

§ 159a.22 Industrial operations.

(a) *Classification in Industrial Operations.* Classification of information in private industrial operations shall be based only on guidance furnished by the government. Industrial management may not make original classification determinations and shall implement the classification decisions of the U.S. Government contracting authority.

(b) *Contract Security Classification Specification.* DD Form 254, "Contract Security Classification Specification," shall be used to convey contractual security classification guidance to industrial management. DD Forms 254 shall be changed by the originator to reflect changes in classification guidance and reviewed for currency and accuracy not less than once every 2 years. Changes shall conform with this part and DoD 5220.22–R and DoD 5220.22–M and shall be provided to all holders of the DD Form 254 as soon as possible. When no changes are made as a result of the biennial review, the originator shall so notify all holders of the DD Form 254 in writing.

Subpart D—Declassification and Downgrading

§ 159a.24 General provisions.

(a) *Policy.* Information classified under E.O. 12356 and prior orders shall be declassified or downgraded as soon as national security considerations permit. Decisions concerning declassification shall be based on the loss of sensitivity of the information with the passage of time or on the occurrence of an event that permits declassification. Information that continues to meet the classification requirements of § 159a.15(c) despite the passage of time will continue to be protected in accordance with this part.

(b) *Responsibility of Officials.* Officials authorized under § 159a.12(c) to declassify or downgrade information that is under the final classification jurisdiction of the Department of Defense shall take such action in accordance with this subpart.

(c) *Declassification Coordination.* DoD Component declassification review of classified information shall be coordinated with any other DoD or non-DoD office, Component, or agency that has a direct interest in the subject matter.

(d) *Declassification by the Director of the ISOO.* If the Director of the ISOO determines that information is classified in violation of E.O. 12356, the Director may require the activity that originally classified the information to declassify it. Any such decision by the Director may be appealed through the Director of Security Plans and Programs, ODUSD(P), to the National Security Council (NSC). The information shall remain classified pending a prompt decision on the appeal.

§ 159a.25 Systematic review.

(a) *Assistance to the Archivist of the United States.* The Secretary of Defense and the Secretaries of the Military Departments shall designate experienced personnel to assist the Archivist of the United States in the systematic review of classified information. Such personnel shall:

(1) Provide guidance and assistance to National Archives and Records Administration (NARA) employees in identifying and separating documents and specific categories of information within documents that are deemed to require continued classification; and

(2) Refer doubtful cases to the DoD Component having classification jurisdiction over the information or material for resolution.

(b) *Systematic Review Guidelines.* The Director of Security Plans and Programs, ODUSD(P), in coordination with DoD Components, shall review, evaluate, and recommend revisions of DoD Directive 5200.30 [9] at least every 5 years.

[9] See footnote 1 to § 159a.3.

(c) *Systematic Review Procedures.* (1) Except as noted in this subsection, classified information transferred to the NARA that is permanently valuable will be reviewed systematically for declassification by the Archivist of the United States with the assistance of the DoD personnel designated for that purpose under paragraph (a) of this section as it becomes 30 years old. Information concerning intelligence (including special activities), sources, or methods created after 1945, and information concerning cryptology created after 1945, accessioned into the NARA will be reviewed systematically as it becomes 50 years old. Such information shall be downgraded or declassified by the Archivist of the United States under E.O. 12356, the directives of the ISOO, and DoD Directive 5200.30.

(2) All DoD classified information that is permanently valuable and in the possession or control of DoD Components, including that held in Federal Records Centers or other storage areas, may be reviewed systematically for declassification by the DoD Component exercising control of such information. Systematic declassification review conducted by DoD Components and personnel designated under paragraph (a) of this section shall proceed as follows:

(i) Information over which the Department of Defense exercises exclusive or final original classification authority and that under DoD Directive 5200.30, the responsible reviewer determines is to be declassified, shall be marked accordingly.

(ii) Information over which the Department of Defense exercises exclusive or final original classification authority that, after review, is determined to warrant continued protection shall remain classified as long as required by national security considerations.

(3) Classified information over which the Department of Defense does not exercise exclusive or final original classification authority encountered during DoD systematic review may not be declassified unless specifically authorized by the agency having classification jurisdiction over it.

(d) *Systematic Review of Classified Cryptologic Information.* Notwithstanding any other provision of this part, systematic review and declassification of classified cryptologic information shall be conducted in accordance with special procedures developed in consultation with affected agencies by the Director, National Security Agency/Chief, Central Security

Service, and approved by the Secretary of Defense under E.O. 12356 and DoD Directive 5200.30.

(e) *Systematic Review of Intelligence Information.* Systematic review for declassification of classified information pertaining to intelligence activities (including special activities), or intelligence sources or methods shall be in accordance with special procedures to be established by the Director of Central Intelligence after consultation with affected agencies.

§ 159a.26 Mandatory declassification review.

(a) *Information Covered.* Upon request by a U.S. citizen or permanent resident alien, a Federal agency, or a State or local government to declassify and release such information, any classified information (except as provided in paragraph (b) of this section) shall be subject to review by the originating or responsible DoD Component for declassification in accordance with this section.

(b) *Presidential Information.* Information originated by a President, the White House staff, committees, commissions, or boards appointed by the President, or others specifically providing advice and counsel to a President or acting on behalf of a President is exempt from the provisions of this section.

(c) *Cryptologic Information.* Requests for the declassification review of cryptologic information shall be processed in accordance with the provisions of DoD Directive 5200.30.

(d) *Submission of Requests for Mandatory Declassification Review.* Requests for mandatory review of DoD classified information shall be submitted as follows:

(1) Requests shall be in writing and reasonably describe the information sought with sufficient particularity to enable the Component to identify documents containing that information, and be reasonable in scope; for example, the request does not involve such a large number or variety of documents as to leave uncertain the identity of the particular information sought.

(2) Requests shall be submitted to the Office of the Assistant Secretary of Defense (Public Affairs) (ASD(PA)) (entry point for OSD records), the Military Department, or other Component most concerned with the subject matter that is designated under 32 CFR Part 285 to receive requests for records under the Freedom of Information Act. These offices are identified in appropriate Parts of Title 32 of the Code of Federal Regulations for each DoD Component.

(e) *Requirements for Processing.* Unless otherwise directed by the ASD(PA), requests for mandatory review shall be processed as follows:

(1) The designated office shall acknowledge receipt of the request. When a request does not satisfy the conditions of paragraph (d)(1) of this section, the requester shall be notified that unless additional information is provided or the scope of the request narrowed, no further action will be undertaken.

(2) DoD Component action upon the initial request shall be completed within 60 days (45 working days). If no determination has been made within 60 days (45 working days) of receipt of the request, the requester shall be notified of his right to appeal and of the procedures for making such an appeal.

(3) The designated office shall determine whether, under the declassification provisions of this part, the requested information may be declassified, and, if so, make such information available to the requester, unless withholding is otherwise warranted under applicable law. If the information may not be released in whole or in part, the requester shall be given a brief statement as to the reasons for denial, notice of the right to appeal the determination within 60 days (45 working days) to a designated appellate authority (including name, title, and address of such authority), and the procedures for such an appeal.

(4) When a request is received for information classified by another DoD Component or an agency outside the Department of Defense, the designated office shall:

(i) Forward the request to such DoD Component or outside agency for review together with a copy of the document containing the information requested, when practicable and when appropriate, with its recommendation to withhold any of the information;

(ii) Notify the requester of the referral unless the DoD Component or outside agency to which the request is referred objects to such notice on grounds that its association with the information requires protection; and

(iii) Request, when appropriate, that the DoD Component or outside agency notify the referring office of its determination.

(5) If the request requires the rendering of services for which fees may be charged under Title 5 of the Independent Offices Appropriation Act in accordance with DoD Instruction 7230.7 [10] the DoD Component may calculate the anticipated amount of fees to be charged and ascertain the requester's willingness to pay the allowable charges as a precondition to taking further action upon the request.

(6) A requester may appeal to the head of a DoD Component or designee whenever that DoD Component has not acted on an initial request within 60 days or the requester has been notified that requested information may not be released in whole or in part. Within 30 days after receipt, an appellate authority shall determine whether continued classification of the requested information is required in whole or in part, notify the requester of its determination, and make available to the requester any information determined to be releasable. If continued classification is required under this part, the requester shall be notified of the reasons therefor. If so requested, an appellate authority shall communicate its determination to any referring DoD Component or outside agency.

(7) The ASD(PA) shall act as appellate authority for all appeals regarding OSD, OJCS, and Unified Command records.

(f) *Foreign Government Information.* Requests for mandatory review for the declassification of foreign government information shall be processed and acted upon under the provisions of this section subject to § 159a.76(c).

(g) *Prohibition.* No DoD Component in possession of a document shall in response to a request under the Freedom of Information Act or this section refuse to confirm the existence or nonexistence of the document, unless the fact of its existence or nonexistence would itself be classifiable under this part.

(h) *Restricted Data and Formerly Restricted Data.* Any proposed action on a request, including requests from Presidential libraries, for DoD classified documents that are marked "Restricted Data" or "Formerly Restricted Data" must be coordinated with the Department of Energy.

§ 159a.27 Declassification of transferred documents or material.

(a) *Material Officially Transferred.* In the case of classified information or material transferred under statute, E.O., or directive from one department or agency or DoD Component to another in conjunction with a transfer of functions, as distinguished from transfers merely for purposes of storage, the receiving department, agency, or DoD Component shall be deemed to be the original

[10] See footnote 1 to § 159a.3

classifying authority over such material for purposes of downgrading and declassification.

(b) *Material Not Officially Transferred.* When a DoD Component has in its possession classified information or material originated in an agency outside the Department of Defense that has ceased to exist and such information or material has not been transferred to another department or agency within the meaning of paragraph (a) of this section, or when it is impossible to identify the originating agency, the DoD Component shall be deemed to be the originating agency for the purpose of declassifying or downgrading such information or material. If it appears probable that another department, agency, or DoD Component may have a substantial interest in the classification of such information, the DoD Component deemed to be the originating agency shall notify such other department, agency, or DoD Component of the nature of the information or material and any intention to downgrade or declassify it. Until 60 days after notification, the DoD Component shall not declassify or downgrade such information or material without consulting the other department, agency, or DoD Component. During this period, the other department, agency, or DoD Component may express objections to downgrading or declassifying such information or material.

(c) *Transfer for Storage or Retirement.* Whenever practicable, classified documents shall be reviewed for downgrading or declassification before they are forwarded to a Records Center for storage or to the NARA for permanent preservation. Any downgrading or declassification determination shall be indicated on each document by markings as required by Subpart E of this part.

§ 159a.28 Downgrading.

(a) *Automatic Downgrading.* Classified information marked for automatic downgrading in accordance with this or prior regulations or E.Os. is downgraded accordingly without notification to holders.

(b) *Downgrading Upon Reconsideration.* Classified information not marked for automatic downgrading may be assigned a lower classification designation by the originator or by an official authorized to declassify the same information. Prompt notice of such downgrading shall be provided to known holders of the information.

§ 159a.29 Miscellaneous.

(a) *Notification of Changes in Declassification.* When clasified material has been properly marked with specific dates or events for declassification, it is not necessary to issue notices of declassification to any holders. However, when declassification action is taken earlier than originally scheduled, or the duration of classification is extended, the authority making such changes shall ensure prompt notification of all holders to whom the information was originally transmitted. The notification shall specify the marking action to be taken, the authority therefor, and the effective date. Upon receipt of notification, recipients shall effect the proper changes and shall notify holders to whom they have transmitted the classified information. See § 159a.34 (a) and (e) for markings and the use of posted notices.

(b) *Foreign Relations Series.* In order to permit the State Department editors of *Foriegn Relations of the United States* to meet their mandated goal of publishing twenty years after the event, DoD Components shall assist the editors in the Department of State by easing access to appropriate classified materials in their custody and by expediting declassification review of items from their files selected for possible publication.

(c) *Reproduction for Declassification Review.* The provisions of § 159a.55(f) shall not restrict the reproduction of documents for the purpose of facilitating declassification review under the provisions of this subpart or the Freedom of Information Act, as amended. After review for declassification, however, those reproduced documents that remain classified must be destroyed in accordance with Subpart J of this part.

Subpart E—Marking

§ 159a.31 General provisions.

(a) *Designation.* Subject to the exceptions in paragraph (c) of this section, information determined to require classification protection under this part shall be so designated. Designation by means other than physical marking may be used but shall be followed by physical marking as soon as possible.

(b) *Purpose of Designation.* Designation by physical marking, notation, or other means serves to warn the holder about the classification of the information involved; to indicate the degree of protection against unauthorized disclosure that is required for that particular level of classification; and to facilitate downgrading and declassification actions.

(c) *Exceptions.* (1) No article that has appeared, in whole or in part, in newspapers, magazines or elsewhere in the public domain, or any copy thereof, that is being reviewed and evaluated to compare its content with classified information that is being safeguarded in the Department of Defense by security classification, may be marked with any security classification, control or other kind of restrictive marking. The results of the review and evaluation, if classified, shall be separate from the article in question.

(2) Classified documents and material shall be marked in accordance with paragraph (d) of this section unless the markings themselves would reveal a confidential source or relationship not otherwise evident in the document, material, or information.

(3) The marking requirements of paragraph (d) (1)(iv) and (2)(iv) of this section do not apply to documents or other material that contain, in whole or in part, Restricted Data or Formerly Restricted Data information. Such documents or other material or portions thereof shall not be declassified without approval of the Department of Energy with respect to Restricted Data or Formerly Restricted Data information, and with respect to any other national security information contained therein, the approval of the originating agency.

(d) *Documents or Other Material in General.* (1) At the time of original classification, the following shall be shown on the face of all originally classified documents or clearly associated with other forms of classified information in a manner appropriate to the medium involved:

(i) The identity of the original classification authority by position title, unless he or she is the signer or approver of the document;

(ii) The agency and office of origin;

(iii) The overall classification of the document;

(iv) The date or event for automatic declassification or the notation "Originating Agency's Determination Required" or "OADR"; and, if applicable,

(v) Any downgrading action to be taken and the date or event thereof.

(2) At the time of derivative classification, the following shall be shown on the face of all derivatively classified documents or clearly associated with other forms of classified information in a manner appropriate to the medium involved:

(i) The source of classification, that is, a source document or classification guide. If classification is derived from more than one source, the phrase

"Multiple Sources" will be shown and the identification of each source will be maintained with the file or record copy of the document;

(ii) The agency and office of origin of the derivatively classified document;

(iii) The overall classification of the document;

(iv) The date or event for declassification or the notation "Originating Agency's Determination Required" or "OADR," carried forward from the classification source. If the classification is derived from multiple sources, either the most remote date or event for declassification marked on the sources or if required by any source, the notation "Originating Agency's Determination Required" or "OADR" shall be shown; and, if applicable,

(v) Any downgrading action to be taken and the date or event thereof.

(3) In addition to the foregoing, classified documents shall be marked as prescribed in § 159a.32, Subpart L of this part, if the document contains foreign government information, and with any applicable special notation listed in § 159a.35. Such notations shall be carried forward from source documents to derivatively classified documents when appropriate. Provides illustrated guidance on the application of classification and associated markings to documents prepared by the Department of Defense.

(4) Material other than paper documents shall show the required information on the material itself or if that is not practical, in related or accompanying documentation.

(e) *Identification of Classification Authority.* (1) Identification of a classification authority shall be shown on the "Classified by" line prescribed under § 159a.34(c) and shall be sufficient, standing alone, to identify a particular official, source document or classification guide.

(i) If all information in a document or material is classified as an act of original classification, the classification authority who made the determination shall be identified on the "Classified by" line, unless the classifier is also the signer or approver of the document.

(ii) If the classification of all information in a document or material is derived from a single source (for example, a source document or classification guide), the "Classified by" line shall identify the source document or classification guide, including its date when necessary to insure positive identification.

(iii) If the classification of information contained in a document or material is derived from more than one original classification authority, or an original classification authority and another source, or from more than one source document, classification guide, or combination thereof, the "Classified by" line shall be marked "Multiple Sources" and identification of all such authorities and sources shall be maintained with the file or record copy of the document.

(iv) If an official with requisite classification authority has been designated by the head of an activity to approve security classifications assigned to all information leaving the activity, the title of that designated official shall be shown on the "Classified by" line. The designated official shall maintain records adequate to support derivative classification actions.

(2) Guidance concerning the identification of the classification authority on electronically transmitted messages is contained in § 159a.32(h).

(3) Guidance concerning the identification of the classification authority on DoD documents that contain only foreign or NATO classified information is contained in § 159a.77(d).

(f) *Wholly Unclassified Material.* Normally, unclassified material shall not be marked or stamped "Unclassified" unless it is essential to convey to a recipient of such material that it has been examined with a view to imposing a security classification and that it has been determined that it does not require classification. However, the marking "Unclassified" may be applied to formerly classified material.

§ 159a.32 Specific markings on documents.

(a) *Overall and Page Marking.* Except as otherwise specified for working papers, the overall classification of a document, whether or not permanently bound, or any copy or reproduction thereof, shall be conspicuously marked, stamped or affixed permanently at the top and bottom on the outside of the front cover (if any), on the title page (if any), on the first page, and on the outside of the back cover (if any). Each interior page, except those that are blank, shall be marked top and bottom according to its content, to include "Unclassified" when no classified information is contained on such a page. Alternatively, the overall classification of the document may be conspicuously marked or stamped at the top and bottom of each interior page when such marking is necessary to achieve production efficiency and the particular information to which classification is assigned is otherwise sufficiently identified consistent with the intent of paragraph (c) of § 159a.32. In any case, the classification marking of a page shall not supplant the classification marking of portions paragraph (c) of this section of the page marked with lower levels of classification.

(b) *Marking Components.* The major components of some complex documents are likely to be used separately. In such instances, each major component shall be marked as a separate document in accordance with § 159a.31. Examples include each annex, appendix, or similar component of a plan, program, or operations order; attachments and appendices to a memorandum or letter; and each major part of a report. If an entire major component is unclassified, the first page of the component may be marked at the top and bottom with the designation "UNCLASSIFIED" and a statement included, such as, "All portions of this (annex, appendix, etc.) are UNCLASSIFIED." When this method of marking is used, no further markings are required on the unclassified major component.

(c) *Portion Marking.* (1) Each section, part, paragraph, or similar portion of a classified document shall be marked to show the level of classification of the information contained in or revealed by it, or that it is unclassified. Portions of documents shall be marked in a manner that eliminates doubt as to which of its portions contains or reveals classified information. Classification levels of portions of a document, except as provided in paragraph (e) of this section, shall be shown by the appropriate classification symbol placed immediately following the portion's letter or number, or in the absence of letters or numbers, immediately before the beginning of the portion. In marking sections, parts, paragraphs, or similar portions, the parenthetical symbols "(TS)" for Top Secret, "(S)" for Secret, "(C)" for Confidential, and "(U)" for unclassified, shall be used. When appropriate, the symbols "RD" for Restricted Data and "FRD" for Formerly Restricted Data shall be added, for example, "(S–RD)" or "(C–FRD)." In addition, portions that contain Critical Nuclear Weapon Design Information (CNWDI) will be marked "(N)" following the classification, for example, "(S–RD)(N)."

(2) Portion marking of DoD documents containing foreign government information shall be in accordance with § 159a.77(d).

(3) Illustrations, photographs, figures, graphs, drawings, charts and similar portions of classified documents will be clearly marked to show their classification or unclassified status. Such markings shall not be abbreviated

and shall be prominent and placed within or contiguous to the portion. Captions of such portions shall be marked on the basis of their content alone by placing the symbol "(TS)," "(S)," "(C)," or "(U)" immediately preceding the caption.

(4) If, in an exceptional situation, parenthetical portion marking is determined to be impracticable, the document shall contain a statement sufficient to identify the information that is classified and the level of such classification. Thus, for example, each portion of a classified document need not be marked separately if all portions are classified at the same level, provided a statement to that effect is included in the document. In the case of classified compilations, the explanations required by paragraph (d) of this section meet this requirement.

(5) When elements of information in one portion require different classifications, but segregation into separate portions would destroy continuity or context, the highest classification required for any item shall be applied to that portion or paragraph.

(6) Waivers of the foregoing portion marking requirements may be granted for good cause. Any request by a DoD Component senior official for a waiver of portion marking requirements shall be submitted to the DUSD(P) and include the following:

(i) Identification of the information or class of documents for which such waiver is sought;

(ii) Detailed explanation of why the waiver should be granted;

(iii) The Component's judgment of the anticipated dissemination of the information or class of documents for which the waiver is sought, and

(iv) The extent to which such information subject to the waiver may be a basis for derivative classification. Waivers shall be granted only upon a written determination by the DUSD(P) as the designee of the Secretary of Defense, that there will be minimal circulation of the specified documents or information, and minimal potential usage of these documents or information as a source for derivative classification determinations; or there is some other basis to conclude that the benefits of portion marking are clearly outweighed by the increased administrative burdens. The granting and revocation of portion marking waivers shall be reported to the Director of the ISOO by the DUSD(P).

(d) *Compilations*—(1) *Documents.* When classification is required to protect a compilation of unclassified information pursuant to § 159a.15(1), the overall classification assigned to such documents shall be placed conspicuously at the top and bottom of each page and on the outside of the front and back covers, if any, and an explanation of the basis for the assigned classification shall be included on the document or on its text.

(2) *Portions of Documents.* If a classified document contains particular portions that are unclassified when standing alone, but classified information will be revealed when they are combined or associated, those portions shall be marked as unclassified, the page shall be marked with the highest classification of any information on or revealed by the page, and an explanation shall be added to the page, or to the document, to explain the classification of the combination or association to the holder. This method of marking also may be used if classified portions on a page, or within a document, will reveal information of a higher classification when they are combined or associated than when they are standing alone.

(e) *Subjects and Titles of Documents.* Subjects or titles of classified documents shall be marked with the appropriate symbol, "(TS)," "(S)," "(C)," or "(U)" placed immediately following and to the right of the item. When applicable, other appropriate symbols, for example, "(RD)" or "(FRD)," shall be added. (Subjects or titles of documents should be unclassified, if possible.)

(f) *File, Folder, or Group of Documents.* When a file, folder, or group of classified documents is removed from secure storage it shall be marked conspicuously with the highest classification of any classified document included therein or shall have an appropriate classified document cover sheet affixed.

(g) *Transmittal Documents.* A transmittal document, including endorsements and comments when such endorsements and comments are added to the basic communication, shall carry on its face a prominent notation of the highest classification of the information transmitted by it, and a legend showing the classification, if any, of the transmittal document, endorsement, or comment standing alone. For example, an unclassified document that transmits as an attachment a classified document shall bear a notation substantially as follows: "UNCLASSIFIED WHEN SEPARATED FROM CLASSIFIED ENCLOSURE."

(h) *Electronically Transmitted Messages.* (1) The copy of a classified message (for example, DD Form 173, Joint Messageform) approved for electronic transmission and maintained as the record copy shall be marked as required by § 159a.31(d) for other documents. Additionally, copies not electronically transmitted (such as, mail and courier copies) shall be marked as required by § 159a.31(d).

(2) The first item of information in the text of a classified electronically transmitted message shall be its overall classification. Paper copies of classified electronically transmitted messages shall be marked at the top and bottom with the assigned classification. Portions shall be marked as prescribed herein for paper copies of documents. When such messages are printed by an automated system, classification markings may be applied by that system, provided that page markings so applied are clearly distinguishable on the face of the document from the printed text.

(3) The originator of a classified electronically transmitted message shall be considered the accountable classifier under § 159a.15(a). The highest level official identified on the message as the sender or, in the absence of such identification, the head of the organization originating the message, is deemed to be the classifier of the message. Thus, a "Classified by" line is not required on such messages. The originator is responsible for maintaining adequate records as required by § 159a.31(d)(2) to show the source of an assigned derivative classification.

(4) The last line of text of a classified electronically transmitted message shall show the date or event for downgrading, if appropriate, and the date or event for automatic declassification or "Originating Agency's Determination Required," by abbreviated markings from § 159a.34. The foregoing is not required for messages that contain information identified as Restricted Data or Formerly Restricted Data.

(5) Any document, the classification of which is based solely upon the classification of the content of a classified electronically transmitted message, shall cite the message on the "Classified by" line of the newly created document.

(i) *Translations.* Translations of U.S. classified information into a language other than English shall be marked to show the United States as the country of origin, with the appropriate U.S. classification markings and the foreign language equivalent thereof (see Appendix A to this part).

§ 159a.33 Markings on special categories of material.

(a) *General Provisions.* Security classification and applicable associated markings (see § 159a.31(d) and

§ 159a.33(k)) assigned by the classifier shall be conspicuously stamped, printed, written, painted, or affixed by means of a tag, sticker, decal, or similar device, on classified material other than paper copies of documents, and on containers of such material, if possible. If marking the material or container is not practicable, written notification of the security classification and applicable associated markings shall be furnished to recipients. The following procedures for marking various kinds of materials containing classified information are not all inclusive and may be varied to accommodate the physical characteristics of the material containing the classified information and to accommodate organizational and operational requirements.

(b) *Charts, Maps, and Drawings.* Charts, maps, and drawings shall bear the appropriate classification marking for the legend, title, or scale blocks in a manner that differentiates between the overall classification of the document and the classification of the legend or title itself. The higher of these markings shall be inscribed at the top and bottom of each such document. When folding or rolling charts, maps, or drawings would cover the classification markings, additional markings shall be applied that are clearly visible when the document is folded or rolled. Applicable associated markings shall be included in or near the legend, title, or scale blocks.

(c) *Photographs, Films, and Recordings.* Photographs, films (including negatives), recordings, and their containers shall be marked to assure that a recipient or viewer will know that classified information of a specified level of classification is involved.

(1) *Photographs.* Negatives and positives shall be marked, whenever practicable, with the appropriate classification designation and applicable associated markings. Roll negatives or positives may be so marked at the beginning and end of each strip. Negatives and positives shall be kept in containers bearing conspicuous classification markings. All prints and reproductions shall be conspicuously marked with the appropriate classification designation and applicable associated markings on the face side of the print if possible. When such markings cannot be applied to the face side, they may be stamped on the reverse side or affixed by pressure tape label, stapled strip, or other comparable means.

Note: When self-processing film or paper is used to photograph or reproduce classified information, all parts of the last exposure shall be removed from the camera and destroyed as classified waste, or the camera shall be protected as classified.

(2) *Transparencies and Slides.* Applicable classification markings shall be shown clearly in the image area of each transparency or slide, if possible. In the case of a 35mm or a similar size transparency or slide where the classification markings are not conspicuous unless projected on a screen, for example, the classification markings also shall be marked on its border, holder, or frame. Duplicate classification markings in image areas and on borders, holders, or frames are required if there is any doubt that the image area markings are not conspicuous enough to be seen when the transparencies or slides are not being projected. Other applicable associated markings shall be shown in the image area, or on the border, holder, or frame, or in accompanying documention. It is not necessary that each transparency or slide of a set of transparencies or slides bear applicable associated markings when the set is controlled as a single document. In such cases, the first transparency or slide shall bear the applicable associated markings.

(3) *Motion Picture Films and Video Tapes.* Classified motion picture films and video tapes shall be marked at the beginning and end by titles bearing the appropriate classification markings. Applicable associated markings shall be included at the beginning of such films or tapes. All such marking shall be visible when projected. Reels and cassettes shall be marked with the appropriate classification and kept in containers bearing conspicuous classification and applicable associated markings.

(4) *Recordings.* Sound, magnetic, or electronic recordings shall contain at the beginning and end a clear statement of the assigned classification that will provide adequate assurance that any listener or viewer will know that classified information of a specified level is involved. Recordings shall be kept in containers or on reels that bear conspicuous classification and applicable associated markings.

(5) *Microforms.* Microforms are images, usually produced photographically on transparent or opaque materials, in sizes too small to be read by the unaided eye. Accordingly, the assigned security classification and abbreviated applicable associated markings shall be conspicuously marked on the microform medium or its container, so as to be readable by the unaided eye. These markings shall also be included on the image so that when the image is enlarged and displayed or printed, the markings will be conspicuous and readable. Such marking will be accomplished as appropriate for the particular microform involved. For example, roll film microforms (or roll microfilm employing 16, 35, 70, or 105 mm films) may generally be marked as provided for roll motion picture film in § 159a.33(c)(3) and decks of "aperture cards" may be marked as provided in § 159a.33(d) for decks of automatic data processing punched cards. Whenever possible, microfiche, microfilm strips, and microform chips shall be marked in accordance with this paragraph.

(d) *Decks of ADP Punched Cards.* When a deck of classified ADP punched cards is handled and controlled as a single document, only the first and last card require classification markings. An additional card shall be added (or the job control card modified) to identify the contents of the deck and the highest classification therein. Such additional card shall include applicable associated markings. Cards removed for separate processing or use and not immediately returned to the deck shall be protected to prevent compromise of any classified information contained therein, and for this purpose shall be marked individually as prescribed in § 159a.32(a).

(e) *Removable ADP and Word Processing Storage Media*—(1) *External.* Removable information storage media and devices, used with ADP systems and typewriters or word processing systems, shall bear external markings clearly indicating the classification of the information and applicable associated markings. Included are media and devices that store information recorded in analog or digital form and that are generally mounted or removed by the users or operators. Examples include magnetic tape reels, cartridges, and cassettes; removable discs, disc cartridges, disc packs and diskettes; paper tape reels; and magnetic cards.

(2) *Internal.* ADP systems and word processing systems employing such media shall provide for internal classification marking to assure that classified information contained therein that is reproduced or generated, will bear applicable classification and associated markings. An exception may be made by the DoD Component head, or designee, for the purpose of exempting existing word processing systems when the internal classification and applicable associated markings cannot be implemented without extensive system modification, provided procedures are established to ensure

that users and recipients of the media, or the information therein, are clearly advised of the applicable classification and associated markings. For ADP systems, exceptions may be authorized by the DoD Component Designated Approving Authority or Authorities, designated under DoD Directive 5200.28. For purposes of these exemption provisions, "existing systems" means word processing and ADP systems already acquired, or, in the case of associated automated information systems, those for which the life cycle management process has already progressed beyond the "definition/design" phase as set forth in DoD Directive 7920.1 [11]. Requirements for the security of nonremovable ADP storage media and clearance or declassification procedures for various ADP storage media are contained in DoD 5200.28–M [12].

(f) *Documents Produced by ADP Equipment.* The first page, and the front and back covers, if any, of documents produced by ADP equipment shall be marked as prescribed in § 159a.32(a). Interior pages also shall be marked as prescribed in § 159a.32(a) except that the classification markings of interior pages of fan-folded printouts may be applied by the ADP equipment. When the application of associated markings prescribed by § 159a.31(d) by the ADP equipment is not consistent with economical and efficient use of such equipment, such markings may be applied to a document produced by ADP equipment by superimposing upon the first page of such document a "Notice of Declassification Instructions and Other Associated Markings." Such notice shall include the date or event for declassification or the notation "Originating Agency's Determination Required" or "OADR" and all other such applicable markings. If individual pages of a document produced by ADP equipment are removed or reproduced for distribution to other users, each such page or group of pages shall be marked as prescribed in § 159a.31(d) or by superimposing upon each such page or group of pages, a copy of any "Notice of Declassification Instructions and Other Associated Markings" applicable to such page or group of pages.

(g) *Material for Training Purposes.* In using unclassified documents or material to simulate classified documents or material for training purposes, such documents or material shall be marked clearly to indicate the actual unclassified status of the information, for example, "(insert classification designation) for training; otherwise unclassified" or "UNCLASSIFIED SAMPLE."

(h) *Miscellaneous Material.* Documents and material such as rejected copy, typewriter ribbons, carbons, and similar items developed in connection with the handling, processing, production, and of use classified information shall be handled in a manner that assures adequate protection of the classified information involved and destruction at the earliest practicable time (see § 159a.32). Unless a requirement exists to retain this material or documents for a specific purpose, there is no need to mark, stamp, or otherwise indicate that the information is classified.

(i) *Special Access Program Documents and Material.* Additional markings as prescribed in directives, regulations and instructions relating to an approved Special Access Program shall be applied to documents and material containing information subject to the special access program. Such additional markings shall not serve as the sole basis for continuing classification of the documents or material to which the markings have been applied. When appropriate, such markings shall be excised to ease timely declassification, downgrading, or removal of the information from special control procedures.

(j) *Secure Telecommunications and Information Handling Equipment.* Applicable classification or Controlled Cryptographic Item (CCI) markings shall be applied to secure telecommunications and information handling equipment or associated cryptographic components. Safeguarding and control procedures for classified and CCI equipment and for safeguarding COMSEC facilities are contained in DoD Instruction 5230.22 [12], National Communications Security Committee (NCSC) Policy Directive 6, DoD Directive C–5200.5 [13], National Telecommunications and Information Systems Security Instruction 4001, and National COMSEC Instruction 4003, 4006, and 4008.

(k) *Associated Markings.* Other applicable associated markings required for documents by § 159a.31(d) shall be accomplished as prescribed in this section or in any other appropriate manner.

§ 159a.34 Classification authority, duration, and change in classification markings.

(a) *Declassification and Regrading Marking Procedures.* When classified information is downgraded or declassified in accordance with the assigned downgrading or declassification markings, such markings shall be a sufficient notation of the authority for such action. Whenever classified information is downgraded or declassified earlier than originally scheduled, or upgraded, the material shall be marked promptly and conspicuously to indicate the change, the authority for the action, the date of the action and the identity of the person taking the action. In addition, except for upgrading (see paragraph (d) of this section), prior classification markings shall be canceled, if practicable, but in any event those on the cover (if any) and first page shall be canceled, and the new classification markings, if any, shall be substituted.

(b) *Applying Derivative Declassification Dates.* (1) New material that derives its classification from information classified on or after August 1, 1982, shall be marked with the declassification date, event, or the notation "Originating Agency's Determination Required" or "OADR" assigned to the source information.

(2) New material that derives its classification from information classified prior to August 1, 1982, shall be treated as follows:

(i) If the source material bears a declassification date or event, that date or event shall be carried forward to the new material;

(ii) If the source material bears no declassification date or event, or bears an indeterminate date or event such as "Upon Notification by Originator," "Cannot Be Determined," or "Impossible to Determine," or is marked for declassification review, the new material shall be marked with the notation "Originating Agency's Determination Required" or "OADR"; or

(iii) If the source material is foreign government information bearing no date or event for declassification or is marked for declassification review, the new material shall be marked with the notation "Originating Agency's Determination Required" or "OADR."

(3) New material that derives its classification from a classification guide issued prior to August 1, 1982, that has not been updated to conform with this Regulation shall be treated as follows:

(i) If the guide specifies a declassification date or event, that date or event shall be applied to the new material; or

(ii) If the guide specifies a declassification review date, the notation "Originating Agency's

[11] See footnote 1 to § 159a.3.

[12] See footnote 7 to § 159a.16(g)(1)

[12] See footnote 1 to § 159a.3.

[13] Classified document. Not releasable to the public.

Determination Required" or "OADR" shall be applied to the new material.

(c) *Commonly Used Markings.* Each classified document is marked on its face with one or more of the following markings:

(1) *Original Classification.* The following markings are used in original classification § 159a.31(d)(1):

Classified by _____ (See Note 1)
Declassify on _____ (See Note 2)
Message Abbreviation:
DECL _____ (See Note 3)

(2) *Derivative Classification.* The following markings are used in derivative classification § 159a.31(d)(2):

Classified by _____ (See Note 4)
Declassify on _____ (See Note 5)
Message Abbreviation:
DECL _____ (See Note 3)

(3) *Downgrading.* The following marking is used to specify a downgrading § 159a.31(d)(1) and (2):

Downgrade to _____ on _____ (See Note 6)
Message Abbreviation:
DNG/___/_____ (See Note 7)

Note 1: Insert identification (position title) of the original classification authority. This line may be omitted if the original classification authority is also the signer or approver of the document.

Note 2: Insert the specific date, an event certain to occur, or the notation "Originating Agency's Determination Required" or "OADR."

Note 3: Insert day, month, and year for declassification, for example, "6 Jun 90," an event certain to occur, or "OADR."

Note 4: Insert identity of the single security classification guide, source document, or other authority for the classification. If more than one such source is applicable, insert the phrase "Multiple Sources."

Note 5: Insert the specific date or event for declassification or the notation "Originating Agency's Determination Required" or "OADR." When multiple sources are used, either the most remote date or event for declassification marked on the sources or, if present on any source, the notation "Originating Agency's Determination Required" or "OADR" is applied to the new document.

Note 6: Insert Secret or Confidential and specific date or event, for example, "Downgrade to *CONFIDENTIAL* on *6 July 1988.*"

Note 7: Insert "S" or "C" to indicate the downgraded classification and specific date or event, for example, "DNG/C/6 Jun 87."

(4) There is no requirement for adding declassification instructions on documents with Restricted Data or Formerly Restricted Data markings (see § 159a.31(b)(3) and § 159a.35 (a) and (b)). Except for electronically transmitted messages, only a completed "Classified by" line is added to documents so marked.

(5) Electronically transmitted messages do not require a "classified by" line (See § 159a.32(h)(3)).

(6) DoD 5200.1–PH provides additional marking guidance.

(d) *Upgrading.* When material is upgraded it shall be promptly and conspicuously marked as prescribed in paragraph (a) of this section except that in all such cases the old classification markings shall be canceled and new markings substituted.

(e) *Limited Use of Posted Notice for Large Quantities of Material.* (1) When the volume of material is such that prompt remarking of each classified item cannot be accomplished without unduly interfering with operations, the custodian may attach downgrading and declassification notices to the storage unit instead of the remarking required by paragraph (a) of this section. Each notice shall specify the authority for the downgrading or declassification action, the date of the action, and the storage unit to which it applies.

(2) When individual documents or materials are permanently withdrawn from storage units, they shall be remarked promptly as prescribed by paragraph (a) of this section. However, when documents or materials subject to a downgrading or declassification notice are withdrawn from one storage unit solely for transfer to another, or a storage unit containing such documents or materials is transferred from one place to another, the transfer may be made without remarking if the notice is attached to or remains with each shipment.

§ 159a.35 Additional warning notices.

(a) *General Provisions.* (1) In addition to the marking requirements prescribed in § 159a.31(d), the warning notices prescribed in this section shall be displayed prominently on classified documents or materials, when applicable. In the case of documents, these warning notices shall be marked conspicuously on the outside of the front cover, or on the first page if there is no front cover. Transmittal documents, including those that are unclassified (§ 159a.35(g)), also shall bear these additional warning notices, when applicable. In addition, abbreviated forms of the notices set forth in § 159a.35(a), (b), and (c) shall be included in portion markings, as applicable. Further, the warning notice in paragraph (d) of this section, in its short form, shall be included at least once on interior pages, as applicable.

(2) When display of warning notices on other materials is not possible, their applicability to the information shall be included in the written notification of the assigned classification.

(b) *Restricted Data.* Classified documents or material containing Restricted Data as defined in the Atomic Energy Act of 1954, as amended shall be marked as follows:

RESTRICTED DATA

This material contains Restricted Data as defined in the Atomic Energy Act of 1954. Unauthorized disclosure subject to administrative and criminal sanctions.

(c) *Formerly Restricted Data.* Classified documents or material containing Formerly Restricted Data, as defined in Section 142.d, Atomic Energy Act of 1954, as amended, but no Restricted Data, shall be marked as follows:

FORMERLY RESTRICTED DATA

Unauthorized disclosure subject to administrative and criminal sanctions. Handle as Restricted Data in foreign dissemination. Section 144.b, Atomic Energy Act, 1954.

(d) *Intelligence Sources or Methods Information.* (1) Documents that contain information relating to intelligence sources or methods shall include the following marking unless otherwise proscribed by DoD Instruction 5230.22:

WARNING NOTICE—Intelligence Sources or Methods Involved

(2) Existing stamps or preprinted labels containing the caveat "Warning Notice—Intelligence Sources and Methods Involved" may be used on documents created on or after the effective date of this part until replacement is required. Any replacement or additional stamps or labels purchased after the effective date of this part shall conform to the wording of paragraph (d)(1) of this section.

(e) *COMSEC Material.* Before release to contractors, COMSEC documents will indicate on the title page, or first page if no title page exists, the following notation:

COMSEC Material—Access by Contractor Personnel Restricted to U.S. Citizens Holding Final Government Clearance.

This notation shall be placed on COMSEC documents or material when originated and when release to contractors can be anticipated. Other COMSEC documents or material shall be marked in accordance with National COMSEC Instruction (NACSI) 4003. Foreign dissemination of COMSEC information is governed by NCSC Policy Directive 6.

(f) *Dissemination and Reproduction Notice.* Classified information that the

DoD originator has determined to be subject to special dissemination or reproduction limitations as outlined in § 159a.54(1) shall include, as applicable, a statement or statements on its cover sheet, first page, or in the text, substantially as follows:

Reproduction requires approval of originator or higher DoD authority.

Further dissemination only as directed by (insert appropriate office or official) or higher DoD authority.

(g) *Other Notations.* Other notations of restrictions on reproduction, dissemination or extraction of classified information may be used as authorized by DoD Directive C–5200.5, DoD Instruction 5230.22, DoD Directive 5210.2 [14], DoD Directive 5100.55 [15], DoD Directive 5200.30, Joint Army-Navy-Air Force Publication 119, DoD Directive 5230.24, and NACSI 4003.

§ 159a.36 Remarking old material.

(a) *General.* (1) Documents and material classified under E.O. 12065 and predecessor E.O.s that are marked for automatic downgrading or automatic declassification on a specific date or event shall be downgraded and declassified pursuant to such markings. Declassification instructions on such documents or material need not be restated to conform with § 159a.32(c). (See also § 159a.34(a)). Information extracted from these documents or material for use in new documents or material shall be marked for declassification on the date specified in accordance with § 159a.31(d)(2).

(2) Documents and material classified under DoD C–5105.21–M–1 [16] and predecessor E.O.s that are not marked for automatic downgrading or automatic declassification on a specific date or event shall not be downgraded or declassified without authorization of the originator. Declassification instructions on such documents or material need not be restated to conform with § 159a.32(a). Information extracted from these documents or material for use in new documents or material shall be marked for declassification upon the determination of the originator, that is, the "Declassify on" line shall be completed with the notation "Originating Agency's Determination Required" or "OADR" in accordance with § 159a.31(d)(2).

(b) *Earlier Declassification and Extension of Classification.* Nothing in this section shall be construed to preclude declassification under Subpart D of this part or subsequent extension of classification under § 159a.16(c).

Subpart F—Safekeeping and Storage

§ 159a.37 Storage and storage equipment.

(a) *General Policy.* Classified information shall be stored only under conditions adequate to prevent unauthorized persons from gaining access. The requirements specified in this part represent the minimum acceptable security standards. DoD policy concerning the use of force for the protection of property or information is specified in DoD Directive 5210.56 [17]

(b) *Standards for Storage Equipment.* The GSA establishes and publishes minimum standards, specifications, and supply schedules for containers, vault doors, alarm systems, and associated security devices suitable for the storage and protection of classified information. Heads of DoD Components may establish additional controls to prevent unauthorized access. Security filing cabinets conforming to federal specifications bear a Test Certification Label on the locking drawer, attesting to the security capabilities of the container and lock. (On some older cabinets the label was affixed on the inside of the locked drawer compartment). Cabinets manufactured after February 1962 indicate "General Services Administration Approved Security Container" on the outside of the top drawer.

(c) *Storage of Classified Information.* Classified information that is not under the personal control and observation of an authorized person, will be guarded or stored in a locked security container as prescribed in the following:

(1) *Top Secret.* Top Secret information shall be stored in:

(i) A safe-type steel file container having a built-in, three-position, dial-type combination lock approved by the GSA or a Class A vault or vault type room that meets the standards established by the head of the DoD Component concerned. When located in buildings, structural enclosures, or other areas not under U.S. Government control, the storage container, vault, or vault-type room must be protected by an alarm system or guarded during nonoperating hours.

(ii) An alarmed area, provided such facilities are adjudged by the local responsible official to afford protection equal to or better than that prescribed in paragraph (c)(1) (i) of this section. When an alarmed area is used for the storage of Top Secret material, the physical barrier must be adequate to prevent:

(A) Surreptitious removal of the material, and

(B) Observation that would result in the compromise of the material. The physical barrier must be such that forcible attack will give evidence of attempted entry into the area. The alarm system must provide immediate notice to a security force of attempted entry. Under field conditions, the field commander will prescribe the measures deemed adequate to meet the storage standards contained in paragraphs (c)(1)(i) and (ii) of this section.

(2) *Secret and Confidential.* Secret and Confidential information shall be stored in the manner prescribed for Top Secret; or in a Class B vault, or a vault-type room, strong room, or secure storage room that meets the standards prescribed by the head of the DoD Component; or, until phased out, in a steel filing cabinet having a built-in, three-position, dial type combination lock; or, as a last resort, an existing steel filing cabinet equipped with a steel lock bar, provided it is secured by a GSA-approved changeable combination padlock. In this latter instance, the keeper or keepers and staples must be secured to the cabinet by welding, rivets, or peened bolts and DoD Components must prescribe supplementary controls to prevent unauthorized access.

(3) *Specialized Security Equipment.*—(i) *Field Safe and One-drawer Container.* One-drawer field safes, and GSA approved security containers are used primarily for storage of classified information in the field and in transportable assemblages. Such containers must be securely fastened or guarded to prevent their theft.

(ii) *Map and Plan File.* A GSA-approved map and plan file has been developed for storage of odd-sized items such as computer cards, maps, and charts.

(4) *Other Storage Requirements.* Storage areas for bulky material containing classified information, other than Top Secret, shall have access openings secured by GSA-approved changeable combination padlocks (federal specification FF–P110 series) or key-operated padlocks with high security cylinders (exposed shackle, military specification P–43951 series, or shrouded shackle, military specification P–43607 series).

(i) When combination padlocks are used, the provisions of paragraph (e) of this section apply.

(ii) When key-operated high security padlocks are used, keys shall be controlled as classified information with

[14] See footnote 1 to § 159a.3.

[15] See footnote 1 to § 159a.3.

[16] See footnote 13 to § 159a.33(j).

[17] See footnote 1 to § 159a.3.

classification equal to that of the information being protected and:

(A) A key and lock custodian shall be appointed to ensure proper custody and handling of keys and locks;

(B) A key and lock control register shall be maintained to identify keys for each lock and their current location and custody;

(C) Keys and locks shall be audited each month;

(D) Keys shall be inventoried with each change of custodian;

(E) Keys shall not be removed from the premises;

(F) Keys and spare locks shall be protected in a secure container;

(G) Locks shall be changed or rotated at least annually, and shall be replaced upon loss or compromise of their keys; and

(H) Master keying is prohibited.

(d) *Procurement and Phase-In of New Storage Equipment.*—(1) *Preliminary Survey.* DoD activities shall not procure new storage equipment until:

(i) A current survey has been made of on-hand security storage equipment and classified records; and

(ii) Based upon the survey, it has been determined that it is not feasible to use available equipment or to retire, return, declassify or destroy enough records on hand to make the needed security storage space available.

(2) *Purchase of New Storage Equipment.* New security storage equipment shall be procured from those items listed on the GSA Federal Supply Schedule. Exceptions may be made by heads of DoD Components, with notification to the DUSD(P).

(3) Nothing in this subpart shall be construed to modify existing Federal Supply Class Management Assignments made under DoD Directive 5030.47.[18]

(e) *Designations and Combinations.*—(1) *Numbering and Designating Storage Facilities.* There shall be no external mark as to the level of classified information authorized to be stored therein. For identification purposes each vault or container shall bear externally an assigned number or symbol.

(2) *Combinations to Containers.*—(i) *Changing.* Combinations to security containers shall be changed only by individuals having that responsibility and an appropriate security clearance. Combinations shall be changed:

(A) When placed in use;

(B) Whenever an individual knowing the combination no longer requires access;

(C) When the combination has been subject to possible compromise;

(D) At least annually; or

(E) When taken out of service. Built-in combination locks shall be reset to the standard combination 50–25–50; combination padlocks shall be reset to the standard combination 10–20–30.

(ii) *Classifying Combinations.* The combination of a vault or container used for the storage of classified information shall be assigned a security classification equal to the highest category of the classified information authorized to be stored therein.

(iii) *Recording Storage Facility Data.* A record shall be maintained for each vault, secure room, or container used for storing classified information, showing location of the container, the names, home addresses, and home telephone numbers of the individuals having knowledge of the combination. Standard Form 700, "Security Container Information" shall be used for this purpose. (Use of this Standard Form is required when existing supplies of similar purpose forms are exhausted or by September 30, 1986, whichever occurs earlier).

(iv) *Dissemination.* Access to the combination of a vault or container used for the storage of classified information shall be granted only to those individuals who are authorized access to the classified information stored therein.

(3) *Electrically Actuated Locks.* Electricially actuated locks (for example, cypher and magnetic strip card locks) do not afford the required degree of protection of classified information and may not be used as a substitute for the locks prescribed in paragraph (c) of this section.

(f) *Repair of Damaged Security Containers.* Neutralization of lock-outs or repair of any damage that affects the integrity of a security container approved for storage of classified information shall be accomplished only by authorized persons who are cleared or continuously escorted while so engaged.

(1) A GSA-approved security container is considered to have been restored to its original state of security integrity if:

(i) All damaged or altered parts (for example, locking drawer, and drawer head) are replaced; or

(ii) When a container has been drilled immediately adjacent to or through the dial ring to neutralize a lock-out, the replacement lock is equal to the original equipment, and the drilled hole is repaired with a tapered, hardened tool-steel pin, or a steel dowel, drill bit, or bearing with a diameter slightly larger than the hole and of such length that when driven into the hole there shall remain at each end of the rod a shallow recess not less than ⅛ inch nor more than 3/16 inch deep to permit the acceptance of substantial welds, and the rod is welded both on the inside and outside surfaces. The outside of the drawer head shall then be puttied, sanded, and repainted in such a way that no visible evidence of the hole or its repair remains on the outer surface after replacement of the damaged parts (for example, new lock).

(2) GSA-approved containers that have been drilled in a location or repaired in a manner other than as described in paragraph (f)(1) of this section, will not be considered to have been restored to their original state of security integrity. The Test Certification Label on the inside of the locking drawer and the "General Services Administration Approved Security Container" label, if any, on the outside of the top drawer shall be removed from such containers.

(3) If damage to a GSA-approved security container is repaired with welds, rivets, or bolts that cannot be removed and replaced without leaving evidence of entry, the cabinet is limited thereafter to the storage of Secret and Confidential material.

(4) If the damage is repaired using methods other than those permitted in paragraphs (f) (1) and (3) of this section, use of the container will be limited to unclassified material and a notice to this effect will be permanently marked on the front of the container.

§ 159a.38 Custodial precautions.

(a) *Responsibilities of Custodians.* (1) Custodians of classified information shall be responsible for providing protection and accountability for such information at all times and for locking classified information in appropriate security equipment whenever it is not in use or under direct supervision of authorized persons. Custodians shall follow procedures that ensure that unauthorized persons do not gain access to classified information.

(2) Only the head of a DoD Component, or single designee at the headquarters and major command levels, may authorize removal of classified information from designated working areas in off-duty hours, for work at home or otherwise, provided that a GSA-approved security container is furnished and appropriate regulations otherwise provide for the maximum protection possible under the circumstances. (See also § 159a.55.) Any such arrangements approved before the effective date of this part shall be reevaluated and, if continued approval

[18] See footnote 1 to § 159a.3.

is warranted, compliance with this paragraph is necessary.

(b) *Care During Working Hours.* DoD personnel shall take precaution to prevent unauthorized access to classified information.

(1) Classified documents removed from storage shall be kept under constant surveillance and face down or covered when not in use. Cover sheets shall be Standard Forms 703, 704, and 705 for, respectively, Top Secret, Secret, and Confidential documents. (Use of these Standard Forms is required when existing supplies of similar purpose forms are exhausted or by September 30, 1986, whichever occurs earlier).

(2) Preliminary drafts, carbon sheets, plates, stencils, stenographic notes, worksheets, typewriter ribbons, and other items containing classified information shall be either destroyed immediately after they have served their purpose; or shall be given the same classification and secure handling as the classified information they contain.

(3) Destruction of typewriter ribbons from which classified information can be obtained shall be accomplished in the manner prescribed for classified working papers of the same classification. After the upper and lower sections have been cycled through and overprinted five times in all ribbon or typing positions, fabric ribbons may be treated as unclassified regardless of their classified use thereafter. Carbon and plastic typewriter ribbons and carbon paper that have been used in the production of classified information shall be destroyed in the manner prescribed for working papers of the same classification after initial usage. However, any ribbon in a typewriter that uses technology which enables the ribbon to be struck several times in the same area before it moves to the next position may be treated as unclassified.

(c) *End-of-Day Security Checks.* Heads of activities that process or store classified information shall establish a system of security checks at the close of each working day to ensure that the area is secure; Standard Form 701, "Activity Security Checklist" shall be used to record such checks. An integral part of the security check system shall be the securing of all vaults, secure rooms, and containers used for the storage of classified material; Standard Form 702, "Security Container Check Sheet" shall be used to record such actions. In addition, Standard Forms 701 and 702 shall be annotated to reflect after-hours, weekend, and holiday activity. (Use of these Standard Forms is required when existing supplies of similar purpose forms are exhausted or by September 30, 1986, whichever occurs earlier).

(d) *Emergency Planning.* (1) Plans shall be developed for the protection, removal, or destruction of classified material in case of fire, natural disaster, civil disturbance, terrorist activities, or enemy action. Such plans shall establish detailed procedures and responsibilities for the protection of classified material to ensure that the material does not come into the possession of unauthorized persons. These plans shall include the treatment of classified information located in foreign countries.

(2) These emergency planning procedures do not apply to material related to COMSEC. Planning for the emergency protection including emergency destruction under no-notice conditions of classified COMSEC material shall be developed in accordance with the requirements of NSA KAG I–D.

(3) Emergency plans shall provide for the protection of classified material in a manner that will minimize the risk of injury or loss of life to personnel. In the case of fire or natural disaster, the immediate placement of authorized personnel around the affected area, preinstructed and trained to prevent the removal of classified material by unauthorized personnel, is an acceptable means of protecting classified material and reducing casualty risk. Such plans shall provide for emergency destruction to preclude capture of classified material when determined to be required. This determination shall be based on an overall commonsense evaluation of the following factors:

(i) Level and sensitivity of classified material held by the activity;

(ii) Proximity of land-based commands to hostile or potentially hostile forces or to communist-controlled countries;

(iii) Flight schedules or ship deployments in the proximity of hostile or potentially hostile forces or near communist-controlled countries;

(iv) Size and armament of land-based commands and ships;

(v) Sensitivity of operational assignment; and

(vi) Potential for aggressive action of hostile forces.

(4) When preparing emergency destruction plans, consideration shall be given to the following:

(i) Reduction of the amount of classified material held by a command as the initial step toward planning for emergency destruction;

(ii) Storage of less frequently used classified material at more secure commands in the same geographical area (if available);

(iii) Transfer of as much retained classified material to microforms as possible, thereby reducing the bulk that needs to be evacuated or destroyed;

(iv) Emphasis on the priorities for destruction, designation of personnel responsible for destruction, and the designation of places and methods of destruction. Additionally, if any destruction site or any particular piece of destruction equipment is to be used by more than one activity or entity, the order or priority for use of the site or equipment must be clearly delineated;

(v) Identification of the individual who is authorized to make the final determination when emergency destruction is to begin and the means by which this determination is to be communicated to all subordinate elements maintaining classified information;

(vi) Authorization for the senior individual present in an assigned space containing classified material to deviate from established plans when circumstances warrant; and

(vii) Emphasis on the importance of beginning destruction sufficiently early to preclude loss of material. The effect of premature destruction is considered inconsequential when measured against the possibility of compromise.

(5) The emergency plan shall require that classified material holdings be assigned a priority for emergency evacuation or destruction. Priorities should be based upon the potential effect on national security should such holdings fall into hostile hands, in accordance with the following general guidelines:

(i) *Priority One.* Exceptionally grave damage (Top Secret material);

(ii) *Priority Two.* Serious damage (Secret material); and

(iii) *Priority Three.* Damage (Confidential material).

(6) If, as determined by appropriate threat analysis, Priority One material cannot otherwise be afforded a reasonable degree of protection from hostile elements in a no-notice emergency situation, provisions shall be made for installation of Anticompromise Emergency Destruct (ACED) equipment to ensure timely initiation and positive destruction of such material [a] in

[a] Technological limitations, particularly as to personnel and structural safety, place constraints on the amount of material that can be accommodated in buildings, ships, and aircraft by current ACED systems; therefore, only Priority One material reasonably can be so protected at this time. Nevertheless, after processing Priority One material

Continued

accordance with the following standard: "With due regard for personnel and structural safety, the ACED system shall reach a stage in destruction sequences at which positive destruction is irreversible within 60 minutes at shore installations, 30 minutes in ships, and 3 minutes in aircraft following activation of the ACED system." [b]

(7) An ACED requirement is presumed to exist and provisions shall be made for an ACED system to protect Priority One material in the following environments:

(i) Shore-based activities located in or within 50 miles of potentially hostile countries, or located within or adjacent to countries with unstable governments;

(ii) Reconnaissance aircraft, both manned and unmanned, that operate within JCS-designated reconnaissance reporting areas (see Memorandum by the Secretary, Joint Chiefs of Staff (SM) 701–76, Volume II, "Peacetime Reconnaissance and Certain Sensitive Operations"; [c]

(iii) Naval surface noncombatant vessels operating in hostile areas when not accompanied by a combatant vessel;

(iv) Naval subsurface vessels operating in hostile areas; and

(v) U.S. Navy Special Project ships (Military Sealift Command-operated) operating in hostile areas.

(8) Except in the most extraordinary circumstances, ACED is not applicable to commands and activities located within the United States. Should there be reason to believe that an ACED requirement exists in environments other than in those listed in paragraph (d)(7) of this section, a threat and vulnerability study should be prepared and submitted to the head of the DoD Component concerned or his designee for approval. The threat and vulnerability study should include, at a minimum, the following data, classified if appropriate:

(i) Volume and type of Priority One material held by the activity, that is, paper products, microforms, magnetic tape, and circuit boards.

(ii) A statement certifying that the amount of Priority One material held by the activity has been reduced to the lowest possible level;

(iii) An estimate of the time, beyond the time frames cited above, required to initiate irreversible destruction of Priority One material held by the activity, and the methods by which destruction of that material would be attempted in the absence of an ACED system;

(iv) Size and composition of the activity;

(v) Location of the activity and the degree of control it, or other United States authority, exercises over security; and

(vi) Proximity to potentially hostile forces and potential for aggressive action by such forces.

(9) When a requirement is believed to exist for ACED equipment not in the GSA or DoD inventories, the potential requirement shall be submitted to the DUSD(P) for validation in accordance with subsection V. B. of DoD Directive 3224.3 [19d].

(10) In determining the method of destruction of other than Priority One material, any method specified for routine destruction or any other means that will ensure positive destruction of the material may be used. Ideally, any destruction method should provide for early attainment of a point at which the destruction process is irreversible. Additionally, classified material may be jettisoned at sea to prevent its easy capture. It should be recognized that such disposal may not prevent recovery of the material. Where none of the methods previously mentioned can be employed, the use of other means, such as dousing the classified material with a flammable liquid and igniting it, or putting to use the facility garbage grinders, sewage treatment plants, and boilers should be considered.

(11) Under emergency destruction conditions, destruction equipment may be operated at maximum capacity and without regard to pollution, preventive maintenance, and other constraints that might otherwise be observed.

(12) Commands and activities that are required to maintain an ACED system pursuant to paragraph (d)(7) of this section, shall conduct drills periodically to ensure that responsible personnel are familiar with the emergency plan. Such drills should be used to evaluate the anticipated effectiveness of the plan and the prescribed equipment and should be the basis for improvements in planning and equipment use. Actual destruction should not be initiated during drills.

(e) *Telecommunications Conversations.* Classified information shall not be discussed in telephone conversations except as authorized over approved secure communications circuits, that is, cryptographically protected circuits or protected distribution systems installed in accordance with National COMSEC Instruction 4009.

(f) *Security of Meetings and Conferences.* Security requirements and procedures governing disclosure of classified information at conferences, symposia, conventions, and similar meetings, and those governing the sponsorship and attendance of U.S. and foreign personnel at such meetings, are set forth in DoD Directive 5200.12[20], DoD Instruction 5230.20[21], DoD 5220.22–R, and DoD 5220.22–M.

(g) *Safeguarding of U.S. Classified Information Located in Foreign Countries.* Except for classified information that has been authorized for release to a foreign government or international organization pursuant to DoD Directive 5230.11[22], and is under the security control of such government or organization, the retention of U.S. classified material in foreign countries may be authorized only when that material is necessary to satisfy specific U.S. Government requirements. This includes classified material temporarily transferred into a foreign country via U.S. Government personnel authorized to escort or handcarry such material pursuant to § 159a.59, as applicable. Whether permanently or temporarily retained, the classified materials shall be stored under U.S. Government control as follows:

(1) At a U.S. military installation, or a location where the United States enjoys extraterritorial status, such as an embassy or consulate.

(2) At a U.S. Government activity located in a building used exclusively by U.S. Government tenants, provided the building is under 24-hour control by U.S. Government personnel.

(3) At a U.S. Government activity located in a building not used exclusively by U.S. Government tenants nor under host government control, provided the classified material is stored in security containers approved by the GSA and is placed under 24-hour control by U.S. Government personnel.

(4) At a U.S. Government activity located in a building not used exclusively by U.S. Government tenants but which is under host government control, provided the classified material is stored in GSA-approved security containers which are further secured in

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in an emergency situation involving possible loss to hostile forces, it is imperative that Priority Two material and then Priority Three material be destroyed insofar as is possible by whatever means available.

[b] The time frames indicated above are those for the initiation of irreversible destruction, not necessarily for the completion of such destruction.

[c] SM 701–76 is available on a strict need-to-know basis from the Chief, Documents Division, Joint Secretariat, OJCS.

[19] See footnote 1 to § 159a.3.

[d] Information on ACED systems may be obtained from the Office of the Chief of Naval Operations (OP–09N), Navy Department, Washington, DC 20350.

[20] See footnote 1 to § 159a.3.

[21] See footnote 1 to § 159a.3.

[22] See footnote 1 to § 159a.3.

a locked room or area to which only U.S. personnel have access.

(5) When host government and U.S. personnel are co-located, U.S. classified material that has not been authorized for release to the host government pursuant to DoD Directive 5230.11, shall, to the extent possible, be segregated from releasable classified material to facilitate physical control and prevent inadvertent compromise. However, U.S. classified material that is releasable to the host country need not be subject to the 24-hour U.S. control requirement provided the host government exercises its own control measures over the pertinent areas or containers during non-duty hours.

(6) Foreign nationals shall be escorted while in areas where nonreleasable U.S. classified material is handled or stored. However, when required by operational necessity, foreign nationals may be permitted, during duty hours, unescorted entry to such areas provided the nonreleasable information is properly stored or is under the direct personal supervision and control of cleared U.S. personnel who can prevent unauthorized access.

§ 159a.39 Activity entry and exit inspection program.

(a) *Policy.* (1) Commanders and heads of activities shall establish and maintain an inspection program to deter and detect unauthorized introduction or removal of classified material from DoD owned or leased installations and facilities. This program does not replace existing programs for facility and installation security and law enforcement inspection requirements.

(2) The inspection program shall be implemented in a manner which does not interfere unduly with the performance of assigned missions.

(3) The inspection program shall be implemented in a manner which does not significantly disrupt the ingress and egress of persons who are employees of, or visitors to, defense installations and facilities.

(4) Inspections carried out under this program shall be limited to the extent feasible to areas where classified work is being performed, and cover only persons employed within, or visiting, such areas.

(5) Inspections carried out under this program shall be performed at a sufficient frequency to provide a credible deterrent to those who would be inclined to remove classified materials without authority from the installation or facility in question.

(6) The method and frequency of such inspections at a given installation or facility is at the discretion of the commander or head of the installation or facility, or other designated official. Such inspections shall conform to the procedures set forth in the following:

(i) *Inspection Frequency.* (A) Inspections may be aperiodic, that is, at irregular intervals.

(B) Inspections may be accomplished at one or more designated entry/exit points; they need not be carried out at all entry/exit points at the same time.

(C) Inspections may be done on a random basis using any standard which may be appropriate, for example, every third person; every tenth person; every hundredth person, at the entry/exit point(s) designated.

(D) Inspections at a particular entry/exit point(s) may be limited as appropriate to various periods of time, for example, one week, one day, or one hour.

(E) Inspections shall be conducted at all entry/exit points after normal duty hours, including weekends and holidays, on a continuous basis, if practicable.

(b) *Inspection Procedures and Identification.* (1) Inspections shall be limited to that which is necessary to determine whether classified material is contained in briefcases, shoulder or handbags, luggage, athletic bags, packages, or other similar containers being removed from or taken into the premises. Inspections shall not be done of wallets, change purses, clothing, cosmetic cases, or other objects of an unusually personal nature.

(2) DoD Components shall provide employees who have a legitimate need to remove classified material from the installation or activity with written or printed authorizations to pass through designated entry/exit points. (See § 159a.59(f)) This may include:

(i) The authorization statements prescribed in § 159a.59.

(ii) If authorized in Component instructions, wallet-size cards which describe in general terms the purpose(s) for authorizing the employee to remove classified material from the facility (for example, use at meetings or transmission to authorized recipients).

(3) Inspectors are to ensure that personnel are not removing classified material without authorization. Where inspectors determine that individuals do not appear to have appropriate authorization to remove classified material, they shall request such individual to obtain appropriate authorization before exiting the premises. If, due to the circumstances, this is not feasible, the inspector should attempt to verify by telephone the authority of the individual in question to remove the classified material with the employing office. When such verification cannot be obtained, and if removal cannot be prevented, the inspector shall advise the employing office and appropriate security office as soon as feasible that classified material was removed by the named individual at a particular time and without apparent authorization.

(4) If the employing office determines that classified material was removed by one of its employees without authority, it shall request an investigation of the circumstances of the removal by appropriate investigative authorities. Where such investigation confirms a violation of security procedures, other than espionage or deliberate compromise, for which § 159a.50 applies, appropriate administrative, disciplinary, or legal action shall be taken.

Subpart G—Compromise of Classified Information

§ 159a.41 Policy.

Compromise of classified information presents a threat to the national security. Once a compromise is known to have occurred, the seriousness of damage to U.S. interests must be determined and appropriate measures taken to negate or minimize the adverse effect of such compromise. When possible, action also should be taken to regain custody of the documents or material that were compromised. In all cases, however, appropriate action must be taken to identify the source and reason for the compromise and remedial action taken to ensure further compromises do not occur. The provisions of DoD Instruction 5240.4 [23] and DoD Directive 5210.50 [24] apply to compromises covered by this subpart.

§ 159a.42 Cryptographic and sensitive compartmented information.

(a) The procedures for handling compromises of cryptographic information are set forth in NACSI 4006 and implementing instructions.

(b) The procedures for handling compromises of SCI information are set forth in DoD TS-5105.21-M-2 [25] and DoD C-5105.21-M-1 [26].

§ 159a.43 Responsibility of discoverer.

(a) Any person who has knowledge of the loss or possible compromise of classified information shall immediately report such fact to the security manager of the person's activity (see § 159a.93(e)) or to the commanding officer or head of

[23] See footnote 1 to § 159a.3.
[24] See footnote 1 to § 159a.3.
[25] See footnote 13 to § 159a.33(j).
[26] See footnote 13 to § 159a.33(j).

the activity in the security manager's absence.

(b) Any person who discovers classified information out of proper control shall take custody of such information and safeguard it in an appropriate manner, and shall notify immediately an appropriate security authority.

§ 159a.44 Preliminary inquiry.

The immediate commander, supervisor, security manager, or other authority shall initiate a preliminary inquiry to determine the circumstances surrounding the loss or possible compromise of classified information. The preliminary inquiry shall establish one of the following:

(a) That a loss or compromise of classified information did not occur;

(b) That a loss or compromise of classified information did occur but the compromise reasonably could not be expected to cause damage to the national security. If, in such instances, the official finds no indication of significant security weakness, the report of preliminary inquiry will be sufficient to resolve the incident and, when appropriate, support the administrative sanctions under § 159a.98; or

(c) That the loss or compromise of classified information did occur and that the compromise reasonably could be expected to cause damage to the national security or that the probability of damage to the national security cannot be discounted. Upon this determination, the responsible official shall:

(1) Report the circumstances of the compromise to an appropriate authority as specified in DoD Component instructions;

(2) If the responsible official is the originator, take the action prescribed in § 159a.47; and

(3) If the responsible official is not the originator, notify the originator of the known details of the compromise, including identification of the classified information. If the originator is unknown, notification will be sent to the office specified in DoD Component instructions.

§ 159a.45 Investigation.

If it is determined that further investigation is warranted, such investigation will include the following:

(a) Identification of the source, date, and circumstances of the compromise.

(b) Complete description and classification of each item of classified information compromised;

(c) A thorough search for the classified information;

(d) Identification of any person or procedure responsible for the compromise. Any person so identified shall be apprised of the nature and circumstances of the compromise and be provided an opportunity to reply to the violation charged. If such person does not choose to make a statement, this fact shall be included in the report of investigation;

(e) An analysis and statement of the known or probable damage to the national security that has resulted or may result (See § 159a.15(k)), and the cause of the loss or compromise; or a statement that compromise did not occur or that there is minimal risk of damage to the national security;

(f) An assessment of the possible advantage to foreign powers resulting from the compromise; and

(g) A compilation of the data in paragraphs (a) through (f) of this section, in a report to the authority ordering the investigation to include an assessment of appropriate corrective, administrative, disciplinary, or legal actions. (Also see § 159a.100).

§ 159a.46 Responsibility of authority ordering investigation.

(a) The report of investigation shall be reviewed to ensure compliance with this part and instructions issued by DoD Components.

(b) The recommendations contained in the report of investigation shall be reviewed to determine sufficiency of remedial, administrative, disciplinary, or legal action proposed and, if adequate, the report of investigation shall be forwarded with recommendations through supervisory channels (See § 159a.98 and § 159a.99).

(c) Whenever an action is contemplated against any person believed responsible for the compromise of classified information, damage assessments shall be coordinated with the legal counsel of the DoD Component where the individual responsible is assigned or employed. Whenever a violation of criminal law appears to have occurred and a criminal prosecution is contemplated, the DoD Component responsible for the damage assessment shall apprise the General Counsel, Department of Defense. See § 159a.101.

§ 159a.47 Responsibility of originator.

The originator or an official higher in the originator's supervisory chain shall, upon receipt of notification of loss or probable compromise of classified information, take action as prescribed in § 159a.15(k).

§ 159a.48 System of control of damage assessments.

Each DoD Component shall establish a system of controls and internal procedures to ensure that damage assessments are conducted when required and that records are maintained in a manner that facilitates their retrieval and use within the Component.

§ 159a.49 Compromises involving more than one agency.

(a) Whenever a compromise involves the classified information or interests of more than one DoD Component or other agency, each such activity undertaking a damage assessment shall advise the others of the circumstances and findings that affect their information and interests. Whenever a damage assessment incorporating the product of two or more DoD Components or other agencies is needed, the affected activities shall agree upon the assignment of responsibility for the assessment.

(b) Whenever a compromise of U.S. classified information is the result of actions taken by foreign nationals, by foreign government officials, or by U.S. nationals employed by international organizations, the activity performing the damage assessment shall ensure, through appropriate intergovernmental liaison channels, that information pertinent to the assessment is obtained. Whenever more than one activity is responsible for the assessment, those activities shall coordinate the request prior to transmittal through appropriate channels.

§ 159a.50 Espionage and deliberate compromise.

Cases of espionage and deliberate unauthorized disclosure of classified information to the public shall be reported in accordance with DoD Instruction 5240.4 and DoD Directive 5210.50 and implementing issuances.

§ 159a.51 Unauthorized absentees.

When an individual who has had access to classified information is on unauthorized absence, an inquiry as appropriate under the circumstances, to include consideration of the length of absence and the degree of sensitivity of the classified information involved, shall be conducted to detect if there are any indications of activities, behavior, or associations that may be inimical to the interest of national security. When such indications are detected, a report shall be made to the DoD Component counterintelligence organization.

Subpart H—Access, Dissemination, and Accountability

§ 159a.53 Access.

(a) *Policy.* (1) Except as otherwise provided for in paragraph (c) of this section, no person may have access to classified information unless that person has been determined to be trustworthy and unless access is essential to the accomplishment of lawful and authorized Government purposes, that is, the person has the appropriate security clearance and a need-to-know. Further, cleared personnel may not have access until they have been given an initial security briefing (see § 159a.70). Procedures shall be established by the head of each DoD Component to prevent unnecessary access to classified information. There shall be a demonstrable need for access to classified information before a request for a personnel security clearance can be initiated. The number of people cleared and granted access to classified information shall be maintained at the minimum number that is consistent with operational requirements and needs. No one has a right to have access to classified information solely by virtue of rank or position. The final responsibility for determining whether an individual's official duties require possession of or access to any element or item of classified information, and whether the individual has been granted the appropriate security clearance by proper authority, rests upon the individual who has authorized possession, knowledge, or control of the information and not upon the prospective recipient. These principles are equally applicable if the prospective recipient is a DoD Component, including commands and activities, other Federal agencies, DoD contractors, foreign governments, and others.

(2) Because of the extreme importance to the national security of Top Secret information and information controlled within approved Special Access Programs, employees shall not be permitted to work alone in areas where such information is in use or stored and accessible by those employees. This general policy is an extra safeguarding measure for the nation's most vital classified information and it is not intended to cast doubt on the integrity of DoD employees. The policy does not apply in those situations where one employee with access is left alone for brief periods during normal duty hours. When compelling operational requirements indicate the need, DoD Component heads may waive this requirement in specific, limited cases. This waiver authority may be delegated to the senior official (§ 159a.93 (b) and (c)) of the DoD Component who may redelegate the authority but only if so authorized by the head of the DoD Component. (Any waiver should include provisions for periodically ensuring the health and welfare of individuals left alone in vaults or secure areas).

(b) *Access by Persons Outside the Executive Branch.* Classified information may be made available to individuals or agencies outside the Executive Branch provided that such information is necessary for performance of a function from which the Government will derive a benefit or advantage, and that such release is not prohibited by the originating department or agency. Heads of DoD Components shall designate appropriate officials to determine, before the release of classified information, the propriety of such action in the interest of national security and assurance of the recipient's trustworthiness and need-to-know.

(1) *Congress.* Access to classified information or material by Congress, its committees, members, and staff representatives shall be in accordance with DoD Directive 5400.4 [27]. Any DoD employee testifying before a congressional committee in executive session in relation to a classified matter shall obtain the assurance of the committee that individuals present have a security clearance commensurate with the highest classification of the information that may be discussed. Members of Congress, by virtue of their elected positions, are not investigated or cleared by the Department of Defense.

(2) *Government Printing Office (GPO).* Documents and material of all classifications may be processed by the GPO, which protects the information in accordance with the DoD/GPO Security Agreement of February 20, 1981.

(3) *Representatives of the General Accounting Office (GAO).* Representatives of the GAO may be granted access to classified information originated by and in possession of the Department of Defense when such information is relevant to the performance of the statutory responsibilities of that office, as set forth in DoD Directive 7650.1 [28]. Officials of the GAO, as designated in Appendix B to this part, are authorized to certify security clearances, and the basis therefor. Certifications will be made by these officials pursuant to arrangements with the DoD Component concerned. Personal recognition or presentation of official GAO credential cards are acceptable for identification purposes.

(4) *Industrial, Educational, and Commercial Entities.* (i) Bidders, contractors, grantees, educational, scientific or industrial organizations may have access to classified information only when such access is essential to a function that is necessary in the interest of the national security, and the recipients are cleared in accordance with DoD 5220.22–R.

(ii) Contractor employees whose duties do not require access to classified information are not eligible for personnel security clearance and cannot be investigated under the DISP. In exceptional situations, when a military command is vulnerable to sabotage and its mission is of critical importance to national security, National Agency Checks may be conducted on such individuals with the approval of the DUSD(P).

(5) *Historical Researchers.* Persons outside the Executive Branch who are engaged in historical research projects may be authorized access to classified information provided that an authorized official within the DoD Component with classification jurisdiction over the information:

(i) Makes a written determination that such access is clearly consistent with the interests of national security in view of the intended use of the material to which access is granted by certifying that the requester has been found to be trustworthy pursuant to paragraph (a)(1) of this section;

(ii) Limits such access to specific categories of information over which that DoD Component has classification jurisdiction and to any other category of information for which the researcher obtains the written consent of a DoD Component or non-DoD department or agency that has classification jurisdiction over information contained in or revealed by documents within the scope of the proposed historical research;

(iii) Maintains custody of the classified material at a DoD installation or activity or authorizes access to documents in the custody of the NARA;

(iv) Obtains the researcher's agreement to safeguard the information and to submit any notes and manuscript for review by all DoD Components or non-DoD departments or agencies with classification jurisdiction for a determination that no classified information is contained therein by execution of a statement entitled, "Conditions Governing Access to Official Records for Historical Research Purposes"; and

[27] See footnote 1 to § 159a.3.

[28] See footnote 1 to § 159a.3.

(v) Issues an authorization for access valid for not more than 2 years from the date of issuance that may be renewed under regulations of the issuing DoD Component.

(6) *Former Presidential Appointees.* Persons who previously occupied policy making positions to which they were appointed by the President may not remove classified information upon departure from office as all such material must remain under the security control of the U.S. Government. Such persons may be authorized access to classified information that they originated, received, reviewed, signed, or that was addressed to them while serving as such an appointee, provided that an authorized official within the DoD Component with classification jurisdiction for such information:

(i) Makes a written determination that such access is clearly consistent with the interests of national security in view of the intended use of the material to which access is granted and by certifying that the requester has been found to be trustworthy pursuant to paragraph (a)(1) of this section;

(ii) Limits such access to specific categories of information over which that DoD Component has classification jurisdiction and to any other category of information for which the former appointee obtains the written consent of a DoD Component or non-DoD department or agency that has classification jurisdiction over information contained in or revealed by documents with the scope of the proposed access;

(iii) Retains custody of the classified material at a DoD installation or activity or authorizes access to documents in the custody of the National Archives and Records Service; and

(iv) Obtains the former presidential appointee's agreement to safeguard the information and to submit any notes and manuscript for review by all DoD Components or non-DoD departments or agencies with classification jurisdiction for a determination that no classified information is contained therein.

(7) *Judicial Proceedings.* DoD Directive 5405.2 [29] governs the release of classified information in litigation.

(c) *Access by Foreign Nationals, Foreign Governments, and International Organizations.* (1) Classified information may be released to foreign nationals, foreign governments, and international organizations only when authorized under the provisions of the National Disclosure Policy and DoD Directive 5230.11; and

(2) Access to COMSEC information by foreign persons and activities shall be in accordance with policy issuances of the National Telecommunications and Information Systems Security Committee (NTISSC).

(d) *Other Situations.* When necessary in the interests of national security, heads of DoD Components, or their single designee, may authorize access by persons outside the federal government, other than those enumerated in paragraphs (b) and (c) of this section, to classified information upon determining that the recipient is trustworthy for the purpose of accomplishing a national security objective; and that the recipient can and will safeguard the information from unauthorized disclosure.

(e) *Access Required by Other Executive Branch Investigative and Law Enforcement Agents.* (1) Normally, investigative agents of other departments or agencies may obtain access to DoD information through established liaison or investigative channels.

(2) When the urgency or delicacy of a Federal Bureau of Investigation (FBI), Drug Enforcement Administration (DEA), or Secret Service investigation precludes use of established liaison or investigative channels, FBI, DEA, or Secret Service agents may obtain access to DoD information as required. However, this information shall be protected as required by its classification. Before any public release of the information so obtained the approval of the head of the activity or higher authority shall be obtained.

(f) *Access by Visitors.* Procedures shall be established to control access to classified information by visitors. (DoD Instruction 5230.20 provides further guidance regarding foreign visitors.)

(1) Except when a continuing, frequent working relationship is established, through which current security clearance and need-to-know are determined, DoD personnel visiting other activities of the Department of Defense, its contractors, and other agencies shall provide advance notification of the pending visit that establishes the visitor's security clearance and the purpose of the visit. Visit requests shall be signed by an official other than the visitor who is in a position to verify the visitor's security clearance.

(2) Visit requests normally should include the following:

(i) Full name, date and place of birth, social security number, and rank or grade of visitor;

(ii) Security clearance of the visitor;

(iii) Employing activity of the visitor;

(iv) Name and address of activity to be visited;

(v) Date and duration of proposed visit;

(iv) Purpose of visit in sufficient detail to establish need-to-know; and

(vii) Names of persons to be contacted.

(3) Visit requests may remain valid for not more than 1 year.

§ 159a.54 Dissemination.

(a) *Policy.* DoD Components shall establish procedures consistent with this Regulation for the dissemination of classified material. The originating official or activity may prescribe specific restrictions on dissemination of classified information when necessary. (See § 159a.35(f). Particular emphasis shall be placed on traditional need-to-know measures to aid in the strict control of classified information.)

(b) *Restraints on Special Access Requirements.* Special requirements with respect to access, distribution, and protection of classified information shall require prior approval in accordance with Subpart M of this part.

(c) *Information Originating in a Non-DoD Department or Agency.* Except under rules established by the Secretary of Defense, or as provided by Section 102 of the National Security Act, classified information originating in a department or agency other than Department of Defense shall not be disseminated outside the Department of Defense without the consent of the originating department or agency.

(d) *Foreign Intelligence Information.* Dissemination of foreign intelligence information shall be in accordance with the provisions of DoD Instruction 5230.22 and DoD Directive C-5230.23 [30].

(e) *Restricted Data and Formerly Restricted Data.* Information bearing the warning notices prescribed in § 159a.35 (b) and (c) shall not be disseminated outside authorized channels without the consent of the originator. Access to and dissemination of Restricted Data by DoD personnel shall be subject to DoD Directive 5210.2.

(f) *NATO Information.* Classified information originated by NATO shall be safeguarded in accordance with DoD Directive 5100.55.

(g) *COMSEC Information.* COMSEC information shall be disseminated in accordance with NACSI 4005 and implementing instructions.

(h) *Dissemination of Top Secret Information.* (1) Top Secret information, originated within the Department of Defense, may not be disseminated

[29] See footnote 1 to § 159a.3.

[30] See footnote 13 to § 159a.33(j).

outside the Department of Defense without the consent of the originating DoD Component, or higher authority.

(2) Top Secret information, whenever segregable from classified portions bearing lower classifications, shall be distributed separately.

(3) Standing distribution requirements for Top Secret information and materials, such as distribution lists, shall be reviewed at least annually to verify the recipients' need-to-know.

(i) *Dissemination of Secret and Confidential Information.* (1) Secret and Confidential information, originated within the Department of Defense, may be disseminated within the Executive Branch, unless prohibited by the originator. (See § 159a.35(f)).

(2) Standing distribution requirements for Secret and Confidential information and materials, such as distribution lists, shall be reviewed at least annually to verify the recipients' need-to-know.

(j) *Code Words, Nicknames, and Exercise Terms.* The use of code words, nicknames, and exercise terms is subject to the provisions of Subpart M and Appendix C.

(k) *Scientific and Technical Meetings.* Use of classified information in scientific and technical meetings is subject to the provisions of DoD Directive 5200.12.

(l) *Limited Dissemination (LIMDIS).* This section establishes limits on measures for the protection of information beyond those involving access to classified information per se, but not so stringent as to require the establishment of a Special Access Program. It prohibits use of terminology indicating enhancements to need-to-know, such as Special Need-to-Know (SNTK), MUST KNOW, Controlled Need-to-Know (CNTK), or other similar security upgrade designations and associated unique security requirements such as specialized nondisclosure statements. Limited dissemination controls are the only security enhancement short of a Special Access Program which may be employed for control over specific information for specified periods of time. In this context, these procedures may be initiated and continued on a showing that additional access controls are required in order to assure the security of the designated information. The decision to apply these procedures shall be made at the original classification authority level of command or supervision in accordance with the implementing information security instructions promulgated by the DoD Component. Except by agreement, such requirements shall not be imposed outside of the approving DoD Component. LIMDIS protective measures are restricted to one or more of the following:

(1) Decentralized maintenance of disclosure listings, briefings concerning access limitations, and physical security restrictions limited to requirements such as placing the material in sealed envelopes within approved storage containers to avoid inadvertent disclosure and the commingling with other files;

(2) Using unclassified nicknames (no code words may be assigned to LIMDIS information);

(3) Marking the material as LIMDIS along with the assigned nickname;

(4) Marking inner envelopes containing designated LIMDIS information with the notation: "To be Opened Only By Personnel Authorized Access";

(5) Requiring electronically transmitted messages containing designated information to be marked with the uniform caveat LIMDIS; and

(6) Prescribing unique oversight procedures to be accomplished by Component professional security personnel (industrial security inspections will be conducted in the normal manner by the Defense Investigative Service).

§ 159a.55 Accountability and control.

(a) *Top Secret Information.* DoD activities shall establish the following procedures:

(1) *Control Officers.* Top Secret Control Officers (TSCOs) and alternates shall be designated within offices to be responsible for receiving, dispatching, and maintaining accountability registers of Top Secret documents. Such individuals shall be selected on the basis of experience and reliability, and shall have Top Secret security clearances. TSCOs need not be appointed in those instances where there is no likelihood of processing Top Secret documentation.

(2) *Accountability.*—(i) *Top Secret Registers.* Top Secret accountability registers shall be maintained by each office originating or receiving Top Secret information. Such registers shall be retained for 2 years and shall, as a minimum, reflect the following:

(A) Sufficient information to identify adequately the Top Secret document or material to include the title or appropriate short title, date of the document, and identification of the originator;

(B) The date the document or material was received;

(C) The number of copies received or later reproduced; and

(D) The disposition of the Top Secret document or material and all copies of such documents or material.

(ii) *Serialization and Copy Numbering.* Top Secret documents and material shall be numbered serially. In addition, each Top Secret document shall be marked to indicate its copy number, for example, copy –1– of –2– copies.

(iii) *Disclosure Records.* Each Top Secret document or item of material shall have appended to it a Top Secret disclosure record. The name and title of all individuals, including stenographic and clerical personnel to whom information in such documents and materials has been disclosed, and the date of such disclosure, shall be recorded thereon. Disclosures to individuals who may have had access to containers in which Top Secret information is stored, or who regularly handle a large volume of such information need not be so recorded. Such individuals, when identified on a roster, are deemed to have had access to such information. Disclosure records shall be retained for 2 years after the documents or materials are transferred, downgraded, or destroyed.

(3) *Inventories.* All Top Secret documents and material shall be inventoried at least once annually. The inventory shall reconcile the Top Secret accountability register with the documents or material on hand. At such time, each document or material shall be examined for completeness. DoD Component senior officials (§ 159a.93 (b) and (c)) may authorize the annual inventory of Top Secret documents and material in repositories, libraries, or activities that store large volumes of Top Secret documents or material to be limited to documents and material to which access has been granted within the past year, and 10 percent of the remaining inventory. If a storage system contains large volumes of information and security measures are adequate to prevent access by unauthorized persons, a request for waiver of the annual inventory requirement accompanied by full justification may be submitted to the DUSD(P).

(4) *Retention.* Top Secret information shall be retained only to the extent necessary to satisfy current requirements. Custodians shall destroy nonrecord copies of Top Secret documents when no longer needed. Record copies of documents that cannot be destroyed shall be reevaluated and, when appropriate, downgraded, declassified, or retired to designated records centers.

(5) *Receipts.* Top Secret documents and material will be accounted for by a continuous chain of receipts. Receipts shall be maintained for 2 years.

(b) *Secret Information.* Administrative procedures shall be established by each DoD Component for controlling Secret information and material originated or received by an activity; distributed or routed to a sub-element of such activity; and disposed of by the activity by transfer of custody or destruction. The control system for Secret information must be determined by a practical balance of security and operating efficiency and must meet the following minimum requirements:

(1) It must provide a means to ensure that Secret material sent outside a major subordinate element (the activity) of the DoD Component concerned has been delivered to the intended recipient. Such delivery may be presumed where the material is sent electronically over secure voice or data circuits. Ensuring physical delivery may be accomplished by use of a receipt as provided in § 159.58(c)(2) or through hand-to-hand transfer when the receiving party acknowledges responsibility for the Secret material.

(2) It must provide a record of receipt and dispatch of Secret material by each major subordinate element. The dispatch record requirement may be satisfied when the distribution of Secret material is evident from addresses or distribution lists for classified documentation. Records of receipt and dispatch are required regardless of the means used to ensure delivery of the material (see paragraph (b)(1) of this section).

(3) Records of receipt and dispatch for Secret material shall be retained for a minimum of 2 years.

(c) *Confidential Information.* Administrative controls shall be established to protect Confidential information received, originated, transmitted, or stored by an activity.

(d) *Receipt of Classified Material.* Procedures shall be developed within DoD activities to protect incoming mail, bulk shipments, and items delivered by messenger until a determination is made whether classified information is contained therein. Screening points shall be established to limit access to classified information to cleared personnel.

(e) *Working Papers.* (1) Working papers are documents and material accumulated or created in the preparation of finished documents and material. Working papers containing classified information shall be:

(i) Dated when created;

(ii) Marked with the highest classification of any information contained therein;

(iii) Protected in accordance with the assigned classification;

(iv) Destroyed when no longer needed; and

(v) Accounted for, controlled, and marked in the manner prescribed for a finished document of the same classification when:

(A) Released by the originator outside the activity or transmitted electrically or through message center channels within the activity;

(B) Retained more than 90 days from date of origin;

(C) Filed permanently; or

(D) Top Secret information is contained therein.

(2) Heads of DoD Components, or their single designees, may approve waivers of accountability, control, and marking requirements for working papers containing Top Secret information for activities within their Components on a case-by-case basis provided a determination is made that:

(i) The conditions set forth in paragraph (e)(1)(v) (A), (B), or (C) of this section, will remain in effect;

(ii) The activity seeking a waiver routinely handles large volumes of Top Secret working papers and compliance with prescribed accountability, control, and marking requirements would have an adverse affect on the activity's mission or operations; and

(iii) Access to areas where Top Secret working papers are handled is restricted to personnel who have an appropriate level of clearance, and other safeguarding measures are adequate to preclude the possibility of unauthorized disclosure.

(3) In all cases in which a waiver is granted under paragraph (e)(2) of this section, the DUSD(P) shall be notified.

(f) *Restraint on Reproduction.* Except for the controlled initial distribution of information processed or received electrically or as provided by § 159a.2(f) and § 159a.29(c), portions of documents and materials that contain Top Secret information shall not be reproduced without the consent of the originator or higher authority. Any stated prohibition against reproduction shall be observed strictly. (See § 159a.35(f)) To the extent possible, DoD Components shall establish classified reproduction facilities where only designated personnel can reproduce classified materials and institute key control systems for reproduction areas. Also, when possible, two people shall be involved in the reproduction process to help assure positive control and safeguarding of all copies. The following additional measures apply to reproduction equipment and to the reproduction of classified information:

(1) Copying of documents containing classified information shall be minimized;

(2) Officials authorized to approve the reproduction of Top Secret and Secret information shall be designated by position title and shall review the need for reproduction of classified documents and material with a view toward minimizing reproduction.

(3) Specific reproduction equipment shall be designated for the reproduction of classified information. Rules for reproduction of classified information shall be posted on or near the designated equipment;

(4) Notices prohibiting reproduction of classified information shall be posted on equipment used only for the reproduction of unclassified information;

(5) DoD Components shall ensure that equipment used for reproduction of classified information does not leave latent images in the equipment or on other material;

(6) All copies of classified documents reproduced for any purpose including those incorporated in a working paper are subject to the same controls prescribed for the document from which the reproduction is made; and

(7) Records shall be maintained for 2 years to show the number and distribution of reproduced copies of all Top Secret documents, of all classified documents covered by special access programs distributed outside the originating agency, and of all Secret and Confidential documents that are marked with special dissemination and reproduction limitations.

(See § 159a.35(f))

Subpart I—Transmission

§ 159a.57 Methods of transmission or transportation.

(a) *Policy.* Classified information may be transmitted or transported only as specified in this subpart.

(b) *Top Secret Information.* Transmission of Top Secret information shall be effected only by:

(1) The Armed Forces Courier Service (ARFCOS);

(2) Authorized DoD Component Courier Services,

(3) If appropriate, the Department of State Courier System;

(4) Cleared and designated U.S. military personnel and Government civilian employees traveling on a conveyance owned, controlled, or

chartered by the U.S. Government or DoD contractors;

(5) Cleared and designated U.S. Military personnel and government civilian employees by surface transportation;

(6) Cleared and designated U.S. Military personnel and government civilian employees on scheduled commercial passenger aircraft within and between the United States, its Territories, and Canada, when approved in accordance with § 159a.59(d)(1).

(7) Cleared and designated U.S. Military personnel and government civilian employees on scheduled commercial passenger aircraft on flights outside the United States, its territories, and Canada, when approved in accordance with § 159a.59(d)(2).

(8) Cleared and designated DoD contractor employees within and between the United States and its Territories provided that the transmission has been authorized in writing by the appropriate contracting officer or his designated representative, and the designated employees have been briefed on their responsibilities as couriers or escorts for the protection of Top Secret material. Complete guidance for Top Secret transmission is specified in DoD 5220.22–R and DoD 5220.22–M.

(9) A cryptographic system authorized by the Director, NSA, or via a protected distribution system designed and installed to meet the standards included in the National COMSEC and Emanations Security (EMSEC) Issuance System.

(c) *Secret Information.* Transmission of Secret information may be effected by:

(1) Any of the means approved for the transmission of Top Secret information except that Secret information may be introduced into the ARFCOS only when the control of such information cannot be otherwise maintained in U.S. custody. This restriction does not apply to SCI and COMSEC information;

(2) Appropriately cleared contractor employees within and between the United States and its Territories provided that:

(i) The designated employees have been briefed in their responsibilities as couriers or escorts for protecting Secret information;

(ii) The classified information remains under the constant custody and protection of the contractor personnel at all times; and

(iii) The transmission otherwise meets the requirements specified in DoD 5220.22–R and DoD 5220.22–M. In other areas, appropriately cleared DoD contractor employees may transmit classified material only as prescribed by DoD 5220.22–R and DoD 5220.22–M

(3) U.S. Postal Service registered mail within and between the United States and its Territories;

(4) U.S. Postal Service registered mail through Army, Navy, or Air Force Postal Service facilities outside the United States and its Territories, provided that the information does not at any time pass out of U.S. citizen control and does not pass through a foreign postal system or any foreign inspection;

(5) U.S. Postal Service and Canadian registered mail with registered mail receipt between U.S. Government and Canadian Government installations in the United States and Canada;

(6) Carriers authorized to transport Secret information by way of a Protective Security Service (PSS) under the DoD Industrial Security Program. This method is authorized only within the U.S. boundaries and only when the size, bulk, weight, and nature of the shipment, or escort considerations make the use of other methods impractical. Routings for these shipments will be obtained from the Military Traffic Management Command (MTMC);

(7) The following carriers under appropriate escort: government and government contract vehicles including aircraft, ships of the U.S. Navy, civil service-operated U.S. Naval ships, and ships of U.S. registry. Appropriately cleared operators of vehicles, officers of ships or pilots of aircraft who are U.S. citizens may be designated as escorts provided the control of the carrier is maintained on a 24-hour basis. The escort shall protect the shipment at all times, through personal observation or authorized storage to prevent inspection, tampering, pilferage, or unauthorized access. However, observation of the shipment is not required during the period it is stored in an aircraft or ship in connection with flight or sea transit, provided the shipment is loaded into a compartment that is not accessible to any unauthorized persons or in a specialized secure, safe-like container that is:

(i) Constructed of solid building material that provides a substantial resistance to forced entry;

(ii) Constructed in a manner that precludes surreptitious entry through disassembly or other means, and that attempts at surreptitious entry would be readily discernible through physical evidence of tampering; and

(iii) Secured by a numbered cable seal lock affixed to a substantial metal hasp in a manner that precludes surreptitious removal and provides substantial resistance to forced entry.

(8) Use of specialized containers aboard aircraft requires that:

(i) Appropriately cleared personnel maintain observation of the material as it is being loaded aboard the aircraft and that observation of the aircraft continues until it is airborne;

(ii) Observation by appropriately cleared personnel is maintained at the destination as the material is being off-loaded and at any intermediate stops. Observation will be continuous until custody of the material is assumed by appropriately cleared personnel.

(c) *Confidential Information.* Transmission of Confidential information may be effected by:

(1) Means approved for the transmission of Secret information. However, U.S. Postal Service registered mail shall be used for Confidential only as indicated in paragraph (c)(2) of this section;

(2) U.S. Postal Service registered mail for:

(i) Confidential information of NATO;

(ii) Other Confidential material to and from FPO or APO addressees located outside the United States and its Territories;

(iii) Other addressees when the originator is uncertain that their location is within U.S. boundaries. Use of return postal receipts on a case-by-case basis is authorized.

(3) U.S. Postal Service first class mail between DoD Component locations anywhere in the United States and its Territories. However, the outer envelope or wrappers of such Confidential material shall be endorsed "POSTMASTER: Address Correction Requested/Do Not Forward." Certified or, if appropriate, registered mail shall be used for material directed to DoD contractors and to non-DoD agencies of the Executive Branch. U.S. Postal Service Express Mail Service may be used between DoD Component locations, between DoD contractors, and between DoD Components and DoD contractors.

(4) Within U.S. boundaries, commercial carriers that provide a Constant Surveillance Service (CSS). Information concerning commercial carriers that provide CSS may be obtained from the MTMC.

(5) In the custody of commanders or masters of ships of U.S. registry who are U.S. citizens. Confidential information shipped on ships of U.S. registry may not pass out of U.S. Government control. The commanders or masters must give and receive classified information receipts and agree to:

(i) Deny access to the Confidential material by unauthorized persons,

including customs inspections, with the understanding that Confidential cargo that would be subject to customs inspection will not be unloaded; and

(ii) Maintain control of the cargo until a receipt is obtained from an authorized representative of the consignee.

(6) Such alternative or additional methods of transmission as the head of any DoD Component may establish by rule or regulation, provided those methods afford at least an equal degree of security.

(e) *Transmission of Classified Material to Foreign Governments.* After a determination by designated officials pursuant to DoD Directive 5230.11 that classified information or material may be released to a foreign government, the material shall be transferred between authorized representatives of each government in compliance with the provisions of this subpart. To assure compliance, each contract, agreement, or other arrangement that involves the release of classified material to foreign entities shall either contain transmission instructions or require that a separate transportation plan be approved by the appropriate DoD security and transportation officials prior to release of the material. (See DoD TS-5105.21-M-3 [31] for guidance regarding SCI.)

(1) Classified material to be released directly to a foreign government representative shall be delivered or transmitted only to a person who has been designated in writing by the recipient government as its officer, agent, or employee (hereafter referred to as the designated representative). Foreign governments may designate a freight forwarder as their agent. This written designation shall contain assurances that such person has a security clearance at the appropriate level and that the person will assume full security responsibility for the material on behalf of the foreign government. The recipient will be required to execute a receipt for the material, regardless of the level of classification.

(2) Classified material that is suitable for transfer by courier or postal service, and which cannot be transferred directly to a foreign government's designated representative as specified in paragraph (e)(1) of this section, shall be transmitted by one of the methods specified in paragraph (b), (c), or (d) of this section, for the designated classification level to:

(i) An embassy, consulate, or other official agency of the recipient government having extraterritorial status in the United States, or to

(ii) A U.S. Embassy or a U.S. military organization in the recipient country or in a third-party country, if applicable, for delivery to a designated representative of the intended recipient government. In either case, the assurance in paragraph (e)(1) of this section, and a receipt, must be obtained.

(3) The shipment of classified material as freight via truck, rail, aircraft, or ship shall be in compliance with the following:

(i) *Shipment Resulting from Foreign Military Sales (FMS).* DoD officials authorized to approve a FMS transaction that involves the delivery of U.S. classified material to a foreign purchaser shall, at the outset of negotiation or consideration of proposal, consult with DoD transportation authorities (Military Traffic Management Command, Military Sealift Command, Military Airlift Command, or other, as appropriate) to determine whether secure shipment from the CONUS point of origin to the ultimate foreign destination is feasible. Normally, the United States will use the Defense Transportation System (DTS) to deliver classified material to the recipient government. If, in the course of FMS case processing, the foreign purchaser proposes to take delivery and custody of the classified material in the United States and use it own facilities and transportation for onward shipment to its territory, the foreign purchaser or its designated representative shall be required to submit a transportation plan for DoD review and approval. This plan, as a minimum, shall specify the storage facilities, delivery and transfer points, carriers, couriers or escorts, and methods of handling to be used from the CONUS point of origin to the final destination and return shipment when applicable. (See Appendix E to this part) Security officials of the DoD Component that initiates the FMS transaction shall evaluate the transportation plan to determine whether the plan adequately ensures protection of the highest level of classified material involved. Unless the DoD Component initiating the FMS transaction approves the transportation plan as submitted, or it is modified to meet U.S. security standards, shipment by other than DTS shall not be permitted. Transmission instructions or the requirement for an approved transportation plan shall be incorporated into the security requirements of the United States Department of Defense Offer and Acceptance (DD Form 1513).

(ii) *Shipments Resulting from Direct Commercial Sales.* Classified shipments resulting from direct commercial sales must comply with the same security standards that apply to FMS shipments. Defense contractors, therefore, will consult, as appropriate, with the purchasing government, the DIS Regional Security Office, and the owning Military Department prior to consummation of a commercial contract that will result in the shipment of classified material to obtain approval of the transportation plan.

(iii) *Delivery within the United States, Its Territories, or Possessions.* Delivery of classified material to a foreign government at a point within the United States, its territories, or its possessions, shall be made only to a person identified in writing by the recipient government as its designated representative as specified in paragraph (e)(1) of this section. The only authorized delivery points are:

(A) An embassy, consulate, or other official agency under the control of the recipient government.

(B) Point of origin. When a designated representative of the recipient government accepts delivery of classified U.S. material at the point of origin (for example, a manufacturing facility or depot), the DoD official who transfers custody shall obtain a receipt for the classified material and assure that the recipient is cognizant or secure means of onward movement of the classified material to its final destination, consistent with the approved transportation plan.

(C) Military or commercial ports of embarkation (POE) that are recognized points of departure from the United States, its territories, or possessions, for onloading aboard a ship, aircraft, or other carrier authorized under paragraph (e)(3)(v) of this section. In these cases, the transportation plan shall provide for U.S.-controlled secure shipment to the CONUS transshipment point and the identification of a secure storage facility, government or commercial, at or in proximity to the POE. A DoD official authorized to transfer custody is to supervise or observe the onloading of FMS material being transported via the DTS and other onloading wherein physical and security custody of the material has yet to be transferred formally to the foreign recipient. In the event that transfer of physical and security custody cannot be accomplished promptly, the DoD official shall ensure that the classified material is either returned to a secure storage facility of the U.S. shipper (government or contractor); or segregated and placed under constant surveillance of a duly cleared U.S. security force at the POE; or

[31] See footnote 13 to § 159a.33(j)

held in the secure storage facility (government or commercial) designated in the transportation plan.

(D) Freight forwarder facility that is identified by the recipient government as its designated representative and that is cleared in accordance with paragraph (e)(3)(vi) of this section, to the level of the classified material to be received. In these cases, a person identified as a designated representative must be present to accept delivery of the classified material and receipt for it, to include full acceptance of security responsibility.

(iv) *Delivery Outside the United States, Its Territories, or Possessions.*— (A) *Delivery within the recipient country.* Classified U.S. material to be delivered to a foreign government within the recipient country shall be delivered on arrival in the recipient country to a U.S. Government representative who shall arrange for its transfer to a designated representative of the recipient government. If the shipment is escorted by a U.S. Government official authorized to accomplish the transfer of custody, the material may be delivered directly to the recipient government's designated representative upon arrival.

(B) *Delivery Within a Third Country.* Classified material to be delivered to a foreign government representative within a third country shall be delivered to an agency or installation of the United States, or of the recipient government, that has extraterritorial status or otherwise is exempt from the jurisdiction of the third country. Unless the material is accompanied by a U.S. Government official authorized to accomplish the transfer of custody, a U.S. Government official shall be designated locally to receive the shipment upon arrival and be vested with authority to effect delivery to the intended recipient government's designated representative.

(v) *Overseas Carriers.* Overseas shipments of U.S. classified material shall be made only via ships, aircraft, or other carriers that are:

(A) Owned or chartered by the U.S. Government or under U.S. registry,

(B) Owned or chartered by or under the registry of the recipient government, or

(C) Otherwise expressly authorized by the head of the DoD Component having classification jurisdiction over the material involved. Overseas shipments of classified material shall be escorted, prepared for shipment, packaged, and stored onboard as prescribed elsewhere in this subpart and in DoD 5220.22-R and DoD 5220.22-M.

(vi) *Freight Forwarders.* Only freight forwarders that have been granted an appropriate security clearance by the Department of Defense or the recipient government are eligible to receive, process, and store U.S. classified material authorized for release to foreign governments. However, a freight forwarder that does not have access to or custody of the classified material need not be cleared.

(f) *Consignor-Consignee Responsibility for Shipment of Bulky Material.* The consignor of a bulk shipment shall:

(1) Normally, select a carrier that will provide a single line service from the point of origin to destination, when such a service is available;

(2) Ship packages weighing less than 200 pounds in closed vehicles only;

(3) Notify the consignee, and military transshipping activities, of the nature of the shipment (including level of classification), the means of shipment, the number of seals, if used, and the anticipated time and date of arrival by separate communication at least 24 hours in advance of arrival of the shipment. Advise the first military transshipping activity that, in the event the material does not move on the conveyance originally anticipated, the transshipping activity should so advise the consignee with information of firm transshipping date and estimated time of arrival. Upon receipt of the advance notice of a shipment of classified material, consignees and transshipping activities shall take appropriate steps to receive the classified shipment and to protect it upon arrival.

(4) Annotate the bills of lading to require the carrier to notify the consignor immediately by the fastest means if the shipment is unduly delayed enroute. Such annotations shall not under any circumstances disclose the classified nature of the commodity. When seals are used, annotate substantially as follows:

DO NOT BREAK SEALS EXCEPT IN EMERGENCY OR UPON AUTHORITY OF CONSIGNOR OR CONSIGNEE. IF BROKEN APPLY CARRIER'S SEALS AS SOON AS POSSIBLE AND IMMEDIATELY NOTIFY CONSIGNOR AND CONSIGNEE.

(5) Require the consignee to advise the consignor of any shipment not received more than 48 hours after the estmated time of arrival furnished by the consignor or transshipping activity. Upon receipt of such notice, the consignor shall immediately trace the shipment. If there is evidence that the classified material was subjected to compromise, the procedures set forth in Subpart G of this part for reporting compromises shall apply.

(g) *Transmission of COMSEC Information.* COMSEC information shall be transmitted in accordance with National COMSEC Instruction 4005.

(h) *Transmission of Restricted Data.* Restricted Data shall be transmitted in the same manner as other information of the same security classification. The transporting and handling of nuclear weapons or nuclear components shall be in accordance with DoD Directives 4540.1 [32] and 5210.41 [33] and applicable DoD Component directives and regulations.

§ 159a.58 Preparation of material for transmission, shipment, or conveyance.

(a) *Envelopes or Containers.* (1) Whenever classified information is transmitted, it shall be enclosed in two opaque sealed envelopes or simliar wrappings when size permits, except as provided by the following:

(2) Whenever classified material is transmitted of a size not suitable for transmission in accordance with paragraph (a)(1) of this section, it shall be enclosed in two opaque sealed containers, such as boxes or heavy wrappings.

(i) If the classified information is an internal component of a packageable item of equipment, the outside shell or body may be considered as the inner enclosure provided it does not reveal classified information.

(ii) If the classified material is an inaccessible internal component of a bulky item of equipment that is not reasonably packageable, the outside or body of the item may be considered to be a sufficient enclosure provided the shell or body does not reveal classified information.

(iii) If the classified material is an item or equipment that is not reasonably packageable and the shell or body is classified, it shall be concealed with an opaque covering that will hide all classified features.

(iv) Specialized shipping containers, including closed cargo transporters, may be used instead of the above packaging requirements. In such cases, the container may be considered the outer wrapping or cover.

(3) Material used for packaging shall be of such strength and durability as to provide security protection while in transit, prevent items from breaking out of the container, and to facilitate the detection of any tampering with the container. The wrappings shall conceal all classified characteristics.

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[32] See footnote 1 to § 159a.3

[33] See footnote 1 to § 159a.3

(4) Closed and locked vehicles, compartments, or cars shall be used for shipments of classified information except when another method is authorized by the consignor. Alternative methods authorized by the consignor must provide security equivalent to or better than the methods specified herein. In all instances, individual packages weighing less than 200 pounds gross shall be shipped only in a closed vehicle.

(5) To minimize the possibility of compromise of classified material caused by improper or inadequate packaging thereof, responsible officials shall ensure that proper wrappings are used for mailable bulky packages. Responsible officials shall require the inspection of bulky packages to determine whether the material is suitable for mailing or whether it should be transmitted by other approved means.

(6) When classified material is hand-carried outside an activity, a locked briefcase may serve as the outer wrapper. In such cases, the addressing requirements of paragraph (b)(4) of this section do not apply; however, the requirements of paragraph (b)(3) of this section are applicable.

(b) *Addressing.* (1) Classified information shall be addressed to an official government activity or DoD contractor with a facility clearance and not to an individual. This is not intended, however, to prevent use of office code numbers or such phrases in the address as "Attention: Research Department," or similar aids in expediting internal routing, in addition to the organization address.

(2) Classified written information shall be folded or packed in such a manner that the text will not be in direct contact with the inner envelope or container. A receipt form shall be attached to or enclosed in the inner envelope or container for all Secret and Top Secret information; Confidential information will require a receipt only if the originator deems it necessary. The mailing of written materials of different classifications in a single package should be avoided. However, when written materials of different classifications are transmitted in one package, they shall be wrapped in a single inner envelope or container. A receipt listing all classified information for which a receipt is requested shall be attached or enclosed. The inner envelope or container shall be marked with the highest classification of the contents.

(3) The inner envelope or container shall show the address of the receiving activity, classification, including, where appropriate, the "Restricted Data" marking, and any applicable special instructions. It shall be carefully sealed to minimize the possibility of access without leaving evidence of tampering.

(4) An outer or single envelope or container shall show the complete and correct address and the return address of the sender.

(5) An outer cover or single envelope or container shall not bear a classification marking, a listing of the contents divulging classified information, or any other unusual data or marks that might invite special attention to the fact that the contents are classified.

(6) Care must be taken to ensure that classified information intended only for U.S. elements of international staffs or other organizations is addressed specifically to those elements.

(c) *Receipt Systems.* (1) Top Secret information shall be transmitted under a chain of receipts covering each individual who gets custody.

(2) Secret information shall be covered by a receipt when transmitted to a foreign government (including foreign government embassies located in the United States) and when transmitted between major subordinate elements of DoD Components and other authorized addressees except that a receipt is not required when there is a hand-to-hand transfer between U.S. personnel and the recipient acknowledges responsibility for the Secret information.

(3) Receipts for Confidential information are not required except when the information is transmitted to a foreign government (including foreign government embassies located in the United States) or upon request.

(4) Receipts shall be provided by the transmitter of the material and the forms shall be attached to the inner cover.

(i) Postcard receipt forms may be used.

(ii) Receipt forms shall be unclassified and contain only such information as is necessary to identify the material being transmitted.

(iii) Receipts shall be retained for at least 2 years.

(5) In those instances where a fly-leaf (page check) form is used with classified publications, the postcard receipt will not be required.

(d) *Exceptions.* Exceptions may be authorized to the requirements contained in this subpart by the head of the Component concerned or designee, provided the exception affords equal protection and accountability to that provided above. Proposed exceptions that do not meet these minimum standards shall be submitted to the DUSD(P) for approval.

§ 159a.59 Restrictions, procedures, and authorization concerning escort or handcarrying of classified information.

(a) *General Restrictions.* Appropriately cleared personnel may be authorized to escort or handcarry classified material between their duty station and an activity to be visited subject to the following conditions:

(1) The storage provisions of § 159a.37 and § 159a.38(g) of Subpart F of this part shall apply at all stops enroute to the destination, unless the information is retained in the personal possession and under constant surveillance of the individual at all times. The hand carrying of classified information on trips that involve an overnight stop is not permissible without advance arrangements for proper overnight storage in a U.S. Government facility or, if in the United States, a cleared contractor's facility that has the requisite storage capability.

(2) Classified material shall not be read, studied, displayed, or used in any manner in public conveyances or places.

(3) When classified material is carried in a private, public or government conveyance, it shall not be placed in any detachable storage compartment such as automobile trailers, luggage racks, aircraft travel pods, or drop tanks nor, under any circumstances, left unattended.

(4) Responsible officials shall provide a written statement to all individuals escorting or carrying classified material aboard commercial passenger aircraft authorizing such transmission. This authorization statement may be included in official travel orders and should ordinarily permit the individual to pass through passenger control points without the need for subjecting the classified material to inspection. Specific procedures for carrying classified documents aboard commercial aircraft are contained in paragraph (c) of this section.

(5) Each activity shall list all classified information carried or escorted by traveling personnel. All classified information shall be accounted for.

(6) Individuals authorized to hand-carry or escort classified material shall be fully informed of the provisions of this subpart, and shall sign a statement to that effect prior to the issuance of written authorization or identification media. This statement shall be retained for a minimum of 2 years; it need not be executed on each occasion that the individual is authorized to transport classified information provided a signed statement is on file.

(b) *Restrictions on Handcarrying Classified Information Aboard*

Commercial Passenger Aircraft. Classified information shall not be hand-carried aboard commercial passenger aircraft unless:

(1) There is neither time nor means available to move the information in the time required to accomplish operational objectives or contract requirements.

(2) The handcarry has been authorized by an appropriate official in accordance with paragraph (d) of this section.

(3) In the case of the handcarry of classified information across international borders, arrangements have been made to ensure that such information will not be opened by customs, border, postal, or other inspectors, either U.S. or foreign.

(4) The handcarry is accomplished aboard a U.S. carrier. Foreign carriers will be utilized only when no U.S. carrier is available and then the approving official must ensure that the information will remain in the custody and physical control of the U.S. escort at all times.

(c) *Procedures for Handcarrying Classified Information Aboard Commercial Passenger Aircraft.*—(1) *Basic requirements.* (i) Advance and continued coordination by the DoD activity and contractor officials shall be made with departure airline and terminal officials and, when possible, with intermediate transfer terminals to develop mutually satisfactory arrangements within the terms of this issuance and Federal Aviation Administration (FAA) guidance. Specifically, a determination should be made beforehand whether documentation described in paragraph (c)(4) of this section, will be required. Local FAA Security Officers can be of assistance in making this determination. To aid coordination and planning, a listing of FAA field offices is at Appendix D to this part.

(ii) The individual designated as courier shall be in possession of either DD Form 2, "Armed (or Uniformed) Services Identification Card" (any color), or other DoD or contractor picture identification card and written authorization to carry classified information.

(2) *Procedures for carrying classified information in envelopes.* Persons carrying classified information should process through the airline ticketing and boarding procedures the same as all other passengers except for the following:

(i) The classified information being carried shall contain no metal bindings and shall be contained in sealed envelopes. Should such envelopes be contained in a briefcase or other carry-on luggage, the briefcase or luggage shall be routinely offered for opening for inspection for weapons. The screening officials may check envelopes by X-ray machine, flexing, feel, and weight, without opening the envelopes themselves.

(ii) Opening or reading of the classified document by the screening official is not permitted.

(3) *Procedures for transporting classified information in packages.* Classified information in sealed or packaged containers shall be processed as follows:

(i) The government or contractor official who has authorized the transport of the classified information shall notify the appropriate air carrier in advance.

(ii) The passenger carrying the information shall report to the affected airline ticket counter before boarding, present his documentation, and the package or cartons to be exempt from screening. The airline representative will review the documentation and description of the containers to be exempt.

(iii) If satisfied with the identification of the passenger and his documentation, the official will provide the passenger with an escort to the screening station and authorize the screening personnel to exempt the container from physical or other type inspection.

(iv) If the airline official is not satisfied with the identification of the passenger or the authenticity of his documentation, the passenger will not be permitted to board, and not be subject to further screening for boarding purposes.

(v) The actual loading and unloading of the information will be under the supervision of a representative of the air carrier; however, appropriately cleared personnel shall accompany the material and keep it under surveillance during loading and unloading operations. In addition, appropriately cleared personnel must be available to conduct surveillance at any intermediate stops where the cargo compartment is to be opened.

(vi) DoD Components and contractor officials shall establish and maintain appropriate liaison with local FAA officials, airline representatives and airport terminal administrative and security officials. Prior notification is emphasized to ensure that the airline representative can make timely arrangements for courier screening.

(4) *Documentation.* (i) When authorized to carry sealed envelopes or containers containing classified information, both government and contractor personnel shall present an identification card carrying a photograph, descriptive data, and signature of the individual. (If the identification card does not contain date of birth, height, weight, and signature, these items must be included in the written authorization.)

(A) DoD personnel shall present an official identification issued by U.S. Government agency.

(B) Contractor personnel shall present identification issued by the contractor or the U.S. Government. Contractors' identification cards shall carry the name of the employing contractor, or otherwise be marked to denote "contractor."

(C) The courier shall have the original of the authorization letter. A reproduced copy is not acceptable; however, the traveler shall have sufficient authenticated copies to provide a copy to each airline involved. The letter shall be prepared on letterhead stationery of the agency or contractor authorizing the carrying of classified material in addition, the letter shall:

(*1*) Give the full name of the individual and his employing agency or company;

(*2*) Describe the type of identification the individual will present (for example, Naval Research Laboratory Identification Card, No. 1234; ABC Corporation Identification Card No. 1234);

(*3*) Describe the material being carried (for example, three sealed packages, 9" × 8" × 24", addressee and addressor);

(*4*) Identify the point of departure, destination, and known transfer points;

(*5*) Carry a date of issue and an expiration date;

(*6*) Carry the name, title, and signature of the official issuing the letter. Each package or carton to be exempt shall be signed on its face by the official who signed the letter; and

(*7*) Carry the name of the government agency designated to confirm the letter of authorization, and its telephone number. The telephone number of the agency designated shall be an official U.S. Government number.

(ii) Information relating to the issuance of DoD identification cards is contained in DoD Instruction 1000.13 [34]. The green, gray, and red DD Forms 2 and other DoD and contractor picture ID card are acceptable to FAA.

(iii) The Director, DIS, shall establish standards for the issuance of identification cards when required by contractor employees selected as couriers or whose duties will involve handcarrying of classified material.

(d) *Authority to Approve Escort or Handcarry of Classified Information*

[34] See footnote 1 to § 159a.3.

Aboard Commercial Passenger Aircraft—(1) *Within the United States, its Territories, and Canada.* (i) DoD Component officials who have been authorized to approve travel orders and designate couriers may approve the escort or handcarry of classified information within the United States, its Territories, and Canada.

(ii) The Director, DIS, may authorize contractor personnel to handcarry classified material in emergency or time-sensitive situations subject to adherence with the procedures and limitations specified in this Section.

(2) *Outside the United States, its Territories, and Canada.* The head of a DoD Component, or single designee at the headquarters or major command level, may authorize the escort or handcarrying of classified information outside the area encompassed by the boundaries of the United States, its Territories, and Canada upon certification by the requestor that:

(i) The material is not present at the destination;

(ii) The material is needed urgently for a specified official purpose; and

(iii) There is a specified reason that the material could not be transmitted by other approved means to the destination in sufficient time for the stated purpose.

Subpart J—Disposal and Destruction

§ 159a.61 Policy.

Documentary record information originated or received by a DoD Component in connection with the transaction of public business, and preserved as evidence of the organization, functions, policies, operations, decisions, procedures, or other activities of any U.S. Government department or agency or because of the informational value of the data contained therein, may be disposed of or destroyed only in accordance with DoD Component record management regulations. Nonrecord classified information, and other material of similar temporary nature, shall be destroyed when no longer needed under procedures established by the head of the cognizant DoD Component. These procedures shall incorporate means of verifying the destruction of classified information and material and be consistent with the following requirements.

§ 159a.62 Methods of destruction.

Classified documents and material shall be destroyed by burning or, with the approval of the cognizant DoD Component head or designee, by melting, chemical decomposition, pulping, pulverizing, cross-cut shredding, or mutilation sufficient to preclude recognition or reconstruction of the classified information. (Strip shredders purchased prior to June 1, 1986 may continue to be used but only in circumstances where reconstruction of the residue is precluded. Shredding significant amounts of unclassified material together with classified material normally will meet this requirement.)

§ 159a.63 Destruction procedures.

(a) Procedures shall be instituted that ensure all classified information intended for destruction actually is destroyed. Destruction records and imposition of a two-person rule, that is, having two cleared persons involved in the entire destruction process, will satisfy this requirement for Top Secret information. Imposition of a two-person rule, without destruction records, will satisfy this requirement for Secret information, as will use of destruction records without imposition of the two-person rule. Only one cleared person needs to be involved in the destruction process for Confidential information.

(b) When burn bags are used for the collection of classified material that is to be destroyed at central destruction facilities, such bags shall be controlled in a manner designed to minimize the possibility of their unauthorized removal and the unauthorized removal of their classified contents prior to actual destruction. When filled, burn bags shall be sealed in a manner that will facilitate the detection of any tampering with the bag.

(c) Procedures to ensure that all classified information intended for destruction actually is destroyed, other than those in paragraphs (a) and (b) of this section, shall be submitted to the DoD Component's senior official (§ 159a.93(b) and (c)) for approval.

§ 159a.65 Records of destruction.

(a) Records of destruction are required for Top Secret information. The record shall be dated and signed at the time of destruction by two persons cleared for access to Top Secret information. However, in the case of Top Secret information placed in burn bags for central disposal, the destruction record may be signed by the officials when the information is so placed and the bags are sealed. Top Secret burn bags shall be numbered serially and a record kept of all subsequent handling of the bags until they are destroyed. This record may be in lieu of actual burn bag receipts and shall be maintained for a minimum of 2 years.

(b) Records of destruction of Secret and Confidential information are not required except for NATO Secret and some limited categories of specially controlled Secret information. When records of destruction are used for Secret information, only one cleared person has to sign such records. (DoD Directive 5100.55 provides guidance on the destruction of NATO classified material.)

(c) Records of destruction shall be maintained for 2 years.

§ 159a.65 Classified waste.

Waste material, such as handwritten notes, carbon paper, typewriter ribbons, and working papers that contains classified information must be protected to prevent unauthorized disclosure of the information. Classified waste shall be destroyed when no longer needed by a method described in § 159a.62. Destruction records are not required.

§ 159a.66 Classified document retention.

(a) Classified documents that are not permanently valuable records of the government shall not be retained more than 5 years from the date of origin, unless such retention is authorized by and in accordance with DoD Component record disposition schedules.

(b) Throughout the Department of Defense, the head of each activity shall establish at least one clean-out day each year where a portion of the work performed in every office with classified information stored is devoted to the destruction of unneeded classified holdings.

Subpart K—Security Education

§ 159a.68 Responsibility and objectives.

Heads of DoD Components shall establish security education programs for their personnel. Such programs shall stress the objectives of improving the protection of information that requires it. They shall also place emphasis on the balance between the need to release the maximum information appropriate under the Freedom of Information Act (32 CFR Part 285) and the interest of the Government in protecting the national security.

§ 159a.69 Scope and principles.

The security education program shall include all personnel authorized or expected to be authorized access to classified information. Each DoD Component shall design its program to fit the requirements of different groups of personnel. Care must be exercised to assure that the program does not evolve into a perfunctory compliance with formal requirements without achieving the real goals of the program. The

program shall, as a minimum, be designed to:

(a) Advise personnel of the adverse effects to the national security that could result from unauthorized disclosure and of their personal, moral, and legal responsibility to protect classified information within their knowledge, possession, or control;

(b) Indoctrinate personnel in the principles, criteria, and procedures for the classification, downgrading, declassification, marking, control and accountability, storage, destruction, and transmission of classified information and material, as prescribed in this Regulation, and alert them to the strict prohibitions against improper use and abuse of the classification system;

(c) Familiarize personnel with procedures for challenging classification descisions believed to be improper;

(d) Familiarize personnel with the security requirements of their particular assignment;

(e) Inform personnel of the techniques employed by foreign intelligence activities in attempting to obtain classified information, and their responsibility to report such attempts;

(f) Advise personnel of the penalties for engaging in espionage activities;

(g) Advise personnel of the strict prohibition against discussing classified information over an unsecure telephone or in any other manner that permits interception by unauthorized persons;

(h) Inform personnel of the penalties for violation or disregard of the provisions of this part (see § 159a.97(b));

(i) Instruct personnel that individuals having knowledge, possession, or control of classified information must determine, before disseminating such information, that the prospective recipient has been cleared for access by competent authority; needs the information in order to perform his or her official duties; and can properly protect (or store) the information.

§ 159a.70 Initial briefings.

DoD personnel granted a security clearance (see §159a.53) shall not be permitted to have access to classified information until they have received an initial security briefing and have signed Standard Form 189, "Classified Information Nondisclosure Agreement." DoD 5200.1–PH–1[35] provides a sample briefing and additional information regarding Standard Form 189. Cleared personnel employed prior to June 1, 1986 must sign Standard Form 189 as soon as practicable but not later than February 28, 1990.

[35] See footnote 2 to § 159a.3

§ 159a.71 Refresher briefings.

Programs shall be established to provide, at a minimum, annual security training for personnel having continued access to classified information. The elements outlined in § 159a.69 shall be tailored to fit the needs of experienced personnel.

§ 159a.72 Foreign travel briefings.

(a) Personnel who have had access to classified information shall be given a foreign travel briefing, before travel, to alert them to their possible exploitation under the following conditions:

(1) Travel to or through communist-controlled countries; and

(2) Attendance at international scientific, technical, engineering or other professional meetings in the United States or in any country outside the United States where it can be anticipated that representatives of Communist-controlled countries will participate or be in attendance. (See also DoD Directive 5240.6 [36].)

(b) Individuals who travel frequently, or attend or host meetings of foreign visitors as described in paragraph (a)(2) of this section, need not be briefed for each occasion, but shall be provided a thorough briefing at least once every 6 months and a general reminder of security responsibilities before each such activity.

§ 159a.73 Termination briefings.

(a) Upon termination of employment, administrative withdrawal of security clearance, or contemplated absence from duty or employment for 60 days or more, DoD military personnel and civilian employees shall be given a termination briefing, return all classified material, and execute a Security Termination Statement. This statement shall include:

(1) An acknowledgment that the individual has read the appropriate provisions of the Espionage Act, other criminal statutes, DoD regulations applicable to the safeguarding of classified information to which the individual has had access, and understands the implications thereof;

(2) A declaration that the individual no longer has any documents or material containing classified information in his or her possession;

(3) An acknowledgement that the individual will not communicate or transmit classified information to any unauthorized person or agency; and

(4) An acknowledgement that the individual will report without delay to the FBI or the DoD Component concerned any attempt by any unauthorized person to solicit classified information.

(b) When an individual refuses to execute a Security Termination Statement, that fact shall be reported immediately to the security manager of the cognizant organization concerned. In any such case, the individual involved shall be debriefed orally. The fact of a refusal to sign a Security Termination Statement shall be reported to the Director, Defense Investigative Service who shall assure that it is recorded in the Defense Central Index of Investigations.

(c) The security termination statement shall be retained by the DoD Component that authorized the individual access to classified information for the period specified in the Component's record retention schedules, but for a minimum of 2 years after the individual is given a termination briefing.

[36] See footnote 1 to § 159a.3.

Subpart L—Foreign Government Information

§ 159a.75 Classification.

(a) *Classification.* (1) Foreign government information classified by a foreign government or international organization of governments shall retain its original classification designation or be assigned a U.S. classification designation that will ensure a degree of protection equivalent to that required by the government or organization that furnished the information. Original classification authority is not required for this purpose.

(2) Foreign government information that was not classified by a foreign entity but was provided with the expectation, expressed or implied, that the information, the source of the information, or both, are to be held in confidence must be classified by an original classification authority. The two-step procedure for classification prescribed in § 159a.15(c) does not apply to the classification of such foreign government information because E.O. 12356 states a presumption of damage to the national security in the event of unauthorized disclosure of such information. Therefore, foreign government information shall be classified at least Confidential, but higher whenever the damage criteria of § 159a.11 (b) or (c) are determined to be met.

(b) *Duration of Classification.* (1) Foreign government information shall not be assigned a date or event for automatic declassification unless specified or agreed to by the foreign entity.

(2) Foreign government information classified by the Department of Defense under this or previous regulations shall be protected for an indefinite period (see § 159a.77(e)).

§ 159a.76 Declassification.

(a) *Policy.* In considering the possibility of declassification of foreign government information, officials shall respect the intent of this regulation to protect foreign government information and confidential foreign sources.

(b) *Systematic Review.* When documents containing foreign government information are encountered during the systematic review process they shall be referred to the originating agency for a declassification determination. Consultation with the foreign originator through appropriate channels may be necessary before final action can be taken.

(c) *Mandatory Review.* Requests for mandatory review for declassification of foreign government information shall be processed and acted upon in accordance with the provisions of § 159a.26, except that foreign government information will be declassified only in accordance with the guidelines developed for such purpose and after necessary consultation with other DoD Components or government agencies with subject matter interest. When these guidelines cannot be applied to the foreign government information requested, or in the absence of such guidelines, consultation with the foreign originator through appropriate channels normally should be effected prior to final action taken on the request. When the responsibile DoD Component is knowledgeable of the foreign originator's view toward declassification or continued classification of the types of information requested, consultation with the foreign originator may not be necessary.

§159a.77 Marking.

(a) *Equivalent U.S. Classification Designations.* Except for the foreign security classification designation RESTRICTED, foreign classification designations, including those of international organizations of governments, that is, NATO, generally parallel U.S. classification designations. A table of equivalents is contained in Appendix A to this part.

(b) *Marking NATO Documents.* Classified documents originated by NATO, if not already marked with the appropriate classification in English, shall be so marked. Markings required under § 159a.34(c) shall not be placed on documents originated by NATO. Documents originated by NATO that are marked RESTRICTED shall be marked with the following additional notation: "To be safeguarded in accordance with USSAN Instruction 1–69" (see DoD Directive 5100.55).

(c) *Marking Other Foreign Government Documents.* (1) If the security classification designation of foreign government documents is shown in English, no other classification marking shall be applied. If the foreign classification designation is not shown in English, the equivalent overall U.S. classification designation (see Appendix A to this part) shall be marked conspicuously on the document. When foreign government documents are marked with a classification designation having no U.S. equivalent, as in the last column of Appendix A to this part, such documents shall be marked in accordance with paragraph (c)(2) of this section.

(2) Certain foreign governments use a fourth classification designation as shown in the last column of Appendix A to this part. Such designations equate to the foreign classification RESTRICTED. If the foreign government documents are marked with any of the classification designations listed in the last column of Appendix A to this part, no other classification marking shall be applied. In all such cases, the notation, "This classified material is to be safeguarded in accordance with DoD 5200.1–R or DoD 5220.22–M," shall be shown on the face of the document.

(3) Other marking requirements prescribed by this Regulation for U.S. classified documents are not applicable to documents of foreign governments or international organizations of governments.

(d) *Marking of DoD Classification Determinations.* Foreign documents containing foreign government information not classified by the foreign government but provided to the Department of Defense in confidence shall be classified as prescribed in § 159a.75(a)(2) and marked with the appropriate U.S. classification.

(e) *Marking of Foreign Government Information in DoD Documents.* (1) Except where such markings would reveal that information is foreign government information when that fact must be concealed, or reveal a confidential source or relationship not otherwise evident in the document or information, foreign government information incorporated in DoD documents shall be identified in a manner that ensures that such information is not declassified prematurely or made accessible to nationals of a third country without consent of the originator. This requirement may be satisfied by marking the face of the document "FOREIGN GOVERNMENT INFORMATION," or with another marking that otherwise indicates that the information is foreign government information, and by including the appropriate identification in the portion or paragraph classification markings, for example, (NS) or (U.K.–C). All other markings prescribed by § 159a.31(d) are applicable to these documents. In addition, DoD classified documents that contain extracts of NATO classified information shall bear a marking substantially as follows on the cover or first page: "THIS DOCUMENT CONTAINS NATO CLASSIFIED INFORMATION."

(2) When foreign RESTRICTED or NATO RESTRICTED information is included in an otherwise unclassified DoD document, the DoD document shall be marked CONFIDENTIAL. All requirements of § 159a.31(d) apply to such documents. Portion markings on such a document include, for example "(U)," "(NR)," and "(FRG–R)." In addition, the appropriate caveat from paragraph (a) of this section, shall be included on the face of the document.

(3) The "Classified by" line of DoD documents containing only foreign government information normally shall be completed with the identity of the foreign government or international organization involved, for example, "Classified by Government of Australia" or "Classfied by NATO," provided that other requirements of § 159a.31(e) do not pertain to such documents.

(4) The "Declassify on" line of DoD documents containing foreign government information normally shall be completed with the notation "Originating Agency's Determination Required" or "OADR" (see § 159a.36 and § 159a.75(b)).

§ 159a.78 Protective mesures.

(a) *NATO Classified Information.* NATO classified information shall be safeguarded in accordance with the provisions of DoD Directive 5100.55.

(b) *Other Foreign Government Information.* (1) Classified foreign government information other than NATO information shall be protected as is prescribed by this part for U.S. classified information of a comparable classification.

(2) Foreign government information, unless it is NATO information, that is marked under § 159a.77(c)(2) or § 159a.77(e)(2) shall be protected as U.S. CONFIDENTIAL, except that such information may be stored in locked

filing cabinets, desks, or other similar closed spaces that will prevent access by unauthorized persons.

Subpart M—Special Access Programs

§ 159a.80. Policy.

It is the policy of the Department of Defense to use the security classification categories and the applicable sections of E.O. 12356 and its implementing ISOO Directive, to limit access to classified information on a "need-to-know" basis to personnel who have been determined to be trustworthy. It is further policy to apply the "need-to-know" principle in the regular system so that there will be no need to resort to formal Special Access Programs. Also, need-to-know control principles shall be applied within Special Access Programs. In this context, Special Access Programs may be created or continued only on specific showing that:

(a) Normal management and safeguarding procedures are not sufficient to limit "need-to-know" or access; and

(b) The number of persons who will need access will be reasonably small and commensurate with the objective of providing extra protection for the information invoved.

§ 159a.81 Establishment of special access programs.

(a) Procedures for the establishment of Special Access Programs involving NATO classified information are based on international treaty requirements (see DoD Directive 5100.55).

(b) The policies and procedures for access to and dissemination of Restricted Data and Critical Nuclear Weapon Design Information are contained in DoD Directive 5210.2.

(c) Special Access Programs for foreign intelligence information under the cognizance of the Director of Central Intelligence, or those of the National Telecommunications and Information Systems Security Committee originate outside the Department of Defense. However, coordination with the DUSD(P) and the Component's central point of contact is necessary before the establishment or implementation of any such Programs by any DoD Component. The information required by § 159a.80(f)(1) will be provided.

(d) Excluding those Programs and that information specified in paragraphs (a)(1), (2), and (3) of this section, Special Access Programs shall be established within the Military Departments by:

(1) Submitting to the Secretary of the Department the information required under § 159a.80(f)(1).

(2) Obtaining written approval from the Secretary of the Department;

(3) Providing to the DUSD(P) notice of the approval; and

(4) Maintaining the information and rationale upon which approval was granted within the Military Department's central office.

(e) Excluding those Programs and that information in paragraphs (d)(1), (2), and (3) of this section, Special Access Programs that are desired to be established in any DoD Component other than the Military Departments shall be submitted with the information referred to in § 159a.80(f)(1) to the DUSD(P) for approval.

(f) Upon specific written notice to one of the appropriate DoD Special Access Program approval officials, receipt of their written concurrence, protective Special Access Program controls may be applied to a prospective Special Access Program for up to a 6-month period from the date of such notice. However, in all instances, the Program must be terminated as a prospective Special Access Program or formally approved as a Special Access Program by the end of the 6-month time period.

(g) Unless under DoD Directive S-5210.36 [37], Special Access Programs which involve one or more DoD Components, or a DoD Component and a non-DoD activity, shall be covered by a written agreement which must document who has the principal security responsibility, who is the primary sponsor of the Program, and who is responsible for obtaining Special Access Program approval.

§ 159a.82 Review of special access programs.

(a) Excluding those Programs specified in § 159a.81 (a), (b), or (c), each Special Access Program shall be reviewed annually by the DoD Component responsible for establishment of the Program. To accommodate such reviews, DoD Components shall institute procedures to ensure the conduct of annual security inspections, with or without prior notice, and regularly scheduled audits by security, contract administration, and audit organizations. Also, Program managers shall ensure that Special Access Program activities have undergone a current review by legal counsel for compliance with law, executive order, regulation, and national policy. To accomplish such reviews, specially cleared pools of attorneys may be utilized, but in all cases legal counsel shall be provided with all information necessary to perform such reviews.

(b) Special Access Programs, excluding those specified in § 159a.81 (a), (b), or (c), or those required by treaty or international agreement, shall terminate automatically every 5 years unless reestablished in accordance with the procedures contained in § 159a.81.

§ 159a.83 Control and central office administration.

(a) Special Access Programs shall be controlled and managed in accordance with DoD Directive 5205.7 [38]. Each DoD Component shall appoint a Special Access Program coordinator to establish and maintain a central office and to serve as a single point of contact for information concerning the establishment and security administration of all Special Access Programs established by or existing in the Component. These officials shall report to the DUSD(P) on the status of DoD Special Access Programs within the Component to include:

(1) The establishment of a Special Access Program as required by § 159a.81(d)(3); and

(2) Changes in Program status as required by § 159a.85 (b) or (c).

(b) Officials serving as single points of contact, as well as members of their respective staffs and other persons providing support to Special Access Programs who require access to multiple sets of particularly sensitive information, shall be subject to a counterintelligence-scope polygraph examination periodically but not less than once every 5 years. Additionally, such testing will be subject to the limitations imposed by Congress. The program for each DoD Component, as well as requests for waiver, shall be submitted for approval by the DUSD(P).

§ 159a.84 Codewords and nicknames.

Excluding those Programs specified in § 159a.81 (a), (b), and (c), each Special Access Program will be assigned a classified code word, or an unclassified nickname, or both. DoD Components other than Military Departments may request codewords and nicknames from the DUSD(P) individually or in block. If codewords or nicknames are obtained in block, however, the issuing Component shall promptly notify the DUSD(P) upon activitation and assignment.

§ 159a.95 Reporting of special access programs.

(a) *Report of Establishment.* Reports to the Secretary of the Military Department or the DUSD(P) required

[37] See footnote 13 to § 159a.33(j)

[38] See footnote 1 to § 159a.3

under § 159a.81 for Special Access Programs shall include:

(1) The responsible department, agency, or DoD Component, including office identification;

(2) The codeword and/or nickname of the Program;

(3) The relationship, if any, to other Special Access Programs in the Department of Defense or other government agencies;

(4) The rationale for establishing the Special Access Program including the reason why normal management and safeguarding procedures for classified information are inadequate;

(5) The estimated number of persons granted special access in the responsible DoD Component; other DoD Components; other government agencies; contractors; and the total of such personnel;

(6) A summary statement pertaining to the Program security requirements with particular emphasis upon those personnel security requirements governing access to Program information;

(7) The date of Program establishment;

(8) The estimated number and approximate dollar value, if known, of carve-out contracts that will be or are required to support the Program; and

(9) The DoD Component official who is the point of contact (last name, first name, middle initial; position or title; mailing address; and telephone number).

(10) A security plan and appropriate security classification guide and notification that a proper DD Form 254, "Contract Security Classification Specification," has been issued to contractors participating in the Program.

(b) *Annual Reports.* DoD Component annual reports from other than the Military Departments to the DUSD(P) shall be submitted not later than January 31 of each year, showing the changes in information provided under paragraph (a) of this section, as well as the date of last review. Annual reports shall reflect *actual* rather than *estimated* numbers of carve-out contracts and persons granted access and shall summarize the results of the inspections and audits required by § 159a.82(a). Reports from the Military Departments which have approval authority will summarize the required reviews which have been conducted during the year by the central offices, to include details and numbers of carve-out contracts associated with approved Special Access Programs and their overall security posture and numbers of approved Programs by type. Additionally, the Military Department Secretaries authorized to approve such Programs shall furnish a name listing, by unclassified nickname if practicable, or approved Special Access Programs under their cognizance, and they will report any changes to the listing as they occur pursuant to the notification requirements of § 159a.81(d)(3), that is, additions, deletions, and corrections to the DUSD(P). The effective date of information in the annual reports shall be December 31.

(c) *Termination Reports.* The DUSD(P) shall be notified upon termination of a Special Access Program.

§ 159a.86 Accounting for special access programs.

Each of the central offices which must be identified in accordance with § 159a.83(a) shall maintain a complete listing of currently approved DoD Special Access Programs which encompasses the information outlined in § 159a.85(a). These listings shall be readily available to the DUSD(P) or his designated representatives.

§ 159a.87 Limitations on access.

Access to data reported under this subpart shall be limited to the DUSD(P) and the minimum number of properly indoctrinated staff necessary to perform the functions assigned the DUSD(P) herein. Access may not be granted to any other person for any purpose without the approval of the DoD Components sponsoring the Special Access Programs concerned.

§ 159a.88 "Carve-Out" contracts.

(a) The Secretaries of the Military Departments and the DUSD(P), or their designees, shall ensure that, in those Special Access Programs involving contractors, special access controls are made applicable by legally binding instruments.

(b) To the extent necessary for DIS to execute its security responsibilities with respect to Special Access Programs under its security cognizance, DIS personnel shall have access to all information relating to the administration of these Programs.

(c) Excluding those Programs specified in § 159a.81(c), the use of "carve-out" contracts that relieve the DIS from inspection responsibility under the Defense Industrial Security Program is prohibited unless:

(1) Such contract supports a Special Access Program approved and administered under § 159a.81;

(2) Mere knowledge of the existence of a contract or of its affiliation with the Special Access Program is classified information; and

(3) Carve-out status is approved for each contract by the Secretary of a Military Department, the Director, NSA, the DUSD(P), or their designees.

(d) Approval to establish a "carve-out" contract must be requested from the Secretary of a Military Department, or designee(s), the Director, NSA, or designee(s), or in the case of other DoD Components, from the DUSD(P). Approved "carve-out" contracts shall be assured the support necessary for the requisite protection of the classified information involved. The support shall be specified through a system of controls that shall provide for:

(1) A written security plan, oral waivers of which are prohibited except in critical situations that must be documented as soon as possible after the fact.

Note: The plan must identify that DD Forms 254 have been distributed to the Defense Investigative Service as outlined in DoD Directive 5205.7.

(2) Professional security personnel at the sponsoring DoD Component performing security inspections at each contractor's facility which shall be conducted, at a minimum, with the frequency prescribed by paragraph 4–103 of DoD 5220.22–R;

(3) "Carve-out" contracting procedures;

(4) A central office of record; and

(5) An official to be the single point of contact for security control and administration. DoD Components other than the Military Departments and NSA shall submit such appropriate rationale and security plan along with requests for approval to the DUSD(P).

(e) An annual inventory of carve-out contracts shall be conducted by each DoD Component which participates in Special Access Programs.

(f) This subsection relates back to the date of execution for each contract to which carve-out contracting techniques are applied. The carve-out status of any contract expires upon termination of the Special Access Program which it supports.

§ 159a.89 Oversight reviews.

(a) DUSD(P) shall conduct oversight reviews, as required, to determine compliance with this subpart.

(b) Pursuant to statutory authority, the Inspector General, Department of Defense, shall conduct oversight of Special Access Programs.

Subpart N—Program Management

§ 159a.91 Executive branch oversight and policy direction.

(a) *National Security Council.* Pursuant to the provisions of E.O. 12356, the NSC shall provide overall policy

direction for the Information Security Program.

(b) *Administrator of General Services.* The Administrator of General Services is responsible for implementing and monitoring the Information Security Program established under E.O. 12356. In accordance with E.O. 12356, the Administrator delegates the implementation and monitorship functions of the Program to the Director of the ISOO.

(c) *Information Security Oversight Office.*—(1) *Composition.* The ISOO has a full-time director appointed by the Administrator of General Services with approval of the President. The Director has the authority to appoint a staff for the office.

(2) *Functions.* The Director of the ISOO is charged with the following principal functions that pertain to the Department of Defense:

(i) Oversee DoD actions to ensure compliance with E.O. 12356 implementing directives, for example, the ISOO Directive No. 1 and this part;

(ii) Consider and take action on complaints and suggestions from persons within or outside the government with respect to the administration of the Information Security Program;

(iii) Report annually to the President through the NSC on the implementation of E.O. 12356;

(iv) Review this Regulation and DoD guidelines for systematic declassification review; and

(v) Conduct on-site reviews of the Information Security Program of each DoD Component that generates or handles classified information.

(3) *Information Requests.* The Director of the ISOO is authorized to request information or material concerning the Department of Defense, as needed by the ISOO in carrying out its functions.

(4) *Coordination.* Heads of DoD Components shall ensure that any significant requirements levied directly on the Component by the ISOO are brought to the attention of the Director of Security Plans and Programs, ODUSD(P).

§ 159a.92 Department of Defense.

(a) *Management Responsibility.* (1) The DUSD(P) is the Senior DoD Information Security Authority having DoD-wide authority and responsibility to ensure effective and uniform compliance with and implementation of E.O. 12356 and its implementing ISOO Directive No. 1. As such, the DUSD(P) shall have primary responsibility for providing guidance, oversight and approval of policy and procedures governing the DoD Information Security Program. The DUSD(P) or his designee may approve waivers or exceptions to the provisions of this part to the extent such action is consistent with E.O. 12356 and ISOO Directive No. 1.

(2) The heads of DoD Components may approve waivers to the provisions of this part only as specifically provided for herein.

(3) The Director, NSA/Chief, Central Security Service, under 32 CFR Part 159, is authorized to impose special requirements with respect to the marking, reproduction, distribution, accounting, and protection of and access to classified cryptologic information. In this regard, the Director, NSA, may approve waivers or exceptions to these special requirements. Except as provided in § 159a.6 the authority to lower any COMSEC security standards rests with the Secretary of Defense. Requests for approval of such waivers or exceptions to established COMSEC security standards which, if adopted, will have the effect of lowering such standards, shall be submitted to the DUSD(P) for approval by the Secretary of Defense.

§ 159a.93 DoD components.

(a) *General.* The head of each DoD Component shall establish and maintain an Information Security Program designed to ensure compliance with the provisions of this part throughout the Component.

(b) *Military Departments.* In accordance with 32 CFR Part 159 the Secretary of each Military Department shall designate a Senior Information Security Authority who shall be responsible for complying with and implementing this part within the Department.

(c) *Other Components.* In accordance with 32 CFR Part 159, the head of each other DoD Component shall designate a Senior Information Security Authority who shall be responsible for complying with and implementing this Regulation within their respective Component.

(d) *Program Monitorship.* The Senior Information Security Authorities designated under paragraphs (b) and (c) of this section, are responsible within their respective jurisdictions for monitoring, inspecting with or without prior announcement, and reporting on the status of administration of the DoD Information Security Program at all levels of activity under their cognizance.

(e) *Field Program Management.* (1) Throughout the Department of Defense, the head of each activity shall appoint, in writing, an official to serve as security manager for the activity. This official shall be responsible for the administration of an effective Information Security Program in that activity with particular emphasis on security education and training, assignment of proper classifications, downgrading and declassification, safeguarding, and monitorship, to include sampling classified documents for the purpose of assuring compliance with this part.

(2) Activity heads shall ensure that officials appointed as security managers either possess, or obtain within a reasonable time after appointment, knowledge of and training in the Information Security Program commensurate with the needs of their positions. The Director of Security Plans and Programs, ODUSD(P) shall, with the assistance of the Director, Defense Security Institute, develop minimum standards for training of activity security managers. Such training should result in appropriate certifications to be recorded in the personnel files of the individuals involved.

(3) Activity heads shall ensure that officials appointed as security managers are authorized direct and ready access to the appointing official on matters concerning the Information Security Program. They also shall provide sufficient resources of time, staff, and funds to permit accomplishment of the security manager's responsibilities, to include meaningful oversight of the Information Security Program at all levels of the activity.

§ 159a.94 Information requirements.

(a) *Information Requirements.* DoD Components shall submit on a fiscal year basis a consolidated report concerning the Information Security Program of the Component on SF 311, "Agency Information Security Program Data," to reach the ODUSD(P) by October 20 of each year. SF 311 shall be completed in accordance with the instructions thereon and augmenting instructions issued by the ODUSD(P). The ODUSD(P) shall submit the DoD report (SF 311) to the ISOO by October 31 of each year. Interagency Report Control Number 0230–GSA–AN applies to this information collection system as well as to that contained in § 159a.12.

§ 159a.95 Defense Information Security Committee.

(a) *Purpose.* The Defense Information Security Committee (DISC) is established to advise and assist the DUSD(P) and the Director, Security Plans and Programs (ODUSD(P) in the formulation of DoD Information Security Program policy and procedures.

(b) *Direction and Membership.* The DISC shall meet at the call of the

DUSD(P) or the Director, Security Plans and Programs. It is comprised of the DUSD(P) as Chairman; the Director, Security Plans and Programs, as Vice Chairman; and the senior officials (designated in accordance with section E.3.a., DoD Directive 5200.1,[39] or their representatives) responsible for directing and administering the Information Security Program of the OJCS, the Departments of the Army, Navy, and Air Force, the Defense Intelligence Agency, the Defense Nuclear Agency, the National Security Agency, and the Defense Investigative Service. Other DoD Components may be invited to attend meetings of particular interest to them.

Subpart O—Administrative Sanctions

§ 159a.97 Individual responsibility.

All personnel, civilian or military, of the Department of Defense are responsible individually for complying with the provisions of this part.

§ 159a.98 Violations subject to sanctions.

(a) DoD Military and civilian personnel are subject to administrative sanctions if they:

(1) Knowingly and willfully classify or continue the classification of information in violation of E.O. 12356, any implementing issuances, or this part.

(2) Knowingly, willfully, or negligently disclose to unauthorized persons information properly classified under E.O. 12356 or prior orders; or

(3) Knowingly and willfully violate any other provision of E.O. 12356, any implementing issuances or this part.

(b) Sanctions include but are not limited to a warning notice, reprimand, termination of classification authority, suspension without pay, forfeiture of pay, removal or discharge, and will be imposed upon any person, regardless of office or level of employment, who is responsible for a violation specified under this paragraph as determined appropriate under applicable law and DoD regulations. Nothing in this part prohibits or limits action under the Uniform Code of Military Justice based upon violations of that Code.

§ 159a.99 Corrective action.

The Secretary of Defense, the Secretaries of the Military Departments, and the heads of other DoD Components shall ensure that appropriate and prompt corrective action is taken whenever a violation under § 159a.98(a) occurs or repeated administrative discrepancies or repeated disregard of requirements of this Regulation occur (see § 159a.100). Commanders and supervisors, in consultation with appropriate legal counsel, shall utilize all appropriate criminal, civil, and administative enforcement remedies against employees who violate the law and security requirements as set forth in this part and other pertinent DoD issuances.

§ 159a.100 Administrative discrepancies.

Repeated administrative discrepancies in the marking and handling of classified information and material such as failure to show classification authority; failure to apply internal classification markings; failure to adhere to the requirements of this part that pertain to dissemination, storage, accountability, and destruction, and that are determined not to constitute a violation under § 159a.98(a) may be grounds for adverse administrative action including warning, admonition, reprimand or termination of classification authority as determined appropriate under applicable policies and procedures.

§ 159a.101 Reporting violations.

(a) Whenever a violation under § 159a.98(a)(2) occurs, the Director of Counterintelligence and Investigative Programs, ODUSD(P) shall be informed of the date and general nature of the occurrence including the relevent parts of this part, the sanctions imposed, and the corrective action taken. Whenever a violation under § 159a.98(a) (1) or (3) occurs, the Director of Security Plans and Programs, OSUSD(P) shall be provided the same information. Notification of such violations shall be furnished to the Director of the ISOO in accordance with § 5.4(d) of E.O. 12356 by the ODUSD(P).

(b) Any action resulting in unauthorized disclosure of properly classified information that constitutes a violation of the criminal statutes and evidence reflected in classified information of possible violations of federal criminal law by a DoD employee and of possible violations by any other person of those federal criminal laws specified in guidelines adopted by the Attorney General shall be the subject of a report processed in accordance with DoD Directive 5210.50 and DoD Instruction 5240.4.

(c) Any action reported under paragraph (b) of this section, shall be reported to the Attorney General by the General Counsel, Department of Defense.

(d) Reports shall be made to appropriate counterintelligence, investigative, and personnel security authorities concerning any employee who is known to have been responsible for repeated security violations over a period of a year, for appropriate evaluation, including readjudication of the employee's security clearance.

APPENDIX A—EQUIVALENT FOREIGN AND INTERNATIONAL PACT ORGANIZATION SECURITY CLASSIFICATIONS

Country	Top Secret	Secret	Confidential	
Argentina	Estrictamente Secreto	Secreto	Confidencial	Reservado.
Australia	Top Secret	Secret	Confidential	
Austria	Streng Geheim	Geheim	Verschuluss	
Belgium:				
French	Tres Secret	Secret	Confidentiel Restreints	Difusion.
Flemish	Zeer Geheim	Geheim	Vertrouwelijk Verspreidng	Bepertke.
Bolivia	Syoersecreto or Muy Secreto	Secreto	Confidencial	Resedrvado.
Brazil	Ultra Secreto	Secreto	Confidencial	Reservado.
Cambodia	Tres Secret	Secret	Secret/Confidential	
Canada	Top Secret	Secret	Confidential	Restricted.
Chile	Secreto	Secreto	Reservado	Reservado.
Columbia	Ultrasecreto	Secreto	Reservado Restringido	Confidencial.
Costa Rica	Alto Secreto	Secreto	Confidencial	
Denmark	Hojst Himmiligt	Himmiligt	Fortroligt	Til Tjenestebrug.
Ecuador	Secretisimo	Secreto	Confidencial	Reservado.
El Salvador	Ultra Secreto	Secreto	Confidencial	Reservado.

[39] See footnote 1 to § 159a.3

APPENDIX A—EQUIVALENT FOREIGN AND INTERNATIONAL PACT ORGANIZATION SECURITY CLASSIFICATIONS—Continued

Country	Top Secret	Secret	Confidential	
Ethiopia	Yemlaz Birtou Mistir	Kilkil		
Finland	Erittain Salainen	Salainen		
France	Tres Secret	Secret Defense	Confidentiel Defense Restreinte	Diffusion.
Germany	Streng Geheim	Geheim	Va-Vertraulich	
Greece	Akpre Anopphton	Anopphton	Emilieteytikon Xpheere	Mepinpiemenhe.
Guatemala	Alto Secreto	Secreto	Confidencial	Reservado.
Haiti		Secret	Confidential	
Honduras	Super Secreto	Secreto	Confidencial	Reservado.
Hong Kong	Top Secret	Secret	Confidential	Restricted.
Hungary	Szigoruan Titkos	Titkos	Bizalmas	
India	Top Secret	Secret	Confidential	Restricted.
Indonesia	Sangat Rahasia	Rahasia	Terbatas	
Iran	Bekoli Serri	Serri	Kheili Mahramaneh	Mahramaneh.
Iraq	(Absolutely secret)	(Secret)		(Limited).
Ireland Gaelic	Top Secret An-Sicreideach	Secret Sicreideach	Confidential Runda	Restricted Srianta.
Israel	Sodi Beyoter	Sodi	Shamur	Mugbal.
Italy	Segretissimo	Segreto	Riservatissimo	Riservato.
Japan	Kimitsu	Gokuhi	Hi Bugaihi	Toriatsukaichui.
Jordan	Maktum Jiddan	Maktum	Sirri	Mahdud.
Korea				
Laos	Tres Secret	Secret	Secret/Confidentiel Restreinte	Difusion.
Lebanon	Tres Secret	Secret	Confidentiel	
Mexico	Alto Secreto	Secreto	Confidencial	Restringido.
Netherlands	Zeer Geheim	Geheim	Confidentieel or Vertrouwelijk	Dienstgeheim.
New Zealand	Top Secret	Secret	Condifential	Dienstgeheim.
Nicaragua	Alto Secreto	Secreto	Confidencial	Reservado.
Norway	Strengt Hemmelig	Hemmelig	Konfideneielt	Begrenset.
Pakistan	Top Secret	Secret	Confidential	Restricted.
Paraguay	Secreto	Secreto	Confidencial	Reservado.
Peru	Estrictamente Secreto	Secreto	Condifencial	Reservado.
Philippines	Top Secret	Secret	Confidential	Restricted.
Portugal	Muito Secreto	Secreto	Confidencial	Reservado.
Spain	Maximo Secreto	Secreto	Confidencial Limitada	Diffussion.
Sweden (Red Borders)	Hemlig	Hemlig	Hemlig	
Switzerland	(1)	(1)	(1)	
French	Secret	Secret	Secret Exclusive Du	Reserve A L'Usage.
German	Streng Geheim	Geheim	Vertraulich Lichen Gebrauch	Nur Fur Dienst-
Italian	Segreto	Segreto	Segreto Di Servizio	Ad Exclusive Uso.
Thailand	Lup Tisud	Lup Maag	Lup	Pok Pid.
Turkey	Cok Gizli	Gizli	Ozel	Hizmete Ozel.
Union of South Africa:				
English	Top Secret	Secret	Confidential	Restricted.
Afrikaana	Uiters Geheim	Geheim	Vertroulik	Reperk.
United Arab Republic (Egypt)	Top Secret	Very Secret	Secret	Official.

[1] Three languages. TOP SECRET has a registration number to distinguish from SECRET and CONFIDENTIAL.

Appendix B—General Accounting Office Officials Authorized To Certify Security Clearances (See § 159a.53(b)(3))

The Comptroller General, Deputy Comptroller General and Assistant Comptroller General and Assistants to the Comptroller General

The General Counsel and Deputy General Counsel

The Director and Deputy Director, Personnel; the Security Officer

The Director and Deputy Director, Office of Internal Review

The Director and Assistants to the Director of the Office of Program Planning and the Office of Policy

The Director and Deputy Directors of the Community and Economic Development Division

The Director, and Deputy Directors, Associate Directors, Deputy Associate Directors, Senior Group Directors, and the Assistant to the Director for Planning and Administration of the Energy and Minerals Division

The Director, Deputy Directors, Associate Directors and Division Personnel Security Officer of the Human Resources Division

The Directors, Deputy Directors, and Associate Directors, of the following Divisions:

Claims
Field Operations
Financial and General Management Studies
General Government
International
Logistics and Communications
Procurement and Systems Acquisition
Program Analysis Division

Directors and Managers of International Division Overseas Offices as follows:

Director European Branch, Frankfurt, Germany
Director Far East Branch, Honolulu, Hawaii
Manager, Sub Office, Bangkok, Thailand

Regional Managers and Assistsant Regional Managers of the Field Operations Division's Regional Offices as follows:

Atlanta, Georgia
Boston, Massachusetts
Chicago, Illinois
Cincinnati, Ohio
Dallas, Texas
Denver, Colorado
Detroit, Michigan
Kansas City, Missouri
Los Angeles, California
New York, New York
Norfolk, Virginia
Philadelphia, Pennsylvania
San Francisco, California
Seattle, Washingotn
Washington, D.C.

Appendix C—Instructions Governing Use of Code Words, Nicknames, and Exercise Terms (See § 159a.54(j))

1. Definitions

a. *Using Component.* The DoD Component to which a code word is allocated for use, and which assigns to the word a classified meaning, or which originates nicknames and exercise terms using the procedure established by the Joint Chiefs of Staff.

b. *Code Word.* A single word selected from those listed in Joint Army-Navy-Air Force Publication (JANAP) 299 and later volumes, and assigned a classified meaning by appropriate authority to insure proper security concerning intentions, and to safeguard information pertaining to actual military plans or operations classified as Confidential or higher. A code word shall not

be assigned to test, drill or exercise activities. A code word is placed in one of three categories:

(1) *Available.* Allocated to the using component. Available code words *individually* will be unclassified until placed in the active category.

(2) *Active.* Assigned a classified meaning and current.

(3) *Canceled.* Formerly active, but discontinued due to compromise, suspected compromise, cessation, or completion of the operation to which the code word pertained. Canceled code words *individually* will be unclassified and remain so until returned to the active category.

c. *Nickname.* A combination of two separate unclassified words which is assigned an unclassified meaning and is employed only for unclassified administrative, morale, or public information purposes.

d. *Exercise Term.* A combination of two separate unclassified words, normally unclassified, used exclusively to designate a test, drill, or exercise. An exercise term is employed to preclude the possibility of confusing exercise directions with actual operations directives.

2. Policy and Procedure

a. *Code Words.* The Joint Chiefs of Staff are responsible for allocating words or blocks of code words from JANAP 299 to DoD Components. DoD Components may request allocation of such code words as required and may reallocate available code words within their organizations, in accordance with individual policies and procedure, subject to applicable rules set forth herein.

(1) A permanent record of all code words shall be maintained by the Joint Chiefs of Staff.

(2) The using Component shall account for available code words and maintain a record of each active code word. Upon being canceled, the using component shall maintain the record for 2 years; thence the record of each code word may be disposed of in accordance with current practices, and the code word returned to the available inventory.

b. *Nicknames*

(1) Nicknames may be assigned to actual events, projects, movement of forces, or other nonexercise activities involving elements of information of any classification category, but the nickname, the description or meaning it represents, and the relationship of the nickname and its meaning must be unclassified. A nickname is not designed to achieve a security objective.

(2) Nicknames, improperly selected, can be counterproductive. A nickname must be chosen with sufficient care to ensure that it does not:

(a) Express a degree of bellicosity inconsistent with traditional American ideals or current foreign policy;

(b) Convey connotations offensive to good taste or derogatory to a particular group, sect, or creed; or,

(c) Convey connotations offensive to our allies or other Free World nations.

(3) The following shall not be used as nicknames:

(a) Any two-word combination voice call sign found in JANAP 119 or ACP 110. (However, single words in JANAP 119 or ACP 110 may be used as part of a nickname if the first word of the nickname does not appear in JANAP 299 and later volumes.)

(b) Combination of words including word "project," "exercise," or "operation." (The word "project" often is used as the first or second word with an unclassified nickname originating outside the Department of Defense.)

(c) Words that may be used correctly either as a single word or as two words, such as "moonlight."

(d) Exotic words, trite expressions, or well-known commercial trademarks.

(4) The Joint Chiefs of Staff shall:

(a) Establish a procedure by which nicknames may be authorized for use by DoD Components.

(b) Prescribe a method for the using Components to report nicknames used.

(5) The heads of DoD Components shall:

(a) Establish controls within their Components for the assignment of nicknames authorized under subparagraph 2.b.(4)(a), above.

(b) Under the procedures established, advise the Joint Chiefs of Staff of nicknames as they are assigned.

c. Exercise Term

(1) Unclassified exercise terms may be assigned only to tests, drills, or exercises for the purpose of emphasizing that the event is a test, drill, or exercise and not an actual operation. However, the description or meaning it represents, and the relationship of the exercise term and its meaning can be classified or unclassified. A classified exercise term is not authorized.

(2) Selection of exercise terms will follow the same guidance as contained in subparagraphs 2.b.(2) and (3), above.

(3) The Joint Chiefs of Staff shall:

(a) Establish a procedure by which exercise terms may be authorized for use by DoD Components.

(b) Prescribe a method for using Components to report exercise terms used.

(4) The heads of DoD Components shall:

(a) Establish controls within their Component for the assignment of exercise terms authorized under subparagraph 2.c.(3), above.

(b) Under the procedures established, advise the Joint Chiefs of Staff of exercise terms as they are assigned.

3. Assignment of Classified Meanings to Code Words

a. The DoD Component responsible for the development of a plan or the execution of an operation shall be responsible for determining whether to assign a code word.

b. Code words shall be activated for the following purposes only:

(1) To designate a classified military plan or operation;

(2) To designate classified geographic locations in conjunction with plans or operations referred to in subparagraph 3.b.(1), above; or,

(3) To cancel intentions in discussions and messages or other documents pertaining to plans, operations, or geographic locations referred to in subparagraphs 3.b.(1) and (2), above.

c. The using Component shall assign to a code word a specific meaning classified Secret or Confidential. Code words shall not be used to cover unclassified meanings. The assigned meaning need not in all cases be classified as high as the overall classification assigned to the plan or operation. Top Secret code words may be issued only with DUSD(P) or DoD Component head approval.

d. Code words shall be selected by each using Component in such manner that the word used does not suggest the nature of its meaning.

e. A code word shall not be used repeatedly for similar purposes; that is, if the initial phase of an operation is designated "Meaning," succeeding phases shall not be designated "Meaning II" and "Meaning III," but should have different code words.

f. Each DoD Component shall establish policies and procedures for the control and assignment of classified meanings to code words, subject to applicable rules set forth herein.

4. Notice of Assignment, Dissemination, and Cancelation of Code Words and Meanings

a. The using Component shall promptly notify the Joint Chiefs of Staff when a code word is made active, indicating the word, and its classification. Similar notice shall be made when any changes occur, such as the substitution of a new word for one previously placed in use.

b. The using Component is responsible for further dissemination of active code words and meanings to all concerned activities, to include classification of each.

c. The using Component is responsible for notifying the Joint Chiefs of Staff of canceled code words. This cancellation report is considered final action, and no further reporting or accounting of the status of the canceled code word will be required.

5. Classification and Downgrading Instructions

a. During the development of a plan, or the planning of an operation by the headquarters of the using Component, the code word and its meaning shall have the same classification. When dissemination of the plan to other DoD Components or to subordinate echelons of the using Component is required, the using Component may downgrade the code words assigned below the classification assigned to their meanings in order to facilitate additional planning implementation, and execution by such other Components or echelons, but code words shall, at a minimum, be classified Confidential.

b. A code word which is replaced by another code word due to a compromise or suspected compromise, or for any other reason, shall be canceled, and classified Confidential for a period of 2 years, after which the code word will become unclassified.

c. When a plan or operation is discontinued or completed, and is not replaced by a similar plan or operation but the meaning cannot be declassified, the code word assigned thereto shall be canceled and classified Confidential

for a period of 2 years, or until the meaning is declassified, whichever is sooner, after which the code word will become unclassified.

d. In every case, whenever a code word is referred to in documents, the security classification of the code word shall be placed in parentheses immediately following the code word, for example, "Label (C)."

e. When the meaning of a code word no longer requires a classification, the using Component shall declassify the meaning and the code word and return the code word to the available inventory.

6. Security Practices

a. The meaning of a code word may be used in a message or other document, together with the code word, only when it is essential to do so. Active code words may be used in correspondence or other documents forwarded to addresses who may or may not have knowledge of the meaning. If the context of a document contains detailed instructions or similar information which indicates the purpose or nature of the related meaning, the active code word shall not be used.

b. In handling correspondence pertaining to active code words, care shall be used to avoid bringing the code words and their meanings together. They should be handled in separate card files, catalogs, indexes, or lists, enveloped separately, and dispatched at different times so they do not travel through mail or courier channels together.

c. Code words shall not be used for addresses, return addresses, shipping designators, file indicators, call signs, identification signals, or for other similar purposes.

7. Former Words

All code words formerly categorized as "inactive" or "obsolete" shall be placed in the current canceled category and classified Confidential. Unless otherwise restricted, all code words formerly categorized as "canceled" or "available" shall be individually declassified. All records associated with such code words may be disposed of in accordance with current practices, provided such records have been retained at least 2 years after the code words were placed in the former categories of "inactive," "obsolete," or "canceled."

8. Non-DoD Words

Nicknames or code words originating outside of the Department of Defense that are jointly used by the originating organization and the Department of Defense shall be registered with the DUSD(P) to prevent confusion with DoD-originated words.

Appendix D—Federal Aviation Administration Air Transportation, Security Field Offices (See § 159a.59(c)(1)(i))

City	*State*
Anchorage	Alaska
Atlanta	Georgia
Baltimore	Maryland
Boston	Massachusetts
Chicago (O'Hare)	Illinois
Cleveland	Ohio
Dallas	Texas
Denver	Colorado
Detroit	Michigan
Honolulu	Hawaii
Houston	Texas
Kansas City	Missouri
Las Vegas	Nevada
Los Angeles	California
Miami	Florida
Minneapolis	Minnesota
Newark	New Jersey
New Orleans	Louisiana
New York (John F. Kennedy)	New York
New York (La Guardia)	New York
Philadelphia	Pennsylvania
Pittsburgh	Pennsylvania
Portland	Oregon
St. Louis	Missouri
San Antonio	Texas
San Diego	California
San Francisco	California
San Juan	Puerto Rico
Seattle	Washington
Tampa	Florida
Tucson	Arizona
Washington (Dulles)	Washington, DC
Washington (National)	Washington, DC

Appendix E—Transportation Plan (See § 159a.57(e))

The provisions of § 159a.57(e) of this part require that transmission instructions or a separate transportation plan be included with any contract, agreement or other arrangement involving the release of classified material to foreign entities. The transportation plan is to be submitted to and approved by applicable DoD authorities. As a minimum, the transportation plan shall include the following provisions:

a. A description of the classified material together with a brief narrative as to where and under what circumstances transfer of custody will occur;

b. Identification, by name or title, of the designated representative of the foreign recipient government or international organization who will receipt for and assume security responsibility for the U.S. classified material (person(s) so identified must be cleared for access to the level of the classified material to be shipped);

c. Identification and specific location of delivery points and any transfer points;

d. Identification of commercial carriers and freight forwarders or transportation agents who will be involved in the shipping process, the extent of their involvement, and their security clearance status;

e. Identification of any storage or processing facilities to be used and, relative thereto, certification that such facilities are authorized by competent government authority to receive, store, or process the level of classified material to be shipped;

f. When applicable, the identification, by name or title, of couriers and escorts to be used and details as to their responsibilities and security clearance status;

g. Description of shipping methods to be used as authorized by the provisions of subpart I, together with the identification of carriers (foreign and domestic);

h. In those cases when it is anticipated that the U.S. classified material or parts thereof may be returned to the United States for repair, service, modification, or other reasons, the plan must require that shipment shall be via a carrier of U.S. or recipient government registry, handled only by authorized personnel, and that the applicable Military Department (for foreign military sales (FMS)) or Defense Investigative Service (for commercial sales) will be given advance notification of estimated time and place of arrival and will be consulted concerning inland shipment;

i. The plan shall require the recipient government or international organization to examine shipping documents upon receipt of the classified material in its own territory and advise the responsible Military Department in the case of FMS, or Defense Investigative Service in the case of commercial sales, if the material has been transferred enroute to any carrier not authorized by the transportation plan; and

j. The recipient government or international organization also will be required to inform the responsible Military Department or the Defense Investigative Service promptly and fully of any known or suspected compromise of U.S. classified material while such material is in its custody or under its cognizance during shipment.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 16, 1989.

[FR Doc. 89-14748 Filed 6-26-89; 8:45 am]

BILLING CODE 3810-01-M

SELECTIVE SERVICE SYSTEM

32 CFR Part 1656

Selective Service Regulations

AGENCY: Selective Service System.

ACTION: Final rule.

SUMMARY: Procedures for the processing of registrants under the Military Selective Service Act (50 U.S.C. App. 451 et seq.) are revised to assure greater fairness and efficiency in administration in the processing of registrants.

EFFECTIVE DATE: June 27, 1989.

FOR FURTHER INFORMATION CONTACT: Henry N. Williams, General Counsel, Selective Service System, Washington, DC 20435, Phone (202) 724-1167.

SUPPLEMENTARY INFORMATION: This amendment to Selective Service Regulations is published pursuant to section 13(b) of the Military Selective Service Act (50 U.S.C. App. 463(b)) and Executive Order 11623. These regulations implement the Military Selective Service Act (50 U.S.C. App. 451 et seq.).

Analysis of Comments

The proposed amendment to Selective Service Regulations was published in the **Federal Register** on April 14, 1989 (54 FR 14968) for public comment. Two letters of comment were received, both favored the proposal.

The proposed regulation will become the final rule.

Determination

As required by Executive Order 12291, I have determined that this regulation is not a "Major" rule and therefore does not require a Regulatory Impact Analysis.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), I have determined that this regulation does not have a significant economic impact on a substantial number of small entities.

Certificate

Whereas, on April 14, 1989, the Director of Selective Service published a Notice of Proposed Amendments of Selective Service Regulations at 54 FR 14968; and whereas such publication complied with the publication requirement of section 13(b) of the Military Selective Service Act (50 App. U.S.C. 463(b)) in that more than 30 days have elapsed subsequent to such publication during which period comments from the public (summarized above) have been received and considered; and I certify that I have requested the view of officials named in section 2(a) of Executive Order 11623 and none of them has timely requested that the matter be referred to the President for decision.

Now therefore by virtue of the authority vested in me by the Military Selective Service Act, as amended (50 App. U.S.C. section 451 et seq.) and Executive Order 11623 of October 12, 1971, the Selective Service Regulations constituting a portion of Chapter XVI of Title 32 of the Code of Federal Regulations, are hereby amended, as stated below.

List of Subjects in 32 CFR Chapter XVI

Armed Forces—draft.

Dated: June 14, 1989.

Samuel K. Lessey Jr.,

Director of Selective Service.

The regulation is:

PART 1656—ALTERNATIVE SERVICE

(1) The authority citation for Part 1656 continues to read as follows:

Authority: Military Selective Service Act, 50 U.S.C. App. 451 et. seq.; E.O. 11623.

§ 1656.5 [Amended]

(2) Section 1656.5(a)(1)(iii) is removed and reserved.

[FR Doc. 89–15114 Filed 6–26–89; 8:45 am]

BILLING CODE 8015–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD1–89–048]

Safety Zone Regulations; Coney Island Channel, New York

AGENCY: Coast Guard, DOT.

ACTION: Emergency Rule.

SUMMARY: The Coast Guard is establishing a safety zone in Coney Island Channel, New York. This Zone is needed to protect the maritime community from the possible dangers and hazards to navigation associated with an airshow.

EFFECTIVE DATES: This regulation becomes effective at 1:00 p.m. local time on the 1st, 2nd, 3rd and 4th of July 1989. It terminates at 2:30 p.m. local time on the 1st, 2nd, 3rd and 4th of July 1989.

FOR FURTHER INFORMATION CONTACT: GMC H.J. Moss of Captain of the Port, New York (212) 668–7933.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was not published for this regulation and it is being made effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to public interest since immediate action is needed to respond to any potential hazards. This action has been analyzed in accordance with the principle and criteria of E.O. 12612, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Drafting Information

The drafters of this regulation are LTJG. C.W. Jennings, Project Officer for the Captain of the Port, New York, and LT. J.B. Gately, Project Attorney, First Coast Guard District Legal Office.

Discussion of Regulation

The circumstances requiring this regulation result from an airshow display over Coney Island Channel, NY.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water) security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165 [AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160–5, 49 CFR 1.46.

2. Part 165 is amended by adding section 165.T1029 to read as follows:

§ 165.T1029 Safety Zone; Coney Island Channel, New York, NY.

(a) *Location.* That portion of the waters of Coney Island Channel encompassed by a line drawn from Sheepshead Bay buoy "7"(LLN31685), thence southwest to approach buoy"1"(LLN31655), thence due west to Coney Island Channel buoy"11"(LLN32640), thence due north to Norton Pt. on Coney Island,

(b) *Effective date.* This regulation becomes effective at 1:00 p.m. local time on the 1st, 2nd, 3rd and 4th of July 1989. It terminates at 2:30 p.m. local time on the 1st, 2nd, 3rd and 4th of July 1989.

(c) *Regulations.* In accordance with the general regulations in Section 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port.

Dated: June 7, 1989.

R.C. North,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 89–15188 Filed 6–26–89; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 173

[CGD 89–048]

Vessel Numbering and Casualty Reporting

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is correcting statutory citations and restatements of legislative text to conform to changes made during recodification of Title 46 of the United States Code. The Coast Guard is also updating the lists of Issuing Authorities and Reporting Authorities. Since the lists of issuing and reporting authorities were last corrected, the Coast Guard has approved several State numbering and casualty reporting systems. The Coast Guard remains the issuing and reporting authority only for the State of Alaska. The effect of this rulemaking is to update statutory citations and restatements of legislative text related to reciprocity, and to accurately identify the appropriate issuing and reporting authority for each State.

EFFECTIVE DATE: June 27, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Carlton Perry, Office of Navigation Safety and Waterway Services (202) 267–0979.

SUPPLEMENTARY INFORMATION: In 1983, Congress recodified sections of the Federal Boat Safety Act of 1971 into Title 46 U.S.C., and changed the language of subsections 18(c) and 18(d) regarding reciprocity. This rulemaking amends several sections in Title 33 CFR Part 173 and revises the wording of § 173.17 to conform to the current text of 46 U.S.C. 12302. The changes do not substantively affect the existing regulations.

Appendix A of 33 CFR Part 173 lists States approved by the Coast Guard to conduct the functions of issuing vessel numbers and requiring the reporting of vessel accidents. Since the lists were last updated in 1976, the Coast Guard has approved three State numbering and casualty and accident reporting systems: American Samoa, 1982; Washington, 1984; and New Hampshire, 1988. The Coast Guard now issues vessel numbers and requires the reporting of accidents only for the State of Alaska. This rulemaking will incorporate the three most recently approved States into paragraph (a), alphabetically, along with the other State issuing and reporting authorities.

This final rule was not preceded by a notice of proposed rulemaking and is being made effective in less than 30 days after publication in the **Federal Register**. This rule relates to the Coast Guard's management, procedures and practices, and merely corrects the restatement of current law text and updates the Appendix A listing to reflect the current State issuing and reporting authorities. Therefore, the Coast Guard has determined that notice and opportunity for public comment is unnecessary under 5 U.S.C. 553(b)(3)(B). Since the changes reflected in this rule have already been accomplished, good cause exists, under 5 U.S.C. 553(d), for making it effective in less than 30 days after publication in the **Federal Register**.

Drafting Information

The principal persons involved in drafting this rule are: Carlton Perry, Project Manager, and Christena Green, Project Attorney, Office of the Chief Counsel.

Regulatory Evaluation

This rulemaking is considered nonmajor under Executive Order No. 12291 and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of the rulemaking has been found to be so minimal that further evaluation is unnecessary. These amendments merely correct a listing of current issuing and reporting authorities. Since the impact of the proposal is expected to be minimal, the Coast Guard certifies that this final rule will not have significant economic impact on a substantial number of small entities.

Federalism

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

List of Subjects in 33 CFR Part 173

Marine safety, Reporting requirements.

In consideration of the foregoing, the Coast Guard is amending Part 173 of Title 33, Code of Federal Regulations as set forth below.

PART 173—[AMENDED]

1. The authority for Part 173 continues to read as follows:

Authority: 46 U.S.C. 6106, 12302; 49 CFR 1.46.

2. Section 173.1 is revised to read as follows:

§ 173.1 Purpose.

This part prescribes requirements for numbering vessels and for reporting casualties and accidents to implement sections 6101, 6102, 12301 and 12302 of Title 46, United States Code.

3. Section 173.3 is amended by removing and reserving paragraph (a) to read as follows:

§ 173.3 Definitions.

As used in this part:

(a) [Reserved.]

* * * * *

4. Section 173.13 is amended by revising the introductory text to read as follows:

§ 173.13 Exemptions.

Where the Coast Guard issues numbers, the following classes of vessels are exempt, under Section 12303 of Title 46, United States Code, from the numbering provisions of Sections 12301 and 12302 of Title 46, United States Code, and this part:

* * * * *

5. Section 173.17 is revised to read as follows:

§ 173.17 Reciprocity.

(a) Section 12302(c) of Title 46, United States Code, states:

When a vessel is numbered in a State, it is deemed in compliance with the numbering system of a State in which it temporarily is operated.

(b) Section 12302(d) of Title 46, United States Code, states:

When a vessel is removed to a new State of principal operation, the issuing authority of that State shall recognize the validity of the number issued by the original State for 60 days.

6. Section 173.21 is amended by revising paragraph (b) to read as follows:

§ 173.21 Certificate of number required.

* * * * *

(b) Section 12304(a) of Title 46, United States Code, states in part: The certificate of number for a vessel less than 26 feet in length and leased or rented to another for the latter's noncommercial operation of less than 7 days may be retained on shore by the vessel's owner or representative at the place from which the vessel departs or returns to the possession of the owner or the owner's representative.

Appendix A—[Amended]

7. In paragraph (a) of Appendix A of Part 173, the phrase "American Samoa–AS." is added immediately after the phrase "Alabama–AL."; the phrase "New Hampshire–NH." is added immediately after the phrase "Nevada–NV."; and the phrase "Washington–WN." is added immediately after the phrase "Virgin Islands–VI.".

8. In paragraph (b) of Appendix A of Part 173, the phrases "American Samoa–AS.", "New Hampshire–NH.", and "Washington–WN." are deleted.

Dated: June 21, 1989.

R. T. Nelson,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 89–15189 Filed 6–26–89; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–3608–3]

Approval and Promulgation of Air Quality Implemenation Plans; Louisiana; Revision to Louisiana Lead SIP for the Baton Rouge Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action approves a revision to the Louisiana State Implementation Plan (SIP) for lead. On July 28, 1982, at 47 FR 32529 EPA proposed to approve the Louisiana lead SIP as submitted to EPA except for the portion dealing with the Baton Rouge area, because EPA required additional air quality modeling around the Ethyl Corporation's lead gasoline additive manufacturing plant ("Ethyl") in East Baton Rouge Parish. On May 1, 1984, (49 FR 18484), EPA fully approved the Louisiana lead SIP, which included the State's lead control plan for the Ethyl facility—a State Compliance Order issued October 31, 1983. In a letter dated July 18, 1986, the Governor of Louisiana submitted to EPA a new Compliance Order dated January 31, 1986, that amended the original Order in its entirety. Because the original Order was a part of the approved lead SIP for Baton Rouge, its amendment meant that the State had to seek an amendment to its SIP.

EFFECTIVE DATE: This action will be effective on July 27, 1989.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations:

Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733.

Louisiana Department of Environmental Quality, P.O. Box 44096, 625 N. 4th Street, 8th Floor, Baton Rouge, Louisiana 70804–4096.

Environmental Protection Agency, Public Information Reference Unit, 401 M Street SW., Washington, DC 20460.

If you wish to view these documents, please contact the person named below to schedule an appointment.

FOR FURTHER INFORMATION CONTACT: Barbara Durso at (214) 655–7214 or FTS 255–7214.

SUPPLEMENTARY INFORMATION: The pertinent background information concerning this notice was published in the proposed rulemaking on April 14, 1988, at 53 FR 12435. EPA did not receive any comments on the proposal.

In accordance with the proposal, the Louisiana Department of Environmental Quality (LDEQ) remodeled the impact of the Ethyl Corporation's lead emissions on ambient air quality in the Baton Rouge area using the ISCST model, Version 6.3, and submitted the new modeling analysis to EPA by letter dated May 27, 1988. On January 27, 1989, LDEQ submitted an explanatory letter to EPA in response to questions from EPA about emissions limits used in the May 1988 analysis. Since LDEQ satisfied EPA's concerns, the Agency finds the current modeling analysis to adequately demonstrate that ambient air quality concentrations of lead will not be adversely affected by lead emissions from the change in Ethyl's operations.

In general, there are four elements considered in the application of an air quality model: (1) Input of the sources of emissions, (2) selection of a meteorological data set which best represents dispersion and transport in the area, (3) identification of receptors (i.e., those points downwind), and (4) choice of model options. EPA's review of LDEQ's current air qualilty analysis of May 27, 1988, considered these elements.

EPA had two concerns with the air quality modeling first submitted to support the State's request to revise the lead SIP for the Baton Rouge area: (1) The use of appropriate versions of the air quality model and (2), the use of a fully adequate receptor network. Because of these concerns, EPA required that the State remodel the impact of Ethyl's lead emissions.

In its first attempt, LDEQ used Version 5 of the ISCST model even though Version 6 was designated the acceptable version for regulatory use at that time (52 FR 12435). In the current modeling for the revised lead SIP, LDEQ used Version 6.3 of ISCST, which was the appropriate supplemental version at the time the State did the current modeling.

EPA's second concern was with the limited nature of the receptor network near the plant property line used in the first modeling effort. LDEQ remedied this problem by adding more receptors in the current modeling, which resulted in fully acceptable receptor coverage.

The State's amended Compliance Order for the Ethyl Corporation facility in Baton Rouge limits emissions to 0.22 grams of lead per second from the two furnaces, based on a calendar quarterly averaging period. The input of emission sources and rates in the modeling for Ethyl are consistent with the requirements of the amended Order. Under a plantwide emissions limit of 0.22 grams of lead per second for a calendar quarterly averaging period, the LDEQ submittal allows for flexibility in the quarterly average emission rates from the individual furnaces: (1) 0.22 grams of lead per second per quarterly averaging period for the reverberatory furnace stack and, (2) 0.14 grams of lead per second, quarterly average, for the rotary furnace stack.

LDEQ properly selected the applicable options for the ISCST model to assess ambient air concentrations of lead in the Baton Rouge area. These options included the regulatory option, that is the model included certain features recommended by EPA in its guidelines. The State also used an acceptable meteorological data set, which included five years (1982–1986) of Baton Rouge surface data and Lake Charles upper air data. The State chose a receptor network that provided adequate coverage to identify the maximum predicted lead concentration on a calendar quarter basis. The results of the current modeling, including consideration of background lead air quality, showed no exceedances of the lead standard will occur in the Baton Rouge area as a result of this action.

Final Action

EPA has evaluated the revision to the Baton Rouge portion of the Louisiana lead SIP and finds that it meets the requirements of EPA regulations and policy, therefore, EPA approves the revision to Lousiana lead SIP as submitted by the Governor in a letter dated July 18, 1986. EPA finds that the amended Compliance Order issued by the Secretary of the Louisiana Department of Environmental Quality on January 31, 1986, to Ethyl Corporation of Baton Rouge, Louisiana, is adequate to attain and maintain the lead NAAQS throughout the Baton Route area.

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

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 28, 1989. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by Reference, Lead, Reporting and Recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the State of Louisiana was approved by the Director of the Federal Register on July 1, 1982.

Authority: 42 U.S.C. 7401–7642.

Date: June 16, 1989.

Robert E. Layton, Jr.,

Regional Administrator.

40 CFR Part 52, Subpart T, is amended as follows:

PART 52—[AMENDED]

Subpart T—Louisiana

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

Authority: 42 U.S.C. 7401–7642.

2. Section 52.970 is amended by adding paragraph (c)(51) to read as follows:

§ 52.970 Identification of plan.

* * * * *

(c) * * *

(51) Revision to the Louisiana Lead State Implementation Plan (SIP) submitted by the Governor in a letter dated July 18, 1986.

(i) Incorporation by Reference.

(A) An amended Compliance Order dated January 31, 1986, issued by the Secretary of the State of Louisiana Department of Environmental Quality in the matter of Ethyl Corporation, Baton Rouge, Louisiana.

(ii) Additional material.

(A) Computer modeling submitted by letter dated May 27, 1988, from Doug Walters, Louisiana Department of Environmental Quality, to Joe Winkler, U.S. Environmental Protection Agency.

(B) Explanatory letter dated January 27, 1989, from Gustave Von Bodungen, Louisiana Department of Environmental Quality, to Gerald Fontenot, U.S. Environmental Protection Agency.

[FR Doc. 89–15186 Filed 6–26–89; 8:45 am]
BILLING CODE 6560–60–M

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40 CFR Part 52

[FRL–3606–5]

Designation of Areas for Air Quality Planning Purposes

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

ACTION: Final rule.

SUMMARY: USEPA is disapproving a site-specific revision to the ozone portion of the Ohio State Implementation Plan (SIP) for the General Motors (GM) Lordstown auto assembly facility in Warren (Trumbull County), Ohio. On October 5, 1978 (43 FR 46011), USEPA designated Trumbull County as nonattainment for ozone. This action is based on a revision request submitted by Ohio on October 21, 1986, for a relaxation of emission limitations for GM's volatile organic compound (VOC) topcoat and final repair coatings operations, as established under Ohio Administrative Code (OAC) Rule 3745–21–09(C). USEPA has determined that this request would not constitute Reasonably Available Control Technology (RACT), as required under the Clean Air Act (CAA).

As a result of today's disapproval of the revision for GM's Lordstown facility, the source remains subject to the control requirements of OAC Rule 3745–21–09(C).

EFFECTIVE DATE: This final rulemaking becomes effective on July 27, 1989.

ADDRESSES: Copies of materials relating to USEPA's action may be inspected during normal business hours at the following address. (It is recommended that you telephone Maggie Greene, at (312) 886–6088, before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR–26), 230 South Dearborn Street, Chicago, Illinois 60604

Ohio Environmental Protection Agency, Office of Air Pollution Control, 1800 WaterMark Drive, P.O. Box 1049, Columbus, Ohio 43266–0149.

FOR FURTHER INFORMATION CONTACT: Maggie Greene, U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR–26), 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886–6088.

SUPPLEMENTARY INFORMATION: On October 21, 1986, the Ohio Environmental Protection Agency (OEPA) submitted a request to revise the ozone portion of the State Implementation Plan (SIP) for the General Motors (GM) Lordstown auto assembly facility, which is located in Trumbull County, Ohio. On October 5, 1978 (43 FR 46011), USEPA designated Trumbull County as nonattainment for ozone. The revision requests a relaxation of emission limitations for GM's volatile organic compound (VOC) topcoat and final repair coatings operations, as established under Ohio Administrative Code (OAC) Rule 3745–21–09(C). USEPA has determined that this revision request would not constitute RACT as required under the CAA.

On June 29, 1988 (53 FR 24450), USEPA proposed to disapprove a site-specific SIP revision for the GM Lordstown auto assembly facility. Both OEPA and GM commented on the proposed disapproval. OEPA's comments are repeated in full in this final rule. However, due to their length, portions of GM's comments are abbreviated and/or paraphrased. USEPA's responses are based upon the full comments.

Public Comments and USEPA's Responses.

Ohio EPA's August 12, 1988, Comments

(1) USEPA FR Comment

GM's revised limit for its topcoat operation would amount to an average VOC content of 5.2 lbs VOC per gallon of coating, minus water. USEPA does not consider such a high VOC content as REACT for automotive topcoats, based upon past Agency analyses. USEPA must consider Ohio's request for GM Lordstown as a permanent relaxation, because Ohio has failed to specify a date for conversion of GM's coating operations to base coat/clear coat.

Ohio EPA Response. The USEPA refers to "past Agency analyses," but does not identify them in either the NPR or Region V's TSD. If this phrase refers to the CTG for automobile and light-duty truck assembly plants, it would not be a proper basis for disapproving the SIP revision. Obviously, the SIP revision is facility-specific. The approvability of the SIP revision must rise or fall based upon facility-specific considerations. The CTG establishes a presumptive norm for RACT, and the USEPA has indicated, as a matter of policy, that States have the latitude to establish an alternative definition of RACT for a particular facility if the presumptive norm is determined to be unreasonable. This is precisely what the Ohio EPA is proposing for the GM Lordstown facility—an alternative definition of RACT for the topcoat and final repair operations. Therefore, we must consider the statement that the "USEPA does not consider such a high VOC content as RACT" as nothing more than unsubstantiated opinion.

It is true that the variances for the topcoat and final repair operations do not contain a deadline for conversion to base coat/clear coat technology. Nevertheless, the USEPA has been fully aware of the fact that GM and the Ohio EPA have not considered the SIP revision to constitute a permanent relaxation. The Ohio EPA and GM have always considered the SIP revision to be a temporary relaxation. This was pointed out clearly to the USEPA in the Ohio EPA's Fact Sheet for the variances, as was the reason why GM could not commit to a firm date for the base coat/clear coat conversion as part of the terms and conditions of the variances. The fact that GM actually completely (sic) the conversion in September 1987, confirms the temporary nature of the SIP revision.

The USEPA's October 21, 1981, policy on automobile coatings provides for

compliance date extensions through 1987 for topcoats. This approach was not pursued by the Ohio EPA because, as mentioned above, GM did not know exactly when the base coat/clear coat conversion would occur, and there was a good likelihood it would not occur by the end of 1987. In retrospect, if this approach had been followed, there would not have been a need for a redefinition of RACT for the GM Lordstown topcoat and final repair operations and there would not have been a basis for the USEPA's pending enforcement action against the Lordstown facility.

In order to remove the USEPA's concern that the SIP revision constitutes a permanent relaxation, the Ohio EPA will be modifying the variances in the near future to specify an expiration date of December 31, 1987. Once the variances have been officially modified, they will be submitted to the USEPA. In the meantime, however, the pending SIP revision should be evaluated as a temporary relaxation for the period from January 1, 1986 through December 31, 1987.

USEPA Response. Both USEPA's past guidance on RACT for automotive topcoat operations (the Control Technique Guideline (CTG) document for automotive coatings) and current guidance (the May 25, 1988, document titled "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations") present RACT for automotive topcoat operations to be 2.8 lbs VOC/gallon of coating. USEPA is not aware of having approved a permanent limit of 5.2 lbs/gallon as RACT for automotive topcoat operations. If Ohio's position is that GM Lordstown's topcoat operation is different from all other topcoat operations required to meet 2.8 lbs VOC/gallon at 30 percent transfer efficiency, or less than 5.2 lbs VOC/gallon, it has not demonstrated this position. This is the fundamental test that must be met to obtain a permanent relaxation substantially less stringent than what is generally required.

It does not matter "that GM and the Ohio EPA have not considered the SIP revision to constitute a permanent relaxation." USEPA is limited to reviewing what has been formally submitted to it and Ohio's October 21, 1986, submittal constitutes a permanent relaxation.

If Ohio submits a compliance date extension in the future, it will be reviewed as such. However, it is not possible for USEPA to do so with the submittal which is currently before it.

(2) USEPA FR Comment

In a memorandum of February 7, 1986, USEPA's Economic Analysis Branch (EAB) presented its evaluation of GM's cost analysis for spray booth controls. EAB's annualization techniques resulted in a systematic 19 percent reduction in GM's annualized costs. Therefore, GM's cost analysis appears to have overestimated these costs.

Ohio EPA Response. There is an underlying fallacy in this conclusion. The USEPA has assumed that the EAB's methods for calculating the annualized costs are more accurate than those used by GM. No information has been provided by the USEPA to support this assumption. In fact, the February 7, 1986, EAB memorandum referenced in the NPR states the following:

> (a) GM's costing procedures are appropriate; and
> (b) the capital and operating cost estimates prepared by GM are acceptable for this specific application; * * *

Also, the January 31, 1986, EAB memorandum, which provides the details of their cost estimates, states the following:

> Note that, for all three options, the EAB C/E (cost effectiveness) is lower, and by the same amount (19 percent). This difference is solely due to the different methods and assumptions used in calculating the total annual/levelized costs.

Nowhere in the January 31, 1986, memorandum does the EAB characterize its cost estimates as being more accurate than GM's, nor does the EAB state that GM has "overestimated" the costs.

In summary, the difference between GM's and the EAB's cost estimation techniques cannot form a basis for disapproval of the SIP revision, especially when it has not been determined that the EAB's approach is more accurate.

USEPA Response. In order to evaluate C/E numbers, it is necessary that C/E results be based upon standard USEPA techniques. As stated in the January 31, 1986, memorandum titled "Carbon Adsorption Costs: GM Lordstown Assembly Plant" (which is referred to above by Ohio):

> To put C/E results on an equal footing with those estimated for NSPS, NESHAP, CTG, and most other [Office of Air Quality Planning and Standards] OAQPS cost analyses, USEPA calculated the total annual cost and C/E for each option, using both the GM "raw" capital and operating and maintenance (O&M) costs, and the factors and assumptions normally employed in OAQPS cost analyses.

Comparing C/E values, as Ohio EPA has done, which have been developed differently is meaningless.

(3) USEPA FR Comment

GM currently uses a 27 percent solids dispersion lacquer (DL) topcoat coating. In a November 1978 report, entitled "Study to Determine Capabilities to Meet Federal USEPA Guidelines for VOC Emissions", GM proposed to convert operations to higher solids solvent systems until waterborne coatings could be used to achieve final compliance with RACT limits. At that time, the facility was at 17 percent solids DL, which formed the appropriate baseline from which to figure cost-effectiveness. An interim increase to 27 percent solids DL was part of GM's plan to obtain an additional 5 years to achieve final compliance with the emission limits. Therefore, it is inappropriate for GM to later revise its baseline for determining cost-effectiveness to the 27 percent solids content which GM previously identified as an interim limit to support a compliance date extension, which GM received on October 31, 1980 (45 FR 72122).

Ohio EPA Response. It is very interesting to note that the Ohio EPA initially raised the question concerning the proper baseline for calculating cost-effectiveness, i.e., 17 percent solids DL or 27 percent solids DL. The Ohio EPA's position was that 17 percent solids DL was the proper baseline. However, in discussions with the EAB, GM was informed that incremental cost-effectiveness, and hence a 27 percent solids DL, was the proper method for determining RACT. Now the USEPA is saying that the use of a 27 percent solids DL baseline is a reason for disapproving the SIP revision. Which position represents the real USEPA position on this issue?

In reviewing the variance applications submitted by GM, we considered the issue of economic reasonableness by looking at both a 17 percent solids DL baseline and a 27 percent solids DL baseline. The results of these analyses were discussed in detail in the following sections of the Fact Sheet for the variances:

> If GM were to try to comply with the 2.8 lbs VOC/gallon limitation for the topcoat coating lines through the use of add-on control equipment, incinerators would have to be installed for the 2nd undercoat and 3rd lacquer ovens, and carbon adsorption would have to be installed for the 27 stack pairs associated with the 1st lacquer spray booth. This would require a capital expenditure of $38 million. *The overall cost-effectiveness of this control strategy from a 27 percent solids*

lacquer emission baseline would be in excess of $15,000/ton. From a 17 percent solids lacquer emission baseline (i.e., prior to the conversion to 27 percent solids DL and the installation of the incinerator for the 1st lacquer oven), the cost-effectiveness would be approximately $5,700/ton.

GM also investigated the cost-effectiveness of a "RACT equivalent bubble" for the topcoat coating lines. This control strategy would involve (a) the use of carbon adsorption for the 15 most concentrated stack pairs associated with the 1st lacquer spray booth, (b) conversion to a waterborne deadener material, and (c) conversion to a super high solids elpo (prime) material. A capital expenditure of $24 million would be required, and *the overall cost-effectiveness from a 27 percent solids lacquer emission baseline would be almost $6,500/ton. From a 17 percent solids lacquer emission baseline, the cost-effectiveness would be approximately $2,700/ton.*

The overall cost-effectiveness values for strict compliance with the 2.8 lbs VOC/gallon limitation (i.e. $5,700/ton and $15,000/ton) and for compliance by means of a "RACT equivalent bubble" (i.e., $2,700/ton and $6,600/ton) are well above the levels used by the USEPA in defining RACT for various VOC source categories. For example, *the definitions of RACT for the USEPA's RACT I, II and III source categories, of which the surface coating of automobiles is one, are generally based upon cost-effectiveness values that are well below $2000/ton. Furthermore, concerning the proposed "Standards of Performance for New Stationary Sources; Magnetic Tape Manufacturing Industry," the USEPA indicates that a cost-effectiveness of $1,100 per ton "is in the upper end of the range of cost-effectiveness values that EPA is currently using to make decisions on the appropriate levels of nontoxic VOC emissions.*

GM did not investigate the costs of employing add-on controls for the final repair topcoat coating lines because it is the company's opinion that due to the low VOC concentrations, the low annual VOC emission rates, and the large volumes of exhaust gases, the controls would not be any more cost-effective than the controls that were investigated for the topcoat spray booths and ovens (emphasis added throughout).

It is clear from the above that whichever baseline is used, the use of control equipment to achieve strict compliance with the existing regulations or RACT-equivalence is economically unreasonable. Therefore, GM's use of a 27 percent solids DL baseline cannot be a valid basis for disapproval of the SIP revision.

USEPA Response. USEPA has not established a specific policy on what place incremental cost-effectiveness plays in RACT evaluations. RACT is based upon a case-by-case evaluation of technical and economic feasibility. It is not possible to comment on OEPA's discussions with the EAB, as these discussions were not documented.

USEPA does not base economic feasibility upon a rigid C/E cutoff. As indicated by OEPA's response, use of a 17 percent solids DL baseline will result in substantially lower C/E values than use of a 27 percent DL baseline.

USEPA maintains the position stated in the NPR. The appropriate baseline from which to evaluate cost-effectiveness is 17 percent DL. The interim step of 27 percent was presented as part of GM's support to obtain an additional five years to achieve final compliance. It is, therefore, inappropriate for GM to later revise its baseline for determining cost-effectiveness to what was previously identified by GM as an interim limit to support a compliance date extension, which GM received. Also, refer to USEPA's response to GM's comment II C.3.

(4) USEPA FR Comment

OEPA determined the overall cost-effectiveness of each of the various combinations of control measures that GM could employ. For each combination, OEPA also determined whether a combination would result in a RACT equivalent VOC emission reduction. OEPA's analysis indicated that certain combinations of control measures, considered by OEPA to result in emission reductions equivalent to RACT, were reasonably cost-effective.

Ohio EPA Response. This issue is addressed above in the paragraphs excerpted from the Fact Sheet for the variances. A RACT-equivalent combination of control measures would have cost-effectiveness values of $6,600/ton and $2,700/ton for a 27 percent solids DL baseline and a 17 percent solids DL baseline, respectively. Even the lower of these 2 values cannot be considered reasonable when compared to the levels that are normally used by the USEPA to define RACT.

Please note that all of the cost estimates prepared by GM (and by the USEPA) assumed a 10-year useful life for the control equipment. If a useful life of 2 years were used, based upon the date the conversion to base coat/clear coat actually was completed, the cost-effectiveness values would be considerably higher than those mentioned above. The importance of the temporary nature of the SIP revision cannot be overemphasized.

Therefore, in summary, the USEPA's assertion that the RACT-Equivalent combination of control measures is "reasonably cost-effective" is false and is not a valid basis for disapproval of the SIP revision.

USEPA Response. As stated previously, USEPA has not set a C/E cutoff which can be used as the sole basis for determining whether a specific level of control is economically feasible. Ohio's comment that a 2-year, rather than a 10-year, control equipment useful life should be used in evaluating C/E is invalid. Ohio's proposed SIP revision is a permanent relaxation and must be evaluated as such.

(5) USEPA FR Comment

GM failed to investigate the option of continuing to use a 17 percent solids DL with add-on spray booth controls, which could result in VOC emission levels significantly less than current topcoat emissions.

Ohio EPA Response. This statement is inaccurate and surely is not a valid reason for disapproval of the SIP revision. This issue was specifically addressed in a June 4, 1986, letter from GM to the Ohio EPA. The letter was included as part of the technical support for the SIP revision. The information provided by GM indicates that it would be less cost-effective to achieve compliance with the existing regulations by using control equipment and a 17 percent solids DL than by using control equipment and a 27 percent solids DL. Therefore, both options must be considered to be economically unreasonable.

USEPA Response. GM's June 4, 1986, letter does address a 17 percent DL baseline and add-on controls. However, it appears that use of 17 percent DL, and 1st color spray booth and oven controls would result in substantially less emissions than use of 27 percent DL and incineration of the first color oven emissions. GM does not appear to have evaluated the feasibility of 1st color spray booth and oven controls (before converting to 27 percent DL) as an alternative to the permanent relaxation which was proposed by Ohio EPA. The cost-effectiveness value of spray booth controls is lower with 17 percent DL. RACT is defined as the lowest emission limit that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.

The existence of a more stringent alternative, which is economically and technically feasible, is a sufficient demonstration that Ohio's proposed revision does not constitute RACT.

(6) USEPA FR Comment

OEPA determined that the use of air cascading for three stack pairs would

lower GM's cost-effectiveness estimates by approximately 20 percent.

Ohio EPA Response. It is true that the use of air cascading could potentially reduce the capital costs, and hence the cost-effectiveness, for any particular control measure or combination of measures. However, it is not likely that this change alone would be sufficient to enable compliance with the existing regulations in an economically reasonable manner. Also, if this reduction in cost-effectiveness is considered along with the increase in the cost-effectiveness that would result if the useful life of the control equipment were changed from 10 years to 2 years, the final conclusion that it is economically unreasonable to comply with the existing regulations definitely would not be changed. Here again, this reason cannot be a basis for disapproving the SIP revision, especially when considering the temporary nature of the SIP revision.

USEPA Response. Ohio EPA does not appear to disagree with the subject comment. As stated previously, basing cost-effectiveness on a useful life of 2 years (instead of 10 years) is inappropriate because this proposed SIP revision is a permanent relaxation. Ohio's reference to the "temporary nature of the SIP revision" is, therefore, incorrect.

(7) USEPA FR Comment

GM's variance would result in VOC emissions of 945 tons per year greater than the RACT allowable in an ozone nonattainment area.

Ohio Response. This statement is misleading. It is true that the SIP revision would allow an additional 945 tons of VOC emissions/year above the RACT allowable for the Lordstown facility. It is not accurate, however, to describe the Mahoning/Trumbull ozone demonstration area as a nonattainment area. It is a designated nonattainment area, but there have been no violations of the National Ambient Air Quality Standard for ozone in the area for the past 6 calendar years (1982–1987). Also, it is interesting to note that the air quality standards for ozone were maintained in the Mahoning/Trumbull demonstration area even before the Lordstown plant reduced VOC emissions by (a) conversion to the 27 percent solids DL and installation of the incinerator for the 1st lacquer oven emissions (1770 tons/year reduction) and (b) conversion to base coat/clear coat (909 tons/year reduction).

Furthermore, the Mahoning/Trumbull ozone demonstration area has a federally approved ozone SIP. The VOC emission reductions required by the approved SIP have been achieved in a timely manner and, in fact, have been far exceeded.

Neither the ambient air quality monitoring data nor the data generated to track compliance with the approved ozone SIP indicate that the SIP revision for the Lordstown plant has jeopardized the attainment or maintenance of the ozone standard.

On March 1, 1985, the Ohio EPA submitted a request to the USEPA to redesignate the Mahoning/Trumbull ozone demonstration area to an attainment status. The request was supplemented with additional data on November 1, 1986. To date, the USEPA has taken no action on this request. However, if the USEPA were to approve the redesignation request, and we believe there is no reason not to approve it, the SIP revision would immediately be approvable by the USEPA because all the issues relating to RACT would become moot.

In summary, the simple fact that the Mahoning/Trumbull ozone demonstration is designated nonattainment is not a sufficient reason to disapprove the SIP revision. The nonattainment designation belies the fact that there have been no monitored air quality violations. In actuality, the area is an attainment area, and the SIP revision has not prevented the maintenance of the attainment status. Even the TSD prepared by the USEPA states that "approval of the SIP revision would not interfere with attainment or maintenance of the NAAQS in the Youngstown demonstration area."

USEPA Response. Although, USEPA's February 9, 1989, TSD does state that the approved Youngstown attainment demonstration does have sufficient VOC increment available to accommodate this SIP revision, subsequent monitoring data showing violations call into question the adequacy of this demonstration. There have been six exceedances at the Mercer County (Pennsylvania) monitor in the period from 1986 through 1988. Mercer County is an adjoining downwind county to the Mahoning/Trumbull area. This County is viewed by USEPA as a recipient of ozone generated by Mahoning and Trumbull County VOC emissions. Trumbull County remains a designated ozone nonattainment area because of these violations.

(8) USEPA FR Comment

In a memorandum of December 19, 1986, EAB provided additional information on GM's cost assessment, which indicated that GM appeared to emphasize performance under all conceivable circumstances and a minimum adjustment of spray booth operations in analysis of its carbon adsorption equipment. EAB stated that an analysis which considers various engineering and operational compromises (e.g., reduced air flow through the paint booth) in order to lower overall cost would be a more appropriate basis by which to assess achievement of RACT.

Ohio EPA Response. The issues raised by the EAB in the December 19, 1986, memorandum, were addressed in detail in an April 2, 1987, letter from GM to the USEPA. It is apparent that GM has seriously considered all "engineering and operational compromises" that could significantly reduce the overall costs for various control measures. We believe that even though some improvements may be feasible, they would not be sufficient to result in a determination that the use of control equipment to achieve compliance with the existing regulations is economically reasonable. This is especially true when considering the temporary nature of the SIP revision.

USEPA Response. USEPA agrees that some improvements are feasible. Exhaust air recirculation is one of the approaches presented in GM's April 2, 1987, letter to USEPA. Spray booth recirculation is being used by automotive manufacturers outside the United States (including by GM in Ontario) and is planned for use within the United States. As stated previously, this is not a temporary SIP revision.

GM's July 28, 1988, Comments

GM Comment

I. *EPA is required to approve this SIP revision, whether or not it constitutes RACT*—A. *The variance will not interfere with attainment or maintenance of ambient air quality standards.* GM states that, according to Ohio's 1979 ozone SIP, total VOC reductions in the Mahoning/Trumbull County area exceeded the amount required to ensure attainment and maintenance of the NAAQS in the Youngstown area. GM also states that the Youngstown area has attained and consistently maintained the NAAQS since the end of 1981.

B. *EPA may not properly apply the RACT requirement to this variance.* GM's position is that Mahoning/Trumbull Counties are, in fact, attainment areas for ozone, even though they are designated nonattainment areas. "EPA may not disapprove a SIP revision on the grounds that it is not RACT, while at the same time it is unlawfully withholding action on a

redesignation request which, if approved, would eliminate the RACT requirement."

USEPA Response

There is no basis for GM's position that a designated ozone nonattainment area can be considered as an attainment area. The proposed redesignation of Mahoning/Trumbull is the subject of a separate rulemaking action.

The April 4, 1979, "General Preamble for Proposed Rulemaking" states (44 FR 20376) "For SIPs with attainment dates before the end of 1982 that do not use photochemical disperson modeling, these RACT requirements must apply to all major sources covered by each CTG, and in urbanized areas to enough additional sources covered by each CTG to provide for reasonable further progress and attainment as expeditiously as practicable."

Photochemical dispersion modeling was not used in the Mahoning/Trumbull attainment demonstration. Therefore, RACT is required regardless of whether the attainment demonstration indicates that RACT was required by GM Lordstown for attainment to be achieved in the Youngstown area.

In addition, please refer to USEPA's response to Ohio's Comment No. 7.

GM Comment

II. *EPA has articulated no rational basis for its conclusion that the variances do not constitute RACT.*—A. *The proposal does not provide an adequate explanation of the Agency's basis for its determination.*

USEPA Response

USEPA disagrees with GM's opinion. The notice of proposed rulemaking (NPR) provides an adequate basis for the proposed disapproval. As stated in 53 FR 24450.

USEPA has evaluated this revision to determine if Ohio has demonstrated that the revised limits would be RACT for GM Lordstown. To do this, Ohio would have had to demonstrate that the present VOC regulations are either economically or technically infeasible and the new limits are RACT. Ohio did not make such a showing.

The NPR lists a number of points which support USEPA's position, namely that Ohio did not demonstrate that the present VOC regulations are either economically or technically infeasible and the new limits are RACT.

GM Comment

B. *EPA has not articulated any rationale for disapproving the final repair variances.*

USEPA Response

USEPA policy has not been revised to consider RACT for automotive final repair coatings to be less stringent than 4.8 lbs VOC/gallon of coating. GM has not demonstrated that its Lordstown plant is unique from other automotive plants whose coatings comply with a limit consistent with USEPA guidance for RACT. Furthermore, GM has, in fact, converted its paint shop and appears to be using final repair coatings which do not exceed 4.8 lbs VOC per gallon. There does not appear to be a reasonable basis for approving a permanent relaxation from a limit which is being met.

GM Comment

C. *The conclusory statements listed by EPA do not provide a rational basis for disapproving the topcoat variances.*

USEPA bases its proposed disapproval of the Lordstown topcoat variances on eight unconnected and conclusory statements. Several of these statements are simply reiterations of statements made by others with no indication of whether the Agency has accepted them as true, or the reasons for that acceptance if it has occurred. Many of these statements are contradicted by the record. Others are based on mischaracterizations of facts and statements taken out of context. Finally, those statements which are accurate do not constitute a rational basis for rejection of the State's determination that the variances, rather than the existing SIP, constitute RACT.

GM listed its objections to each of the eight reasons for disapproval listed in the NPR.

1. *EPA Statement:* USEPA does not consider [5.2 lbs. VOC per gallon] as RACT for automotive topcoats, based on past Agency analysis.

EPA does not identify the "past Agency analyses" on which this assertion is based. Nor are any such analyses included in the record. For these reasons alone, this conclusion cannot provide a rational basis for disapproval. Furthermore, to the extent the "past Agency analyses" relied on are those contained in the Agency's May 1977, Control Technique Guideline ("CTG") for automobile surface coating operations, those analyses do not support a categorical assertion that 5.2 lbs. VOC per gallon of coating is not RACT.

The CTG is more than 10 years old and does not take into account several profound changes which have occurred in automotive coatings and in economic conditions during this period. GM described the following categories of changes: The demise of waterborne topcoats, development of Base Coat/Clear Coat (BC/CC), and the development of hi-solids lacquers and improved application techniques. GM added that in addition to being obsolete, the CTG analyses were never intended to define RACT. To the contrary, "[t]he primary purpose of each CTG [was] to inform the State and local air pollution control agencies of pollution control techniques available for reducing emissions of VOC from the class of sources covered by the CTG." 44 **Federal Register** 53762 (September 17, 1979).

GM added that RACT in short, is to be based on a "case-by-case review" of "the particular sources being regulated", not on a generalized analysis of "capabilities and problems general to the industry." The quotations are from the September 17, 1979, **Federal Register**.

When Ohio originally incorporated CTG recommendations into its SIP, it did not conduct any case-by-case analysis of the feasibility or reasonableness of those limits as applied to Lordstown. It undertook such an analysis for the first time in response to General Motors' request for the variances here at issue. Based on that analysis it concluded that the CTG recommendation was not RACT "for the particular sources being regulated" and submitted extensive justification to support this determination. USEPA may not properly rely on decade-old "past Agency analyses" of "capabilities and problems * * * general to the industry" as a basis for disapproving the resulting state-issued variances. It must deal directly with capabilities and problems of these particular sources at this particular point in time. To do otherwise is to arbitrarily ignore the express limitations on the "past Agency analyses" at issue and on the uses to which those analyses were intended to be put.

USEPA Response

As stated in the February 9, 1987, TSD, "USEPA has never considered a 5.2 lbs VOC/gallon, 27 percent DL coating as RACT for automotive topcoats. USEPA's October 20, 1981, policy (46 FR 51386) on automotive coatings provides for compliance date extensions through 1987, and not permanent relaxations, for topcoats."

Both USEPA's past guidance on RACT for automotive topcoat operations (the CTG document for automotive coatings) and current guidance (the May 25, 1988, document titled "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations") present RACT for

automotive topcoat operations to be 2.8 lbs VOC/gallon of coating. USEPA is not aware of having approved a permanent limit of 5.2 lbs VOC/gallon as RACT for automotive topcoat operations. Neither Ohio nor GM have presented any cases in which USEPA has approved 5.2 lbs VOC/gallon as RACT for automotive topcoats. If Ohio's position is that GM Lordstown's topcoat operation is different from all other topcoat operations required to meet a limit equivalent to 2.8 lbs VOC/gallon at 30 percent transfer efficiency, or less than 5.2 lbs VOC/gallon, it has not demonstrated this position. This is the fundamental test that must be met to obtain a permanent relaxation substantially less stringent than what is generally required.

USEPA agrees with GM that a case-by-case evaluation of RACT is appropriate. However, neither Ohio nor GM has presented information which justifies approving a permanent topcoat limit relaxation for Lordstown which is less stringent than topcoat limits that have been established at other automotive plants. Furthermore, GM has converted its paint shop and is likely using coatings equivalent to 2.8 lbs per gallon at 30 percent TE or at least coatings with a VOC content lower than 5.2 lbs/gallon. There does not appear to be a reasonable basis for approving a permanent relaxation from a limit which is possibly being met (considering transfer efficiency).

GM Comment

2. *EPA Statement:* EAB's annualization Techniques Resulted In a Systematic 19 Percent Reduction In GM's Annualized costs. Therefore, GM's Cost Analysis Appears To Have Overestimated These Costs.

This statement is not logical unless one presumes that EAB's cost estimates are necessarily more accurate than those used by General Motors. The Agency provides no basis for such a presumption.

GM does not agree that EAB's annualization techniques are more accurate. It added that even if EAB's estimates were presumed more accurate, however, the resulting 19 percent reduction in costs is not a rational basis for concluding that the SIP revision does not reflect RACT. Second, in its submission to the State of Ohio, General Motors annualized its costs on both bases, and demonstrated that, under either method, the conclusion was the same: the costs of add-on controls far exceeded USEPA's own cost-effectiveness cutoffs for reasonable VOC controls.

GM referenced a September 11, 1985 USEPA memorandum of NSPS cost-effectiveness. This memorandum concluded that costs in excess of $1250 per megagram were unreasonable.

USEPA Response

Please refer to USEPA response to Ohio EPA comment 2. Also, this point was not the sole basis of USEPA's proposed disapproval. USEPA has not established cost-effectiveness cutoffs for RACT.

GM Comment

3. *EPA Statement:* [I]t is inappropriate for GM to * * * revise its baseline for determining cost-effectiveness to the 27 percent solids content which GM previously identified as an interim limit to support a compliance date extension, which GM received on October 31, 1980.

This statement is inaccurate in several respects. Demonstrating those inaccuracies, however, requires an understanding of the history of General Motors' Paint Plan and of the implementation of that plan over the last ten years.

GM provided a background before discussing "the factual inaccuracies in USEPA's assertions regarding the Yellow Book and General Motor's commitments."

First, General Motors did not receive a compliance date extension on October 31, 1980. The December 31, 1985, compliance date was the original compliance date established by the State and approved by USEPA. The fact that this date was three years beyond the attainment date approved in the SIP does not make it an extension. Since that Ohio SIP demonstrated that the emission reductions at Lordstown were not necessary to ensure either attainment of the NAAQS or reasonable further progress in the interim, the State was free to establish any compliance date it saw fit. Moreover, as discussed above, USEPA expressly determined in 1979, that the facts even as they then existed made the deadlines incorporated into General Motors "Yellow Book" as expeditious as practicable. Thus, the December 31, 1985, date would not have been an extension even if the reductions had been necessary to attainment. See CAA section 172(a)(2), 42 U.S.C. 7502(a)(2).

Second, General Motors did not include cost-effectiveness calculations, either generic or plant specific, in the "Yellow Book". Obviously, therefore, General Motors did not later revise its baseline for determining cost-effectiveness. No such baseline was ever established.

Third, the Yellow Book constituted a commitment by General Motors to meet the broad goal of achieving waterborne equivalence at all of its assembly plants by 1987, and correlative commitments by EPA to: (1) Work with General Motors to develop a workable schedule by which that goal could be achieved, and (2) to manage the changes in that schedule that were expected to result as economic and air quality conditions changed and as the technology necessary for achieving the goal was developed. It unequivocally was not a commitment to any particular control strategy or baseline for judging cost-effectiveness.

Finally, there is USEPA's assertion that General Motors should have used 17 percent DL, rather than 27 percent DL, as its baseline for determining cost effectiveness. This assertion is inconsistent with the rationale used to support it. USEPA and General Motors contemplated, in 1978, that the progression from 17 percent DL to waterborne equivalence at Lordstown would involve two distinct steps. First, the plant would be converted to 27 percent lacquers, since this would produce large emission reductions without the substantial facility impacts that were anticipated to be necessary for full waterborne equivalence. Second, the plant would achieve waterborne equivalence by means which had not yet been determined. It is the second step which is now at issue. Since the question is whether General Motors can reasonably go beyond 27 percent lacquer, 27 percent lacquer is the only proper baseline for evaluating the cost-effectiveness of the changes necessary to achieve that step.

In addition, USEPA's assertion that 17 percent DL should have been used as the baseline is inconsistent with USEPA's own practice. The same February 7, 1986, EAB memo which identifies the 19 percent difference in annualization technique results also specifically notes that the costs and cost-effectiveness ratios it was analyzing were incremental costs (i.e., were the costs of going beyond the controls required by the variance). At no point does EAB suggest that this approach is inappropriate. To the contrary, EAB specifically concluded that "GM's costing procedures are appropriate," and that "[t]he capital and operating cost estimates prepared by GM are acceptable for this specific application."

Moreover, when this issue was first raised by the State of Ohio, Mr. David Aldorfer of General Motors contacted Mr. John Calcagni, the principal author of the February 7, 1986, EAB memo, to inquire as to USEPA's position on this issue. Mr. Calcagni confirmed that

incremental cost-effectiveness was the appropriate metric for judging RACT In USEPA's view.

This point is confirmed by USEPA's rulemaking on NSPS for the Magnetic Tape Manufacturing Industry. 51 FR 2996 (January 22, 1986). In that rulemaking, USEPA expressly found costs in excess of $1200/[Megagram] Mg ($1088/ton) to be unreasonable:

> This [$1200/Mg] value is in the upper end of the range of cost-effective values that USEPA is currently using to make decisions on appropriate levels of nontoxic VOC emissions.

Id. at 3014.

Moreover, USEPA specifically confirmed that, when evaluating cost effectiveness in relation to this cutoff, each stage of an increasingly stringent series of "layered" controls is to be evaluated separately, with the appropriate level of control being determined by reference to the incremental cost of the last "layer."

The claim that General Motors should have used average cost-effectiveness from a 17 percent baseline is also inconsistent with sound economic theory. There are distinct capital costs associated with converting from 17 percent DL to 27 percent DL based on well-defined changes needed in mechanical components of the system such as pumps, filters, and oven time. There are other and entirely distinct capital costs associated with application of control devices to the resulting exhaust streams.

Finally as with the differences in annualization techniques discussed above, the differences between 17 percent and 27 percent DL baseline is not sufficient to change the essential conclusion. As Ohio EPA found, the cost-effectiveness of the controls required for compliance with OAC 3745–21–09(C) would be $5,700/ton even from a 17 percent DL baseline. Fact Sheet at 7. This is far in excess of USEPA's own estimates of the upper limits for reasonable VOC controls.

USEPA Response

The following responses are generally in the same order as the above comments. GM is correct in its statement that the December 31, 1985, compliance date is the original compliance date established by Ohio and approved by USEPA. However, the March 10, 1980, NPR (45 FR 15206), in its discussion of OAC 3745–21–04 states "For certain specific sources this regulation provides for an extension of the applicable final compliance date listed above." The final compliance date for GM Lordstown is December 31, 1985. This is an extension past December 1, 1982, which is the final compliance date for Ohio's automotive, light duty truck surface coating regulation. USEPA disagrees with GM's use of 27 percent DL as the baseline from which to evaluate cost-effectiveness. It is immaterial whether this constitutes a revision to GM's baseline or whether GM is using an inappropriate baseline.

GM's (11–1–78) Yellow Book contains its initial plan to comply with USEPA's RACT requirements for automotive coatings. Ohio's automotive coating RACT rules were adopted in 1979. GM Lordstown was using 17 percent volume solids dispersion lacquer as of the date of the Yellow Book and adoption of Ohio's autocoating rule. The level of control during this period (which is 17 percent DL) is, therefore, the appropriate baseline for evaluating cost-effectiveness. The subsequent implementation of any partial control measures (e.g., conversion to 27 percent DL) does not constitute a valid argument for the economic infeasibility of achieving compliance with an emission limit previously established as RACT.

There is no record of USEPA informing GM that conversion to 27 percent DL is an acceptable substitute for achieving final compliance with 2.8 lbs VOC/gallon at 30 percent TE. In fact, USEPA's October 31, 1980, notice of final rulemaking (45 FR 72122) approves a December 31, 1985, final compliance date with no requirement for an interim conversion to 27 percent DL.

The February 7, 1986, EAB memo does not address the issue of whether 17 percent DL or 27 percent DL is the appropriate baseline. GM has not sufficiently documented the communication between Mr. Calcagni and Mr. Aldorfer to enable a response to exactly what Mr. Calcagni confirmed.

USEPA has not established that cost-effectiveness cutoffs for NSPS, and the method for determining cost-effectiveness values, are appropriate for RACT determinations.

Establishing the appropriate baseline for determining cost-effectiveness does not necessarily consider the costs involved in going from an interim to a more stringent level of control. USEPA, therefore, disagrees with what GM believes to be sound economic theory. The issue of 17 percent DL vs 27 percent DL baseline is not the sole basis of USEPA's proposed disapproval.

USEPA agrees with the position stated by Ohio in its August 13, 1986, letter to GM. Ohio EPA states "The use of incremental cost-effectiveness would promote variances by allowing entities to employ marginally unacceptable control technology or only go part way in achieving compliance with an applicable emission limitation, and then argue that to achieve full compliance is not cost-effective."

GM Comment

4. *EPA Statement:* OEPA's analysis indicated that certain combinations of control measures, considered by OEPA to result in emission reductions equivalent to RACT, were reasonably cost effective.

This statement is apparently based on Ohio EPA's analysis of a bubble option considered by General Motors involving (in addition to the controls required by the variance): (1) Carbon adsorption on 15 stack pairs in the main color spray booth, (2) conversion of the deadener operation to a waterborne material, and (3) conversion of the prime operation to a "super hi-solids" waterborne material.

Ohio EPA determined that the average cost effectiveness of this approach, from a 17 percent baseline, was approximately $2700/ton. USEPA concluded that this analysis "supports the reasonableness of at least controlling the 15 stack pairs." USEPA TSD at 6.

The emission reductions achieved by application of carbon adsorption to 15 stack pairs are not sufficient to meet the requirements of the existing SIP. Thus, this option provides no support for USEPA's conclusion that the existing limit is RACT. To the contrary, since this is the only option which USEPA appears to consider reasonable, USEPA apparently concedes that the existing limit is not RACT.

Moreover, USEPA's conclusion that this option is reasonable is entirely dependent on the assumption that it has a cost-effectiveness of $2700/ton. This $2700 figure substantially understates the actual cost-effectiveness by analyzing only the average costs from a 17 percent baseline. As discussed above, this is improper. The actual cost-effectiveness of installing carbon adsorption on 15 stack pairs is over $8,000/ton of coating VOC removed, even if annualized in accordance with USEPA's technique. GM TSD at 26. In no sense can such costs be said to reflect "reasonably available controls."

Finally, Ohio EPA concluded that even the $2700/ton cost figure was unreasonable: "[t]he overall cost effectiveness values * * * for compliance via a RACT equivalent bubble (i.e., $2700/ton [on a 17 percent baseline] and $6600/ton [on a 27 percent baseline]) *are well above the levels used by EPA in defining RACT for various VOC source categories.*" Fact Sheet at 8 (emphasis added). USEPA cites no basis for its contrary

conclusion. Indeed, as indicated above, this position is directly contrary to USEPA's own conclusion that $1200/Mg ($1088/ton) represents the upper limit of the range of values used by USEPA in determining reasonable VOC control, even in the context of NSPS. The costs in question here are more than double this upper limit.

EPA may not simply reject a state determination that $2700/ton represents an unreasonable cost absent some statement of basis for that rejection. There is no indication whatsoever of such a basis in the record here. If there is any published rule, guidance, or policy upon which USEPA is relying in this regard, General Motors is entitled to notice of, and an opportunity to comment on, that rule, guidance, or policy. If not, USEPA is required to defer to the State's judgment in this regard.

USEPA Response

The automotive coating limits, which currently apply to GM Lordstown, have been adopted by Ohio EPA and approved by USEPA as constituting RACT. In order to obtain a permanent relaxation from any of these limits, a demonstration must be made by Ohio EPA/GM that the existing limitation(s) are not RACT and that the limit being proposed constitutes the lowest emission limit that is capable of being met by the application of control technology that is reasonably available considering technological and economic feasibility.

The quote by GM from page 6 of USEPA's TSD, "Supports the reasonableness of *at least* controlling the 15 stack pairs, "(emphasis added) does not limit RACT to that control option. Rather, the statement comments on a potential control option (raised by Ohio EPA) that has not been adequatley documented to not constitute RACT.

The issue of incremental cost-effectiveness, which is brought up again by GM, was discussed as part of the prior comment.

An adequate basis has not been provided for dismissing control strategies with a $2700/ton cost-effectiveness as economically infeasible. USEPA has neither established cost-effectiveness cutoffs for assessing economic feasibility for RACT determinations nor determined that NSPS economic feasibility considerations are appropriate for RACT determinations.

GM Comment

5. *EPA Statement:* GM failed to investigate the option of continuing to use a 17 percent solids DL with add on spray booth controls, which could result in VOC emission levels significantly less than current topcoat emissions.

This statement is wrong. General Motors specifically addressed the option of continuing to use 17 percent DL with add-on spray booth controls in a letter submitted to Ohio EPA On June 4, 1986. This letter was submitted to both Region V and OAQPS under cover letters from Mr. Aldorfer dated June 11, 1986. Record Item E272–1. As stated in that letter, and as demonstrated by the information in the variance application itself, this alternative makes neither economic nor environmental sense.

In its TSD, USEPA observes that, on 17 percent lacquer, carbon adsorption and incineration controls on the main color spray booth would result in an emissions level 382 tons per year below that authorized by the variance. USEPA TSD at 3, 6. What it fails to note, however, is that this alternative would cost an additional $7.5 million dollars per year. Thus, each of these 382 tons would cost over $19,500 to remove. This can hardly be described as "reasonable" control.

For any given level of control, it is invariably more cost-effective to convert to 27 percent lacquer than to stay on 17 percent lacquer and employ more add-on controls. Conversely, for any given level of investment, more emission reductions are achieved by spending those dollars first on a 27 percent lacquer conversion. Thus, common sense as well as sound economic and environmental policy dictate that this be the first step in any "reasonable" control plan.

USEPA Response

GM's comment appears wrong. The $19,500 per ton removal cost is clearly contradicted by the $3,839 per ton, for 1st color booth control, in Table III of GM's June 4, 1986, letter. Presumably, the $19,500 per ton is based upon a 27 percent DL baseline. However, the point of USEPA's comment is that use of 17 percent DL, and 1st color booth and over controls, would result in 382 tons/yr less VOC emissions than the level of control in effect at the time of the submittal.

USEPA agrees with what appears to be GM's point, which is that it is cheaper to obtain reductions by conversion to 27 percent DL than by use of add-on controls. However, it appears that use of 27 percent DL and 1st color oven controls results in greater VOC emissions than use of 17 percent DL and 1st color spray booth and oven controls. It should be noted that GM is using spray booth control. GM's Arlington, Texas, plant, which uses 17 percent DL topcoats, controls VOC emissions from its 1st color spray booth with an incinerator. Also, refer to USEPA's response to Ohio EPA's comment No. 5.

GM Comment

6. *EPA Statement:* OEPA determined that the use of air cascading for three stack pairs would lower GM's cost effectiveness by approximately 20 percent.

This statement has been taken out of context and is misleading. Ohio EPA did determine that the air cascading would reduce costs for the three stack pairs in question. This option, however, is far short of SIP-equivalent emission limitations and involves costs far in excess of any reasonable measure of RACT, even with the 20 percent reduction. See April 15, 1986, letter from David Aldorfer to James Berry Re: "Spraybooth Air Staging" with attached "VOC Abatement Cost Analysis With Air Cascading for BOC group Lordstown Assembly Plant" dated March 1986.

Further, Ohio did not conclude that this 20 percent cost saving could be generalized beyond the three stack pairs at issue. Nor is there any rational basis for such a conclusion by USEPA. These three zones were intentionally selected to provide a "best-case" example for air cascading, i.e., to demonstrate the maximum cost saving that could be achieved through air cascading. They are the three richest zones in the booth, they are contiguous, and the two zones into which the air would be cascaded have no people working inside them. Further, as detailed in the above cited letter and study, the very substantial adverse impacts that air cascading might have on operation of the spray booth were not considered.

The point of the study was that even with these advantages, which are duplicated nowhere else in the paint line, and without considering the costs of adverse impacts on processing, air staging still reduced costs by only 20 percent, far short of what was needed to make add-on controls reasonably cost-effective. In short, the results of this study demonstrated, as OEPA concluded, that the potential cost savings from air cascading were not significant enough to undermine the basic conclusion that carbon adsorption costs were far higher than any accepted cut-offs for reasonably available control technology. Fact Sheet at 6. For a more detailed discussion of this point, as well as others relating to General Motors' investigations of air management techniques, see the April 2, 1987, letter from David Aldorfer to Joe Paisie, Re: "12/19/86 Memorandum from J. Calcagni to J. Paisie, Cost Assessments

for GM Lordstown—Additional Information."

USEPA Response

It appears that GM agrees with USEPA's comment.

GM Comment

7. *EPA Statement:* "GM's variance request would result in VOC emissions of 945 tons per year greater than RACT allowable in an ozone nonattainment area.

First, this area is designated nonattainment only because USEPA has unlawfully failed to act on a State request for redesignation for more than three years. This is not a nonattainment area. There have been no violations of the NAAQS for six years, and the "expected exceedance rate" has been less than 1 for each three year period since the end of 1981 (1982–84, 1983–85, 1984–86, 1985–87).

Further, actual emission reductions achieved in the area exceed those necessary for attainment under the federally approved SIP by over 9,000 tons per year. USEPA TSD at 7.

Second, this assertion begs the question at issue. Ohio EPA has determined that the variances are RACT; the variances thus result in no emissions above RACT allowable.

Third, the quantity of "excess" emission is irrelevant. As USEPA itself states, the growth margin under the federally approved SIP "can easily accommodate the 947 tons/yr used by the proposed variance." USEPA TSD at 7. Moreover, such "excess" emissions would be a cause for concern or a basis for disapproval only if they threatened attainment of maintenance of the NAAQS. USEPA has itself concluded that they do not: "[A]pproval of the SIP revision would not interfere with attainment or maintenance of the NAAQS in the Youngstown demonstration area." USEPA TSD at 7.

USEPA Response

Ohio's redesignation request is the subject of a separate rulemaking action. Also, refer to USEPA's response to Ohio EPA's comment No. 5.

GM Comment

8. *The December 19, 1986, EAB Memorandum.*

General Motors' response to this memorandum is set out in detail in an April 2, 1987, letter from David Aldorfer to Joe Paisie of Region V. That letter has been in USEPA's hands for over a year. It discusses and rebuts, point-by-point, every assertion contained in the December 19, 1986, memorandum. Yet, USEPA has not responded to any of the points in this letter, nor is the letter itself included in the record.

General Motors objects to this selective record building. If USEPA intends to rely, even in part, on the December 19, 1986, memorandum, General Motors is entitled to, and demands, a response to the points raised by General Motors in rebuttal of that memorandum and an opportunity to comment on USEPA's rationale for rejecting those rebuttals.

The December 19, 1986, memorandum consists of a series of speculative, unfounded, and unjustified criticisms of General Motors costs estimates. The conclusions expressed, moreover, have as their only basis a letter evaluating a control system that would not produce SIP-equivalent emission reductions by a vendor who has, in the past, underestimated the costs of, and overestimated the degree of control achieved by, systems he has sold to General Motors. *See* May 10, 1988, letter from David Aldorfer to Gerald Emison, Director OAQPS. Attachment K hereto. Moreover, this vendor's own bid on the Lordstown project was rejected because it was too high relative to other bids and to the costs General Motors itself used in making the cost-effectiveness estimates submitted to Ohio EPA. This memorandum does not provide a rational basis for any conclusion regarding the General Motors cost estimates or the reasonableness of requiring further controls beyond those required by the variances.

USEPA Response.

USEPA has not engaged in selective record building. The April 2, 1987, letter from David Aldorfer to Joseph Paisie was not submitted by Ohio EPA and, therefore, was not considered as part of the formal SIP submittal. Only States have authority to submit revisions to their SIPS. On a more technical basis, the April 2, 1987, letter does not adequately dismiss spray booth recirculation and control. As stated previously, in response to GM's April 2, 1987 letter, spray booth recirculation is being used by automotive manufacturers outside the United States (including GM in Ontario) and is planned for use within the United States.

GM Comment

D. USEPA has failed to consider the air quality needs of the area or General Motors' plans for conversion to BC/CC, both of which provide additional support for the variance.

GM cited 40 CFR 51.100(o), a February 7, 1986, USEPA memorandum, and a March 12, 1986, USEPA memorandum, as support for its position that considerations apart from pure economic and technical feasibility should be considered in defining RACT. GM concluded its discussion of this point with the following paragraph:

Considered in light of the poor cost-effectiveness ratios of control equipment, the demonstrated attainment of standards in the Youngstown area, and the interim nature of such controls, Ohio EPA's conclusion that the variances constituted RACT is fully supported by the record and should be accepted by USEPA.

USEPA Response

The definition of RACT in 40 CFR 51.100(o) is not applicable to this proposed SIP revision. § 51.100(o) "defines RACT for the purposes of §§ 51.100(c)(2) and 51.341(b) only." § 51.100(o) applies only to secondary nonattainment areas (as per §§ 51.100(c)(2) and 51.341(b)), and GM Lordstown is located in a primary ozone nonattainment area.

GM did not demonstrate that the level of control specified for GM Lordstown constitutes RACT for Mahoning, Trumbull Counties. As stated previously, the proposed level of control appears to be less stringent than what has been approved elsewhere as RACT by USEPA for any automotive plant.

The specific basis for GM's conclusionary statement (repeated below) regarding the March 12, 1986, memorandum has not been provided.

In that memorandum, Mr. Calcagni argues that specific cost-effectiveness values for RACT could not be defined, in large measure because differences in air quality needs of the areas in question could have a profound impact on what was deemed to be "reasonable" with regard to control options.

USEPA disagrees with GM's position that the GM Lordstown variance constitutes RACT because "no further controls beyond those variance are necessary to ensure attainment and maintenance of the ambient air quality standards." GM's comment appears equivalent to the position that RACT is only neccessary to the extent required to demonstrate attainment. This position is clearly refuted in the April 4, 1979, General Preamble for Proposed Rulemaking (44 FR 20376) which states "For SIPs with attainment dates before the end of 1982 that do not use photochemical dispersion modeling, these RACT requirements must apply to all major sources covered by each CTG. * * *" GM Lordstown is a major VOC source in an area which has not been subject to photochemical dispersion modeling.

Also, refer to USEPA responses to Ohio EPA comments Nos. 6 and 7. USEPA cannot consider GM's

commitment to convert Lordstown to a waterborne equivalent base coat/clear coat technology because this commitment is not reflected in the proposed SIP revision. See also the second paragraph in response to Ohio EPA's comment No. 4. The issue of cost-effectiveness has been discussed with respect to previous comments.

GM Comment

III. At a minimum, USEPA should approve this SIP revision as a two-year compliance date extension pursuant to USEPA's October 20, 1981, policy on such extensions for automobile top coat operations.

USEPA Response

Neither GM's intent nor its paint shop conversion is a sufficient basis for approving a permanent relaxation. USEPA can only act on proposals that are before it and must base its decisions on the emission limitations contained in proposed SIP revisions.

GM Comment

A. An Extension to December 31, 1987, is justified under USEPA's October 20, 1981, policy.

B. The variance, at a minimum, constitutes RACT for the period from 1985 to 1987.

USEPA Response

USEPA will review the merits of a compliance date extension, through December 31, 1987, if and when such a compliance date extension is submitted to USEPA.

GM Comment

C. Given the foregoing facts USEPA should either directly approve the sip revision as a two-year extension or conditionally approve it subject to a requirement that the state revise the variances to incorporate a December 31, 1987, compliance date.

As the foregoing demonstrates, General Motors is entitled, at a minimum, to a 2-year variance on the terms proposed by Ohio based on both the 1981 policy and on General Motor's demonstration that these variances constituted RACT, at least for that 2-year period. Furthermore, approval of the variances on this basis is consistent with their original intent. When issued, those variances were indefinite in duration, but were never intended to be permanent relaxations. The Fact Sheet makes clear that their purpose was to provide interim relief until such time as it became feasible for General Motors to convert to BC/CC. That time has now come and gone, 5 years earlier than General Motors or Ohio EPA originally anticipated, and the conversion has in fact been made. Under such circumstances, it would be a triumph of form over substance for USEPA to disapprove the variances on the grounds that they are permanent relaxations.

Alternatively, if USEPA determines it is unable to approve the variances as temporary SIP revisions without a date certain incorporated therein, it should, at a minimum notify the State that the SIP revision would be approvable if it were revised to incorporate a December 31, 1987, compliance date and provide the State with a reasonable opportunity to modify the variances accordingly.

USEPA Response

USEPA cannot approve the proposed SIP revision as a 2-year extension because it is not a 2-year extension. Ohio has had the opportunity to modify the variances.

GM Comment

IV. Defects in the administrative record and substantial indicia of agency bias preclude disapproval of this variance request.

A. Omissions from the record deprive the proposal of its rational basis and deprive General Motors of its right to an opportunity for meaningful comment.

The Agency record for this proposal is incomplete. By far, the most important of these omissions is the April 1987 letter from David Aldorfer to J. Paisie of Region V, responding to the December 19, 1986, EAB memo referred to in the proposal. This letter responds directly to a number of the points on which USEPA relies in its proposed disapproval, and it has been in USEPA's possession for over a year. Yet, it is ignored by USEPA. This omission, and USEPA's consequent failure to consider and respond to the points raised by General Motors in that letter, undermine the rational basis for the proposal. Further, it deprives General Motors of any meaningful opportunity to comment on USEPA's view or evaluation of those points.

This is not, however, the only document missing from the record. There is, for instance, no information in the record on the air quality in the Youngstown area, on the area's attainment status, or on the status of the State's request for redesignation. For the reasons set forth above, this information is clearly relevant. Indeed, USEPA admits as much in the TSD.

Further, the record does not contain the federally appoved Ohio SIP, the RFP and attainment demonstrations, or any information on the State's "reasonable further progress" demonstrations. Again, this is information which is in USEPA's possession and which unquestionably should have been considered in reaching the conclusions expressed in the proposal.

Nor does the record contain any information on USEPA's criteria for reviewing site-specific RACT variances or for determining appropriate cost-effectiveness cut-offs. Yet, USEPA concludes that at least one option considered by Ohio EPA is reasonably cost-effective notwithstanding a directly contrary conclusion by the State.

Finally, with the exception of the two EAB memos cited in the proposal, the record contains no documents reflecting the substantial intra-agency communications which occurred regarding this variance. These communications unquestionably played a significant role in shaping the proposal. As such, they should be available for public comment. Moreover, due to the significant possibility, discussed below, of agency bias in this proceeding, this omission is crucial.

USEPA is required to base its proposed actions on the complete record and to make that complete record available for public comment. It has failed to fulfill these obligations here, and until it has, it may not lawfully or reasonably proceed to disapprove this variance.

USEPA Response

The Agency record in fact, is complete. The record is either contained in the sources specific revision file or located in other files available to the general public.

The April 1987 letter from David Aldorfer to Joe Paisie was not submitted to USEPA by Ohio EPA and was, therefore, not a part of the formal GM Lordstown SIP submittal. However this final rulemaking does reflect consideration of the April 1987 letter.

Information on the air quality in the Youngstown Area is not relevant to this action.

Information on the area's attainment status, the status of the State's request for redesignation, the federally approved Ohio SIP, the RFP and attainment demonstrations, the State's reasonable further progress demonstrations, and USEPA's criteria for reviewing site-specific RACT variances and for determining appropriate cost-effective cut-offs are not contained in the individual site-specific rulemaking file. Policy documents utilized by USEPA during evaluation of the revision request are referenced in the Technical Support Document or the notice.

With the exception of the two EAB memoranda cited in the proposed rulemaking notice, the record contains no documents reflecting substantial intra-Agency communication regarding the variances because no such documents exist.

GM Comment

B. There is a substantial basis for believing that agency consideration of these variances has been biased by an improper mixture of its program and enforcement functions. USEPA must, at a minimum, open these contacts to public scrutiny.

USEPA Response.

There is no basis for GM's belief that the USEPA improperly mixed its program and enforcement functions in the rulemaking on this SIP revision request. It is well settled that a polluter is subject to the existing requirements of a SIP until the polluter obtains a variance and such variance is approved by both the State and the U.S. USEPA. *Train* v. *Natural Resources Defense Council* ("NRDC"), 421 U.S. 60, 92 (1975); *see also Duquesne Light Co.* v. *EPA*, 698 F.2d 456, 471 (D.C. Cir. 1983) (the current SIP remains in force until USEPA formally approves a revision); *NRDC* v. *EPA*, 507 F.2d 905, 915 (9th Cir. 1974). Accordingly, the United States initiated a civil action under the Clean Air Act to address GM's violations of the emission limitations of the federally-approved and enforceable Ohio SIP.

Moreover, no conflict of interest arose when the Agency initiated its enforcement action on August 1986, by issuing a Notice of Violation ("NOV") to GM for its failure to comply with the SIP by the statutory compliance date of December 31, 1985. GM did not file a SIP revision request until October 21, 1986, ten months after the compliance date and several months after the NOV was issued.

Coincidentally, the same date which GM had requested for (and was granted) a settlement conference (October 21, 1986) with the Agency's enforcement branch to resolve the allegations in the NOV, was the same date the Agency's rulemaking branch received the SIP revision request for GM. The Agency's enforcement branch, however, proceeded with its action against GM due to GM's failure to propose an expeditious compliance plan in settlement negotiations.

Additionally, the Agency's enforcement branch is not prohibited from having access to or knowledge of the SIP revision request documents filed on behalf of GM, even if GM is a defendant in a separate enforcement action. Any involvement by enforcement personnel with the SIP revision documents was inevitable here, in order for counsel to respond to GM's extensive discovery requests for identification and production of documents in the SIP revision files and in order to respond to the Court's inquiries during status conferences in the judicial action. Enforcement personnel's access to, knowledge of, and familiarity with the documents in the docket files is not only normal and acceptable, but sound legal practice. *See United States* v. *National Steel Corp.* 767 F.2d 1176, 1182 (1975). The Agency's enforcement personnel, however, had no role in the rulemaking decision of the rulemaking branch on the SIP revision request for GM. This rulemaking decision has been completely independent of the enforcement action, in keeping with the spirit and letter of the law as expressed by the Court in *Bethlehem Steel* v. *U.S. EPA*, 638 F.2d 994 (7th Cir. 1980).

Furthermore, any enforcement action taken against GM's Lordstown, Ohio, facility was initiated at the Regional level and not as a result of actions by OAQPS. The USEPA, Region V, Air Compliance Branch, determined that GM's Lordstown facility was violating the Ohio SIP based on reports from the Ohio EPA. Any policy prepared by OAQPS directed at automobile surface coating operations was national in scope, and had no impact on Region V's enforcement initiative against GM's Lordstown facility. OAQPS played no role in the enforcement action against GM's Lordstown facility and play a minimum role in reviewing Region V's Notice of Proposed Rulemaking on the SIP revision request involved here. Therefore, there has been no improper mixture of the rulemaking (program) and enforcement functions by OAQPS in the rulemaking on this SIP revision request.

Because the USEPA, in response to GM's discovery requests in the judicial action, has disclosed the identity of the persons involved in the Agency's review of this SIP revision request, and has produced all non-privileged documents relating to the Agency's review, there is no need for the Agency to re-identify or reproduce such data to GM. GM has had an adequate opportunity to comment on the above data, which was either produced to GM in response to discovery on October 21, 1987, or has been made available for inspection since at least that date.

GM Conclusion

For the reasons stated above, the variances at issue here should be approved as written. USEPA itself has determined that they will not interfere with attainment or maintenance of the NAAQS. This finding alone requires approval, whether or not the variances require RACT. Moreover, USEPA has failed to articulate any rational basis for rejecting the State's conclusion that the variance do require RACT. The "faults" it finds in the State's analysis are in many cases wrong and in others misleading. And, to the extent they are accurate, they do not undermine the basic conclusion that controls beyond those required by the variance are not reasonably cost-effective.

At a minimum, however, the Agency should approve the variances as a two-year extension, with interim RACT determinations pending development of methods for converting to BC/CC without a major reconstruction. Such approval is justified by the facts and by the Agency's 1981 policy on topcoat compliance extensions. If a date certain must be incorporated into the variances to justify that approval, USEPA should notify the State of that fact and provide the State with a reasonable opportunity to amend its submission.

USEPA Response

These issues have been previously addressed. USEPA conclusions are as follows:

1. GM Lordstown is located in an ozone nonattainment area and RACT is, therefore, required. The redesignation request for Mahoning and Trumbull counties is a separate action and USEPA has not yet acted on this request.

2. Ohio EPA/GM have not demonstrated that GM Lordstown's car plant is substantially different from other autocoating facilities which are subject to more stringent limits than are contained in GM's variance. The uniqueness of a facility, as compared to others in the same category, is a primary criteria in evaluating a proposed redefinition of RACT.

3. Ohio EPA/GM have requested a permanent relaxation from limits which it may be currently achieving. On page 45 of its comments, GM states that it has fulfilled its commitment to convert GM Lordstown to a waterborne equivalent base coat/clear coat technology. There is no apparent basis for approving a relaxation from a limit which is being met. If GM Lordstown has not totally achieved waterborne equivalence, it is clearly doing better than the limits proposed in its variance.

4. Ohio EPA/GM have not established, based upon its cost-effectiveness evaluation, that its proposal represents the most stringent (considering economic feasibility) limit capable of being met by GM Lordstown. USEPA has not established cost-effectiveness cutoffs for determining whether or not a specific control strategy constitutes RACT and the method of establishing New Source Performance Standards is not applicable for establishing RACT. It is Ohio's burden to demonstrate both that the

existing SIP limit is not feasible and also that there is no other feasible limit more stringent that what is contained in GM's variance. This claim of infeasibility has not been adequately documented particularly in light of the fact that complying coating systems are available, booth incineration is in use by GM (including at its Arlington, Texas, plant), and spray booth recirculation is being used by automotive manufacturers outside the United States and is planned for use within the United States.

5. USEPA disagrees with the use of 27 percent DL as the baseline for evaluating cost-effectiveness. GM Lordstown was using 17 percent DL as of the date of GM's Yellow Book and adoption of Ohio's autocoating rule. The level of control during this period is, therefore, the appropriate baseline for evaluating cost-effectiveness. The subsequent implementation of any partial control measures (e.g., conversion to 27 percent DL) does not constitute a valid argument for the economic infeasibility of achieving compliance with an emission limit previously established as RACT. As stated by Ohio in its August 13, 1986, letter to GM, "[t]he use of incremental cost-effectiveness would promote variances by allowing entities to employ marginally unacceptable control technology or only go part way in achieving compliance with an applicable emission limitation and then argue that to achieve full compliance is not cost-effective."

Final Action

Based upon a review of the SIP revision request and the public comments raised on behalf of General Motors' Lordstown auto assembly plant in Warren, Ohio, USEPA is taking final action to disapprove this SIP revision as not constituting RACT, as required by the CAA. USEPA is not evaluating the merits of this proposal as a temporary relaxation, because it was submitted as a permanent relaxation. However, USEPA will evaluate any compliance date extension which is submitted for approval.

Under Executive Order 12291, today's action is not "Major". This action is not subject to review by the Office of Management and Budget.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 28, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See § 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ozone, Hydrocarbons.

Dated June 14, 1989.

Valdas V. Adamkus,

Regional Administrator.

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

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart KK—Ohio

1. This notice is issued under authority of the Clean Air Act, as amended.

Authority: 42 U.S.C. 7401—7642.

2. Section 52.1885 is revised by adding new paragraph (l) to read as follows:

§ 52.1885 Control strategy: Ozone.

* * * * *

(l) *Disapproval.* On October 21, 1986, the Ohio Environmental Protection Agency submitted a revision to the ozone portion of the Ohio State Implementation Plan (SIP) for Volatile Organic Compounds (VOC). This revision request is for a relaxation of emission limitation for topcoat and final repair coatings operations for General Motors Lordstown auto assembly facility in Warren (Trumbull County), Ohio. As a result of USEPA's disapproval, the source remains subject to the control requirements of the Ohio Administrative Code (OAC) Rule 3745-09(C).

[FR Doc. 89-14913 Filed 6-26-89; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 60

[AD-FRL-3605-5]

Standards of Performance for New Stationary Sources; Amendment to Test Methods and Procedures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Technical Amendment.

SUMMARY: On October 6, 1988, a notice entitled "Sewage Treatment Plants" was published in the **Federal Register** (53 FR 39412). This rule added § 60.154(d). A notice entitled "Amendments to Test Methods and Procedures" was published in the **Federal Register** on February 14, 1989 (54 FR 6660). This rule consolidated all test methods and procedures necessary to determine compliance with the applicable standards or related monitoring requirements and clarified certain procedures. The rule revised § 60.154 (a), (b) and (c) into § 60.154 (a) and (b) and appears to delete § 60.154(d). The purpose of this action is to reserve § 60.154(c), state that § 60.154(d) remains unchanged from the October 6, 1988, rule, and will make minor corrections.

EFFECTIVE DATE: June 27, 1989.

FOR FURTHER INFORMATION CONTACT: Roger Shigehara, Emission Measurement Branch (MD-19), Technical Support Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-1058.

SUPPLEMENTARY INFORMATION:

List of Subjects in 40 CFR Part 60

Air pollution control.

Date: June 15, 1989.

Don R. Clay,

Acting Assistant Administrator for Air and Radiation.

40 CFR Part 60 is amended as follows:

PART 60—[AMENDED]

1. The authority citation for Part 60 continues to read as follows:

Authority: Sections 101, 111, 114, 116, and 301 of the Clean Air Act, as amended (42 U.S.C. 7401, 7411, 7414, 7416, and 7601).

2. In § 60.154, paragraphs (c) and (d) are added to read as follows:

§ 60.154 Test methods and procedures.

* * * * *

(c) [Reserved]

(d) The owner or operator of any sludge incinerator subject to the provisions of this subpart shall conduct a performance test during which the monitoring and recording devices required under § 60.153(a)(1), (b)(1), (b)(2), (b)(3), and (b)(4) are installed and operating and for which the sampling and analysis procedures required under § 60.153(b)(5) are performed. The owner or operator shall provide the Administrator at least 30 days prior notice of the performance test to afford the Administrator the opportunity to have an observer present.

(1) For incinerators that commenced construction or modification on or before April 18, 1986, the performance test shall be conducted within 360 days of the effective date of these regulations unless the monitoring and recording devices required under § 60.153(a)(1), (b)(1), (b)(2), (b)(3), and (b)(4) were installed and operating and the sampling and analysis procedures required under § 60.153(b)(5) were performed during the

most recent performance test and a record of the measurements taken during the performance test is available.

(2) For incinerators that commence construction or modification after April 18, 1986, the date of the performance test shall be determined by the requirements in § 60.8.

(3) For the initial performance test required by paragraph (d) of this section, the three samples collected by Test Method 5 shall be analyzed first for particulate mass and then in one of the following two ways:

(i) Two samples shall be analyzed by neutron activation for arsenic, cadmium, chromium, copper, nickel, selenium, and zinc; and one sample shall be analyzed by atomic absorption for beryllium and lead. The sample analyzed for beryllium and lead shall be analyzed according to Method 104 and Method 12, respectively.

(ii) Three samples shall be analyzed by atomic absorption for arsenic, beryllium, cadmium, chromium, copper, lead, nickel, selenium, and zinc. The samples shall be analyzed for arsenic, beryllium, and lead according to Method 108, Method 104, and Method 12, respectively. The samples shall be analyzed for cadmium, chromium, copper, nickel, selenium, and zinc according to standard analytical procedures as recommended by atomic absorption equipment manufacturers.

(4) During the initial performance test required by paragraph (d) of this section, sludge samples shall be collected for the purpose of determining the metals content of the sludge. Samples shall be collected from the sludge charged to the incinerator at the beginning of each run and at approximately 30 minute intervals thereafter until the test run ends. The sludge samples collected during each test run shall be combined into a single composite sample. During the performance test, three composite samples shall be generated. The composite samples shall be analyzed in one of the following two ways:

(i) The composite samples shall be analyzed for arsenic, cadmium, chromium, copper, nickel, selenium, and zinc by neutron activation procedures, and for beryllium and lead by atomic absorption according to Method 104 and Method 12, respectively.

(ii) The composite samples shall be analyzed by atomic absorption for arsenic, beryllium, cadmium, chromium, copper, lead, nickel, selenium, and zinc. The samples shall be analyzed for arsenic, beryllium, and lead according to Method 108, Method 104, and Method 12, respectively. The samples shall be analyzed for cadmium, chromium, copper, nickel, selenium, and zinc according to standard analytical procedures as recommended by atomic absorption equipment manufacturers.

(5) The requirements of paragraphs (d)(3) and (d)(4) of this section shall apply only during the first performance test required pursuant to these regulations.

§ 60.335 [Amended]

3. In § 60.335(c)(1), the first equation is revised to read as follows:

$$NO_x = (NO_{xo})\,(P_r/P_o)^{0.5}\,e^{19(Ho-0.00633)}\,(288°K/T_a)^{1.53}$$

§ 60.474 [Amended]

4. In § 60.474(c)(4) introductory text "200 lb/ton" is revised to read "2000 lb/ton".

§ 60.485 [Amended]

5. In § 60.485(g)(4), the equation is revised to read as follows:

$$H_T = K \sum_{i=1}^{n} C_i\ H_i$$

[FR Doc. 89-14680 Filed 6-26-89; 8:45 am]
BILLING CODE 6560-50-M

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40 CFR Part 80

[AMS-FRL-3607-1]

Volatility Regulations for Gasoline and Alcohol Blends Sold in Calendar Years 1989 and Beyond; Correction

AGENCY: Environmental Protection Agency.

ACTION: Final rule; correction.

SUMMARY: This notice corrects minor errors in a notice of final rulemaking promulgating volatility regulations for gasoline and alcohol blends, which was published on March 22, 1989 (54 FR 11868).

FOR FURTHER INFORMATION CONTACT: Robert E. Kenney, Senior Staff Attorney, Field Operations and Support Division (EN-397F), EPA, 401 M Street SW., Washington, DC 20460. Telephone: (202) 382-2633.

SUPPLEMENTARY INFORMATION: This notice corrects minor errors in a notice of final rulemaking promulgating volatility regulations for gasoline and alcohol blends, which was published on March 22, 1989 (54 FR 11868). The reasons for these corrections are set forth below.

(1) In the final rulemaking, the Agency added a new definition of "ethanol blender" at 40 CFR 80.2(v). This definition created a special subcategory of refiner for persons who produce gasoline solely through the addition of ethanol to finished gasoline, with separate liability and defense provisions from other refiners. When the final regulations were drafted, these parties were inadvertently omitted from certain provisions which should have applied to them, specifically 40 CFR 80.27(a), 80.27(d)(3)(ii), and 80.28(g)(4)(iii)(F). This notice corrects these inadvertent omissions.

(2) Section 4.1 of 40 CFR Part 80, Appendix D, describes the types of sampling containers that can be used as part of the promulgated sampling procedures. As published, this section provides that the only cans that can be used for this purpose are "those with the seams soldered on the exterior surface with a flux of rosin in a suitable solvent." Since publication, EPA has learned that such cans may be difficult to procure. Therefore, the language in section 4.1 has been revised to state that cans soldered in this manner are preferred, but that if such cans are not available other cans made with a welded construction may be used as long as their construction is not affected by (and it does not affect) the gasoline being sampled.

(3) Section 12.6 of Appendix D sets forth a water displacement method of sampling gasoline. This method was promulgated erroneously because the sampling and testing methods were intended to eliminate all contact with water in order to allow their use with alcohol blends. The water displacement method, however, allows direct contact between water and product being sampled. Therefore, it is being deleted as an acceptable sampling method. The Agency notes that the American Society for Testing and Materials (ASTM) does not allow use of this sampling method in conjunction with alcohol blends. See ASTM D-4814-88, Annex A2, section A2.6.2.

(4) Figure 4 of Appendix D was drawn incorrectly. In each of the sample probes illustrated in this figure, the center line notation appeared to be a "w" rather than a "CL" (the proper notation). In addition, in Probe (C) the orifice facing upstream should have been a smooth curve instead of a sharp angle, and there should not have been a space in the line facing downstream. A new Figure 4 correcting these errors is included in this notice.

(5) Section 8.1 of Method 1 of 40 CFR Part 80, Appendix E, describes the sample transfer portion of the volatility test procedures. Language has been added to this section to make clear that the fuel chamber should be dried prior

to the running of a volatility test (along with other parts of the test apparatus).

(6) Section 8 of Method 2 of Appendix E (the "dry Herzog" volatility test procedures) lists certain test procedure sections that are different from those in Method 1. One of these changed sections is section 7.4, which deals with preparation of the air chamber part of the test apparatus. As published, this provision of Method 2 requires that the lower connection of the Herzog air chamber be plugged with a #3 rubber stopper. EPA has subsequently detected leaks using this type of stopper and has learned that the manufacturer now sells its testing equipment with a screw-type cap threaded to plug this connection. Therefore, this section is being corrected to allow use of such a cap. As another alternative, it is also acceptable to use a spare fuel chamber to seal the lower connection.

(7) The cross-references in section 8.5 of both Methods 1 and 2 of Appendix E to Note 5 were incorrect. They are corrected to refer to Note 7.

(8) The amount of the special allowance for certain alcohol blends (1.0 pound per square inch) is clarified in section 80.27(d)(1).

(9) Misspellings and incorrect terminology are corrected in: section 80.28(f); Appendix E, Method 1, section 8.1; and Appendix E, Method 2, sections 7.4 and 8.5.

The regulatory corrections made in this notice do not significantly affect the stringency, applicability, compliance burden, or compliance costs of the gasoline volatility regulations. Because these corrections do not result in such changes and are necessary to the proper implementation of these regulations during the ozone season, I find that notice and comment rulemaking is impracticable and unnecessary and thus there is good cause to publish this corrections notice and to make it effective upon publication.

Date: June 16, 1989.

Don R. Clay,

Acting Assistant Administrator for Air and Radiation.

PART 80—[CORRECTED]

The following corrections are made in AMS-FRL-3538-5, the Volatility Regulations for Gasoline and Alcohol Blends Sold in Calendar Years 1989 and Beyond published in the **Federal Register** on March 22, 1989 (54 FR 11868):

§ 80.27 [Corrected]

1. On page 11883, third column, is § 80.27(a), third line, the phrase "ethanol blender," is added after "carrier,".

2. On page 11885, first column, in § 80.27(d)(1), last line, the phrase "(1.0 psi)" is added after "inch".

3. On page 11885, first column, in § 80.27(d)(3)(ii), ninth line, the phrase "ethanol blenders," is added after "carriers,".

§ 80.28 [Corrected]

4. On page 11885, third column, is § 80.28(f), eighth line, the word "refinery" is corrected to read "refiner".

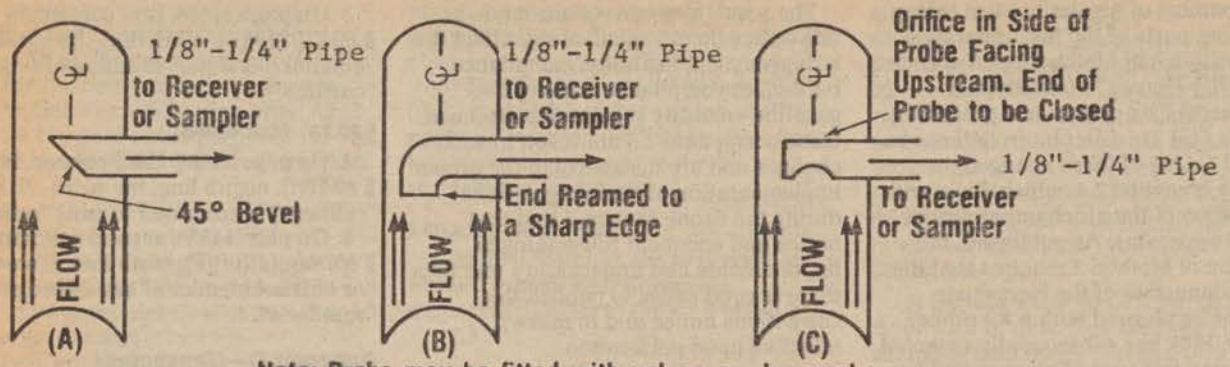
5. On page 11886, second column, in § 80.28(g)(4)(iii)(F), tenth line, the words "or ethanol blender's" are added after "reseller's".

Appendix D—[Corrected]

6. On page 11887, second column, in Appendix D section 4.1 the last two sentences are deleted and replaced with the following sentences, "Cans with the seams soldered on the exterior surface with a flux of rosin in a suitable solvent are preferred because such a flux is easily removed with gasoline, whereas many others are very difficult to remove. If such cans are not available, other cans made with a welded construction that are not affected by, and that do not affect, the gasoline being sampled are acceptable."

7. On pages 11889, third column, through 11890, first column, Appendix D section 12.6 is removed and section 12.7 is redesignated as section 12.6.

8. On page 11893, in Appendix D, Figure 4 is corrected to appear as follows:



Note: Probe may be fitted with valves or plug cocks.
Probe should be disposed horizontally.

PROBES FOR CONTINUOUS SAMPLING



TYPICAL ASSEMBLY FOR LINE SAMPLING

Figure 4. Probes for Continuous Sampling

Appendix E—[Corrected]

9. On page 11897, third column, in Appendix E, Method 1, section 8.1, line 5, the phrase "After drying with absorbent material," is added before the word "Quickly" (which is no longer capitalized).

10. On page 11897, third column, in Appendix E, Method 1, section 8.1, line 11, the word "botton" is corrected to read "bottom".

11. On page 11898, second column, in Appendix E, Method 1, section 8.5, line 4, the words "Note 5" are corrected to read "Note 7".

12. On page 11902, third column, in Appendix E, Method 2, under Part 8. Test Procedure, in section 7.4, line 6, the following sentences are added after "stopper.": "The lower connection of the Herzog air chamber may also be stoppered by utilizing a cap threaded to match the threads of the air chamber, or by attaching a spare fuel chamber to the air chamber. In any procedure used, the interior surfaces of the vapor pressure apparatus and the sample must be kept completely free of water."

13. On page 11902, third column, in Appendix E, Method 2, under Part 8. Test Procedure, in section 7.4, line 14, the word "for" is corrected to read "from".

14. On page 11903, first column, in Appendix E, Method 2, under Part 8. Test Procedure, in section 8.5, line 7, the words "Note 5" are corrected to read "Note 7".

15. On page 11903, first column, in Appendix E, Method 2, under Part 8. Test Procedure, in section 8.5, line 12, the word "vaccum" is corrected to read "vacuum".

FR Doc. 89-14917 Filed 6-26-89; 8:45 am]
BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 161

[CGD 85-208]

RIN 2115-AC95

Floating Electric Waterlight

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is revising its regulation for designing, constructing, testing, and approving a floating electric waterlight by replacing the existing detailed requirements with the incorporation by reference of Underwriters Laboratories Inc. (UL), ANSI/UL 1196, Standard for Floating Waterlights. Also, the Coast Guard is replacing the plan approval process for a waterlight with an approval procedure which uses a test performed by an independent laboratory and a manufacturer certification method. Incorporation by reference of ANSI/UL

1196 allows a waterlight to be designed using the most current technological innovations. The end results will be the development of an improved waterlight design, and a reduction in time delays and administrative procedures.

DATES: This regulation is effective July 27, 1989. The incorporation by reference of certain publications listed in this regulation is approved by the Director of the **Federal Register** as of July 27, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Randall N. Crenwelge, Marine Technical and Hazardous Materials Division, Office of Marine Safety, Security and Environmental Protection, Room 1218, U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001, (202) 267–2206. Normal office hours are from 7:30 a.m. until 4:00 p.m., Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking (NPRM) was published in the **Federal Register** on December 1, 1988 (53 FR 48558). Interested persons were requested to submit comments, and three were received. No requests for a public hearing were received, and one was not held.

Drafting Information

The principal persons involved in drafting this rulemaking are Mr. Randall N. Crenwelge, Project Manager, and Lieutenant Commander Don M. Wrye, Project Counsel, Office of Chief Counsel.

General Discussion

Coast Guard regulations require floating electric waterlights to be attached to lifebuoys, liferafts, lifefloats, and other buoyant apparatus. Floating electric waterlights are required to be constructed and marked in accordance with 46 CFR Subpart 161.010, and they must be U.S. Coast Guard approved.

The Coast Guard, waterlight manufacturers, and Underwriters Laboratories Inc. (UL), an independent standards development and product certification organization, have jointly developed an industry standard for waterlights. This standard, ANSI/UL 1196 (Standard for Floating Waterlights), specifies construction and test requirements, and it is equivalent to previous U.S. Coast Guard regulations. It also contains the requirements of the 1983 amendments to the International Convention for the Safety of Life at Sea of 1974 (SOLAS 74/83).

This rulemaking revises Subpart 161.010 by deleting the specific material, construction, performance, and test requirements, and incorporates ANSI/UL 1196 by reference. Also, the manufacturer must test the waterlight using an independent laboratory which complies with 46 CFR 159.010–3. The manufacturer of a new waterlight must submit to the Commandant (G–MTH–2), U.S. Coast Guard, a pre-approval sample, plans, specifications, a test report, and a self-certification statement indicating compliance with Subpart 161.010. After reviewing all the required items and ensuring compliance to the regulations, an approval certificate is then issued to the manufacturer, and the plans, test report, and other materials are retained by the Coast Guard for future reference. The manufacturer must then label the light with a Coast Guard approval number as required by the ANSI/UL standard. The light can then be mass produced.

Waterlights which have been previously approved and are currently being or will be manufactured with an existing approval number are not affected by this rulemaking, as long as the present certificate is up-to-date. The Coast Guard will continue to accept requests for extensions of approval for previously approved waterlights when their certificates expire.

Discussion of Comments

SOLAS 74/83, Chapter III, Regulation 31–1.7, requires that some lifebuoys have a mass sufficient to operate the quick release mechanism provided for the self-activating and self-igniting lights, or 8.816 pounds (4 kilograms), whichever is greater. Section 8.4 of ANSI/UL 1196 states that a waterlight shall not require more than 20 pounds-force (89N) of tension to release from the mounting bracket. One comment stated that this would require the ring buoy to weigh approximately 20 pounds in order to pull free both the waterlight and smoke signal when released from the bridgewing. This analogy is incomplete due to the fact that the pulling forces applied to the waterlight and smoke signals are dynamic forces. Their magnitude is a function of the mass of the lifebuoy, as well as the acceleration that the lifebuoy gains when released from the quick release mechanism. This force is significantly greater than the required twenty pounds maximum tension that is required to remove the waterlight from its bracket. Waterlights that have been tested to UL 1196 have an average release tension of six pounds. This force is two pounds less than the required eight pound weight of the lifebuoy. The Coast Guard feels the testing requirements in UL 1196 are adequate to ensure release of the waterlight without having to increase the weight of the lifebuoy.

Another comment questioned the justification of incorporating by reference ANSI/UL 1196 in lieu of the existing detailed-design requirements. The comment's position is that by incorporating this standard, the Coast Guard is actually "locking in" on the technology contained in the incorporated standard. The Coast Guard does not agree with this position. ANSI/UL 1196 was developed under a procedure which provides for participation and comment from the affected public, industry, and governmental organizations. This procedure takes into consideration a survey of known existing standards, and the needs and opinion of a wide variety of interests concerned with the subject matter. Thus, manufacturers, consumers, individuals associated with consumer-oriented organizations, academicians, industrial and commercial users, insurance interests, the Coast Guard, and others provide input in the formulation of this standard. These organizations keep this standard consonant with technological advances, and additions and changes are issued as needed to keep abreast with technology. The Coast Guard will revise the regulations as needed to incorporate the latest editions and revisions to this standard.

The Coast Guard has been actively involved in formulating nongovernment standards for over 20 years, working with industry in the interest of safety. This equal partner approach is vital to maintaining an acceptable level of safety while lessening the regulatory burden on our maritime industry. In the Marine Safety program, over 250 industry consensus standards have been adopted into the regulations.

A final comment expressed concern that the proposed rules do not contain provisions for a factory inspection. The comment also suggested that approval and production tests be conducted by a recognized independent laboratory; suggested specific criteria by which a recognized independent laboratory is accepted by the Coast Guard; suggested that accepted independent laboratories be listed in the regulations; suggested that a compliance label by a recognized independent laboratory accepted by the Coast Guard be allowed in lieu of a Coast Guard approval number; and suggested that the operational test be modified by reducing the float test to a duration of one hour and the light output test following the float test be a visual rather than a photometric test.

Section 161.010–4(d) of the rule states that the Coast Guard reserves the right to make any inspection or test it deems

necessary to determine the conformance of the materials and equipment to the regulations. The Coast Guard believes that this statement is sufficient to require and perform a factory inspection by the Coast Guard when sufficient information is available to indicate that a manufacturer's product does not conform to the regulations. As to laboratory testing, this rule requires that a waterlight manufacturer use an independent laboratory accepted by the Coast Guard to conduct approval and production testing. The Coast Guard's position is that an independent laboratory which meets the criteria stated in 46 CFR 159.010-3 is acceptable to perform the required testing. The Coast Guard has decided that it will no longer list those laboratories it accepts pursuant to Subpart 159.010. A provision for obtaining a list of Coast Guard accepted laboratories has been added to § 161.010-4(b). This procedure follows current Coast Guard practice for independent laboratories that test other life-saving appliances. The Coast Guard does not agree that a compliance label can be used in lieu of a Coast Guard approval number. Regulation 4 of Chapter III, SOLAS 74/83, which has been adopted by the United States, specifically requires approval by the Administration. The Coast Guard issued approval number satisfies the requirement of SOLAS 74/83.

The changes to the operational test suggested in the comment are not accepted. The operational test is an integral part of ANSI/UL 1196. By incorporating this standard by reference, the Coast Guard accepts the operational test as it is in the standard as a required element. As discussed either, this standard was developed in coordination with industry and is a consensus standard. This standard would not have been adopted if it was too severe or was impractical. The Coast Guard has independently evaluated this performance standard and concluded that it is a reasonable method of determining that the light will perform as required under actual use. In order to benefit from the incorporation by reference of an industry consensus standard, all technical changes should be accomplished by revising the standard itself.

Regulatory Evaluation

These regulations are considered to be nonmajor under Executive Order 12291 and nonsignificant under DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). They do not impose any new or additional submission requirements on manufacturers. Although they remove the manufacturer's option to perform tests under Coast Guard supervision, they only reflect current practice. Manufacturers, who usually do not have the equipment required to perform their own tests, currently rely on third party laboratories to perform testing. The Coast Guard has not been contacted to witness any manufacturer performed tests for several years. Therefore, the economic impact of these regulations has been found to be so minimal that further evaluation is unnecessary. Since the impact of this rulemaking is minimal, the Coast Guard certifies that it does not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

These regulations do not impose any new information collection or recordkeeping requirements on the public. The only paperwork requirements involve submittal of plans and test results for review, oversight, and recordkeeping purposes. These requirements have been previously approved by the Office of Management and Budget (OMB) and issued OMB Control Number 2115-0121, as displayed in 46 CFR 159.001-9.

Environmental Impact

The Coast Guard has considered the environmental impact of these regulations, and in accordance with section 2.B.2. of Commandant Instruction M16475.1B, has determined that this rule-making is categorically excluded from further environmental documentation.

Federalism

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

List of Subjects

46 CFR Part 161

Fire prevention, Marine safety, Reporting and recordkeeping requirements; Incorporation by reference.

For the reasons set forth in the preamble, the Coast Guard is amending Part 161 of Chapter 1 of Title 46, Code of Federal Regulations, as follows:

PART 161—[AMENDED]

1. The authority citation for Part 161 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703, 4104; 4302; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

2. Subpart 161.010 is revised to read as follows:

Subpart 161.010—Floating Electric Waterlight

Sec.

161.010-1 Incorporation by reference.
161.010-2 Design, Construction, and Test Requirements.
161.010-3 Inspections and methods of test.
161.010-4 Procedure for approval.

Subpart 161.010—Floating Electric Waterlight

§ 161.010-1 Incorporation by reference.

(a) Certain materials are incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than the one listed in paragraph (b) of this section, notice of change must be published in the Federal Register and the material made available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street NW., Washington, DC, and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division (G-MTH), 2100 Second Street SW., Washington, DC 20593-0001, and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part, and the sections affected are:

Underwriters Laboratories, Inc.

333 Pfingsten Road, Northbrook, Illinois 60062, ANSI/UL 1196, Standard for Floating Waterlights, Second Edition March 23, 1987. 161.010-2; 161.010-4

§ 161.010-2 Design, Construction, and Test Requirements.

Each floating electric waterlight shall meet the requirements of ANSI/UL 1196.

§ 161.010-3 Inspections and methods of test.

(a) Each inspection and test report required by this subpart shall comply with § 159.005-11 of this chapter.

(b) The U.S. Coast Guard reserves the right to make any inspection or test it deems necessary to determine the conformance of the materials and equipment to this subpart.

(c) The facilities, materials, and labor for all tests shall be furnished at no cost to the U.S. Coast Guard.

§ 161.010-4 Procedure for approval.

(a) A request for approval of an automatic floating electric waterlight must be submitted to the Commandant

(G–MTH–2), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001.

(b) All inspections and tests must be performed by an independent laboratory which meets the requirements of § 159.010–3 of this chapter. A list of independent laboratories accepted by the Coast Guard as meeting § 159.010–3 of this chapter may be obtained by contacting the Commandant (G–MTH).

(c) Each request for approval must contain;

(1) The name and address of the applicant,

(2) One copy of all plans and specifications that meet the requirements of § 159.005–12 of this chapter,

(3) A pre-approval sample of the waterlight,

(4) An inspection and test report verifying compliance with the construction and test requirements of ANSI/UL 1196, and

(5) A statement by the manufacturer certifying that the waterlight complies with the requirements of this subpart.

Dated: May 2, 1989.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 89–12398 Filed 6–26–89; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88–533; RM–6398; RM–6470]

Radio Broadcasting Services; Clarksville and Lanesville, IN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 226A to Clarksville, Indiana, as that community's first local broadcast service. Coordinates for Channel 226A at Clarksville are 38–17–01 and 85–50–32. A mutually-exclusive proposal, filed by Janet Miller, seeking the allotment of Channel 226A to Lanesville, Indiana, as that community's first local broadcast service, is denied.

Our determination was reached after comparatively evaluating each proposal. That analysis revealed that each community receives at least five aural services. Therefore, Clarksville was preferred since it is the larger community. With this action, the proceeding is terminated.

DATES: Effective August 3, 1989; the window period for filing applications on Channel 226A at Clarksville, Indiana, will open on August 4, 1989, and close on September 5, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530. Questions related to the window application filing process should be addressed to the Audio Services Division, FM Branch, (202) 632–0394.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88–533, adopted May 31, 1989, and released June 20, 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 Indiana, by adding Clarksville, Channel 226A.

Federal Communications Commission.

Karl A. Kensinger,

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

[FR Doc. 89–15098 Filed 6–26–89; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 88–531; RM–6383, RM–6667]

Radio Broadcasting Services; Paris and Dover, TN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 231A to Paris, Tennessee, as that community's second local FM service, at the request of Benton-Weatherford Broadcasting of Tennessee, Inc. The allotment of Channel 231A can be made to Paris in compliance with § 73.207 of the Commission's Rules, at coordinates 36–18–12 and 88–19–24. With this action, this proceeding is terminated.

DATES: Effective August 3, 1989; the window period for filing applications will open on August 4, 1989, and close on September 5, 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. 88–531, adopted May 31, 1989, and released June 20, 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 Tennessee, by adding Channel 231A at Paris.

Karl A. Kensinger,

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

[FR Doc. 89–15099 Filed 6–26–89; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 87–410; RM–5802, RM–6206, RM–6207]

Radio Broadcasting Services; Waterbury and Royalton, VT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 277C2 for Channel 276A at Waterbury, Vermont, and modifies the license of Station WGLY–FM to specify operation on the higher class channel at the request of Harvest Broadcasting, Inc. The upgrade could provide Waterbury with its first wide coverage area FM service. In addition, this action substitutes Channel 286A for Channel 278A at Plattsburg, New York, which is required in order to accomplish the

substitution at Waterbury. In response to the request of AGK Communications, Inc., Channel 259A is allotted to Royalton, Vermont, as that community's first local FM service. The coordinates for Channel 277C2 at Waterbury are 44–18–14 and 72–37–18, a restricted site 11.4 kilometers (7.1 miles) east of Waterbury. Channel 259A can be allotted Royalton at the reference coordinates, which are 43–48–57 and 72–32–46. Canadian concurrence has been obtained. With this action, this proceeding is terminated.

DATES: Effective August 3, 1989; the window period for filing applications for Channel 259A at Royalton, Vermont, will open on August 4, 1989, and close on September 5, 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. 88–410, adopted May 31, 1989, and released June 20, 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 Vermont, by adding Channel 277C2 and removing Channel 276A at Waterbury; by adding Royalton, Vermont, Channel 259A; and amended, under New York, by adding Channel 286A and removing Channel 278A at Plattsburgh.

Karl A. Kensinger,

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

[FR Doc. 89–15100 Filed 6–26–89; 8:45 am]

BILLING CODE 6712–01–M

Proposed Rules

Federal Register
Vol. 54, No. 122
Tuesday, June 27, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter I

[Summary Notice No. PR-89-7]

Petition for Rulemaking; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR Part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: August 28, 1989.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on June 20, 1989.

Deborah Swank,

Acting Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Rulemaking

Docket No: 25924.

Petitioner: Air Transport Association (ATA).

Regulation Affected: 14 CFR Section 121.358.

Description of Petition: To amend the airborne low-altitude windshear rule to (1) remove the requirement that flight guidance equipment be installed on older, electro-mechanical airplanes, and (2) amend the condition for an extended compliance date to have that date be based on fleet compliance rather than phased compliance.

Petitioners' Reason for the Rule: The ATA maintains that the flight guidance equipment when retrofitted on older airplanes does not achieve recovery performance as well as unguided recovery using trained techniques in combination with the flight warning equipment.

Docket No: 24695.

Petitioner: Aircraft Owners and Pilots Association (AOPA).

Regulation Affected: 14 CFR 61.56(d) and 61.87.

Description of Petition: To amend § 61.56(d) of the recreational pilot rule to remove the requirement that non-instrument-rated private pilots with less than 400 hours must complete an annual flight review of a minimum of 1 hour flight instruction and 1 hour ground instruction. AOPA also petitions to amend § 61.87 to provide a grace period for student pilots to meet the requirements for solo flight of this section. Instead of the effective date of the rule, August 31, 1989, AOPA suggests December 1, 1989.

Petitioners' Reason for the Rule: The AOPA believes that the annual review requirement for non-instrument-rated private pilots with fewer than 400 hours flight time is inappropriate and the "grandfathering" of student pilot is a reasonable request.

[FR Doc. 89-15123 Filed 6-26-89; 8:45 am]
BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210, 230 and 240

[Release Nos. 33-6837; 34-26949; 35-24907; IC-17016; File No. S7-17-89]

Request for Comment on Increasing the Level of Involvement of the Independent Accountant With Interim Financial Information

AGENCY: Securities and Exchange Commission.

ACTION: Request for public comment.

SUMMARY: The Commission is considering whether to propose amendments to its rules to improve the reliability of interim reporting by increasing the level of involvement of the independent accountant with interim financial information. Among the initiatives being considered by the Commission is a possible requirement that interim financial information of registrants be reviewed by their independent accountants before such information is filed with the Commission. In order to assist the Commission in determining whether to propose amendments to its requirements for interim financial information, the Commission is requesting comment regarding (1) the perceived need for revisions to the Commission's current Item 302(a) requirements and (2) any incremental costs and benefits of any suggested revisions, including the possible requirements for timely reviews of interim financial information.

DATE: Comments should be received on or before September 25, 1989.

ADDRESS: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Comment letters should refer to File No. S7-17-89. All comment letters received will be available for public inspection and copying in the Commission's Public Reference Room at the same address.

FOR FURTHER INFORMATION CONTACT: Jack C. Parsons or Robert E. Burns,

Office of the Chief Accountant, (202) 272–2130, or Robert A. Bayless, Division of Corporation Finance, (202) 272–2553, Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

Complete and accurate financial reporting by public companies is of paramount importance to the disclosure system underlying the stability and efficient operation of our capital markets. Investors need reliable financial information when making investment decisions. Interim financial reporting is an important part of that full disclosure program because investors rely on, and react quickly to, quarterly results.

Since 1975, the Commission has required that independent accountants review quarterly financial information filed with annual financial statements of larger, more widely traded registrants.[1] Among the reasons for adopting this requirement, which increased the involvement of the independent accountant with quarterly reporting, were expectations that such a requirement would result in greater care and attention being devoted to quarterly reports, thereby increasing the likelihood that management would discover needed adjustments on a timely basis. The Commission also believed that the requirement would bring the reporting, accounting and analytical expertise of independent accountants to bear on the quarterly reporting process.[2]

Although the Commission did not require that reviews be done on a timely basis (*i.e.*, before the quarterly financial data is initially filed with the Commission) it strongly encouraged such a practice. The Commission stated its belief that it was likely that timely reviews would occur so that management would be less likely to face the necessity of revising quarterly data at the time year-end statements are published.[3]

The Commission continues to believe that timely involvement by the independent accountant with interim financial data would improve the reliability of such data, particularly in today's environment of increasingly complex financial transactions and rapidly changing business practices. Further, the National Commission on Fraudulent Financial Reporting (the "Treadway Commission") recently made a recommendation that the SEC should require independent accountants to review quarterly financial data of all public companies before release to the public. The recommendation was based on the Treadway Commision's belief that timely review would improve the reliability of quarterly reporting and increase the likelihood of preventing or detecting fraudulent financial reporting through auditor involvement with quarterly financial data.[4]

Given the Commission's continued belief that timely review by the independent accountant would enhance the reliability of interim data and increase the likelihood that the independent accountant will discover financial reporting problems, and considering the Treadway Commission recommendation, the Commission intends to reconsider the existing Item 302(a) requirements and determine whether any changes may be needed. Among the initiatives being considered by the Commission is a possible requirement that (10 interim [5] financial data of registrants be reviewed by independent public accountants before such information is filed with the Commission and (2) a report issued by the independent accountant upon completion of the review be included by the registrant in its Form 10–Q [6] and in any registration statements that include interim information.

Before proposing any rulemaking in this area, the Commission believes it is appropriate to obtain input from the public about both the experience of registrants and independent accountants with the Commission's existing Item 302(a) requirements and the estimated incremental costs and benefits that should be considered in assessing whether to propose a requirement for timely involvement by the independent accountant with interim financial information. The Commission also is requesting comments regarding whether such a requirement should apply to all interim periods and whether certain registrants should be excluded from such a requirement, as well as the potential impact of such a requirement in the following additional areas:

—Timely release of earnings
—Establish sufficient knowledge when accountant not engaged to perform prior year audit
—Adequacy of procedures performed by the accountant
—Inclusion of accountant's review report
—Potential for over-reliance on review reports
—Rules 436 [7] exemption

A more detailed discussion of these specific areas begins under Section III of this release.

The Commission also is considering whether to expand the number of registrants subject to Regulation S–K Item 302(a), which currently requires larger, more widely traded companies to disclose certain quarterly data in their annual audited financial statements. Subjecting additional registrants to Item 302(a) would resut in auditor review of their quarterly information, but the review would not necessarily have to occur on a timely basis. The benefits of such a review by the auditor are potentially relevant to registrants regardless of their size and trading activity.

Comments are also invited on any issues commentators believe are relevent to the Commission's consideration of auditor involvement with interim information.

II. Background

A. Historical Background

The Commission began considering disclosure of quarterly information in annual financial statements in 1974 when it published a proposal that this information be included in an audited footnote.[8] This proposal evolved to the present requirement for unaudited data adopted in Accounting Series Release (ASR) No. 177.[9] The Commission noted in ASR 177 that when the annual financial statements contained "unaudited" quarterly data it would be presumed that the auditor had followed "appropriate professional standards and procedure with respect to the data." [10] The Commission expressed its belief that the following benefits would also arise:

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[1] Regulation S–K, Item 302(a); 17 CFR 229.302(a).

[2] *See generally*, Accounting Series Release No. (ASR) 177 (September 10, 1975) (40 FR 46107) (hereinafter "ASR 177").

[3] *Id.*

[4] Report of the National Commission on Fraudulent Financial Reporting (October 1987) (hereinafter "Treadway Commission Report") p. 53.

[5] For purposes of this concept release, it is contemplated that "interim financial data" would be data for periods currently addressed by Item 302(a). In general, then, "interim financial data," as used in this release, refers to *quarterly* data. *See* note 22, *infra*. In addition, the Commission is requesting comment on whether other interim periods should be subject to requirements of timely auditor review. *Infra*, Section IV.A. Thus, the meaning of "interim" in this context is flexible; it may be expanded in any proposed or final rulemakings on this subject in response to comments.

[6] 17 CFR 249.308a.

[7] 17 CFR 230.436.

[8] Securities Act Release No. 5549 (December 19, 1974) (40 FR 1079).

[9] ASR 177.

[10] *Id.*

Either timely or retrospective involvement should increase the care and attention devoted to quarterly reports which will increase the likelihood that management will discover needed adjustments on a timely basis. In addition, management may be able to identify problem areas more promptly so that unusual charges and credits are not made so frequently in the last month of a fiscal year. Finally, the involvement of independent accountants will add the expertise of professional accountants with wide experience in reporting problems to the quarterly reporting process. This should improve individual company reporting and direct greater professional attention to the general problems of interim reporting.[11]

While recognizing that involvement of the independent accountant with interim reporting would not prevent all deficiences, the Commission stated its belief that such involvement would enhance the reliability of interm reports and reduce the likelihood of abuse. The Commission concluded that, in the final analysis, the benefits of auditor involvement in quarterly data are expected primarily to result from improvement in the quality of interim reporting and the annual auditing process and only secondarily from the prevention of perceived abuses.[12]

Although the Commission has strongly encouraged timely reviews of quarterly data,[13] it has not required them. In fact, Regulation S–X states:

> The interim financial information included in filings with the Commission need not be reviewed by an independent public accountant prior to filing. If, however, a review of the data is made in accordance with established professional standards and procedures for such a review, the registrant may state that the independent accountant has performed such a review. If such a statement is made, the report of the independent accountant on such review shall accompany the interim financial information.[14]

Although not mandating the timely involvement of independent accountants with quarterly reporting, the Commission expected that such involvement would occur voluntarily so that management would be less likely to face the necessity of revising quarterly data at the time year-end statements are published.

The Commission also stated its belief that, as the reviews of quarterly information became a regular part of the audit examination of public companies, the timing of audit procedures would be revised so that testing of internal controls and the analytical reviews of financial reports would occur throughout the year. It was expected that this would increase the efficiency of the auditors in identifying and focusing promptly on potentially troublesome areas in the audit. As a result, it was the Commission's expectation that the costs of such reviews would not be entirely incremental and that such reviews should reduce the cost of the annual audit examination. It was further expected that such costs would not be continuing since audit programs and corporate control systems would be improved promptly to keep such costs at a minimum.[15]

The Commission's consideration of the costs and benefits of disclosure and auditor reviews of quarterly information also was evident in the Commission's determination that the present Item 302(a) disclosure requirements should not apply to registrants that do not meet certain criteria; *i.e.*, smaller, less actively traded registrants.[16] Although the Commission concluded that it was not clear that the benefits would outweigh the costs for smaller, less widely traded registrants, the Commission noted that it would continue to study the question.[17]

In ASR 177, the Commission also noted that an accountant's report based on its review of the quarterly data may provide significant and useful information to investors. Therefore, the Commission encouraged the issuance of such reports.[18]

B. Current Requirements

The requirements of the Commission concerning auditor involvement in interim financial data are currently addressed in Regulation S–K, Item 302(a).[19] This item requires, for certain registrants (essentially the larger, more widely traded),[20] disclosure, as supplementary financial information in the annual financial statement,[21] of selected quarterly [22] financial data, including: net sales, gross profit, income (loss) before extraordinary items and cumulative effect of a change in accounting, per share data based upon such income (loss), and net income (loss) for each quarter within the two most recent fiscal years and any subsequent interim period. The item also calls for appropriate reconciliations and descriptions of any adjustments to quarterly information previously reported in the Form 10–Q filed for any quarter. Item 302(a)(4) [23] states that if the related financial statements (*i.e.*, the annual financial statements containing the quarterly data) have been audited, then appropriate professional standards and procedures, as enumerated in the Statements of Auditing Standards issued by the Auditing Standards Board of the American Institute of Certified Public Accountants (AICPA),[24] shall be

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[11] *Id.*

[12] *Id.*

[13] *Id.*

[14] Regulation S–X, Rule 10–01(d); 17 CFR 210.10–01(d).

[15] ASR 177.

[16] *See* Regulation S–K, Item 302(a)(5), regarding disclosure of selected quarterly financial data, note 20, *infra*.

[17] ASR 177.

[18] *Id.*

[19] *See* note 1, *supra*.

[20] Item 302(a)(5), 17 CFR 229.302(a)(5), generally requires any registrant, except a foreign private issuer eligible to use Form 20–F, that meets both of two tests to provide quarterly data in an unaudited footnote to the annual audited financial statements. The first test is whether the registrant:

(A) Has securities registered pursuant to section 12(b) of the Exchange Act (other than mutual life insurance companies); or

(B) Is an insurance company that is subject to the reporting requirements of section 15(d) of the Exchange Act and has securities which also meet the criteria set forth in paragraphs (C)(1) and (C)(2) immediately following; or

(C) Has securities registered pursuant to Section 12(g) of the Exchange Act that also

(1) Are quoted on the National Association of Securities Dealers Automated Quotation System, and

(2) Meet the following criteria:

(i) Three or more dealers make a market in such stock, or the stock is registered on a securities exchange that is exempted by the Commission from registration as a national securities exchange pursuant to Section 5 of the Exchange Act;

(ii) There are 800 or more holders of record, as defined in Rule 12g5–1 (17 CFR 240.12g5–1), under the Exchange Act, of the stock who are not officers, directors, or beneficial owners of 10 percent or more of the stock;

(iii) The registrant is a United States corporation;

(iv) There are 300,000 or more of such securities outstanding in addition to shares held beneficially by officers, directors, or beneficial owners of more than 10 percent of the stock; and

(v) In addition, the registrant meets two of the three following requirements:

(A) The shares described in paragraph (C)(2)(iv) above have a market value of at least $2.5 million;

(B) The minimum representative bid price of such stock is at least $5 per share; or

(C) The registrant continues to have at least $2.5 million of capital, surplus, and undivided profits.

The second test is whether the registrant and its consolidated subsidiaries (A) have had net income after taxes but before extraordinary items and the cumulative effect of a change in accounting, of at least $250,000 for each of the last three fiscal years; or (B) had total assets of at least $200,000,000 for the last fiscal year-end.

[21] Item 302(a) information is required to be disclosed in Form 10–K. In addition, Item 302(a) information is required to be disclosed in, among others, Registration Forms S–1 and S–2 under the 1933 Act, 17 CFR 239.11 and 239.12, respectively.

[22] Item 302(a) requires disclosure of selected data for each full quarter within the two most recent fiscal years and any subsequent interim period for which financial statements are included or required to be included by Article 3 of Regulation S–X. Therefore, Item 302(a) is addressed primarily to quarterly financial data; in addition, Item 302 addresses data for certain other interim periods. *See, e.g.*, Rule 3–12 of Regulation S–X.

[23] 17 CFR 229.302(a)(4).

[24] The Auditing Standards Board is the senior technical body designated by the AICPA to promulgate auditing standards.

followed by the reporting accountant with regard to this quarterly data. Because annual financial statements filed with the Commission are required to be audited,[25] the effect of Item 302(a)(4) is that the quarterly data included in the annual statement must be reviewed by the auditor.

The standards and procedures for this review of quarterly data are set forth in Statement on Auditing Standards No. 36, "Review of Interim Financial Information" (codified at AU section 722 and hereinafter referred to as SAS 36). Review procedures pursuant to SAS 36 consist primarily of inquiries and analytical review procedures concerning significant accounting matters relating to the financial information to be reported. A description of these procedures is included in the standard review report, which states in part:

> A review of interim financial information consists principally of obtaining an understanding of the system for the preparation of interim financial information, applying analytical review procedures to financial data, and making inquiries of persons responsible for financial and accounting matters.

SAS 36, paragraph 18.

SAS 36 does not require that interim data be reviewed on a timely basis. Thus, the quarterly data contained in the Form 10–Q filed with the Commission is not required to be reviewed before the Form 10–Q is submitted. Paragraph 27 of SAS 36 expressly permits the auditor to perform the review procedures at the time of the audit of the annual financial statements.

Review procedures pursuant to SAS 36 are substantially less in scope than those employed in audits in accordance with generally accepted auditing standards. Audit procedures require substantially more work, including detailed testing of account balances and transactions, confirmation of amounts due from third parties and observation of physical inventories, among other procedures. Accordingly, a review does not provide the basis for the expression of an audit opinion. SAS 36, paragraph 3 states:

> * * * A review of interim financial information does not provide a basis for the expression of such an [audit] opinion, because the review does not contemplate a study and evaluation of internal accounting control; tests of accounting records and of responses to inquiries by obtaining corroborating evidential matter through inspection, observation, or confirmation; and certain other procedures ordinarily performed during an audit. A review may bring to the accountant's attention significant matters affecting the interim financial information, but it does not provide assurance that the accountant will become aware of all significant matters that would be disclosed in an audit.

Further, the standard review report, as set out in SAS 36, paragraph 18, states that a review of interim financial information

> is substantially less in scope than an examination in accordance with generally accepted auditing standards the object of which is the expression of an opinion regarding the financial statements taken as a whole. Accordingly, we do not express such an opinion.

In summary, Commission rules require the involvement of the independent accountant with quarterly financial data that accompany annual financial statements of the larger, more widely traded registrants. No similar requirement presently exists for small registrants. When cost/benefit considerations were addressed, the Commission expressed its belief that significant benefits would be derived from the involvement of the independent accountant, whether the review is performed on a timely or retrospective basis. In addition, the Commission has encouraged the involvement on a timely basis and has supported issuance of a report by the independent accountant. The Commission has stated its expectation that management would elect timely reviews with the expectation of increasing the benefits derived from the review. The Commission has also specifically stated that it would continue to examine the question of auditor involvement with interim data as it gained experience with the Item 302(a) reporting requirement.

C. The Treadway Commission

During the period from October 1985 to September 1987, a study of the factors contributing to fraudulent financial reporting was conducted by the Treadway Commission.[26] In October 1987, the Treadway Commission issued its final report containing recommendations to reduce the incidence of fraudulent financial reporting.

Among the Treadway Commission's recommendations was the following specific recommendation regarding the timely review of quarterly financial data:

> The SEC should require independent public accountants to review quarterly financial data of all public companies before release to the public.[27]

The Treadway Commission expressed its view that timely auditor involvement would improve the reliability of quarterly reporting and increase the likelihood of preventing or detecting fraudulent financial reporting. The Treadway Commission further stated that the review of quarterly financial data before public release would assure the public of more frequent review of reporting practices of public companies by an independent and objective party, which should improve the financial reporting discipline in many public companies. Further, the Treadway Commission stated that the review should be a "limited" review, as described in existing auditing literature.[28] In its Report, the Treadway Commission specifically addressed the cost/benefit question in the aggregate and reached a general conclusion that the benefits of its recommendations (including timely review of quarterly reports) would justify the costs, stating as follows:

> For some companies, implementing these recommendations will require little or even no change from current practices; for other companies, it will mean adding or improving a recommended practice. Whether it means adding or improving a practice, the benefits justify the costs. Treadway Commission Report, at 11.
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> Costs must be viewed in two ways. The cost of implementation can be quantified. The other cost—the cost of failing to implement these recommendations—is impossible to quantify, yet it may be far larger and more important. This cost is the potential loss of confidence of investors and the public in corporate management and in the financial reporting system. Our capital markets and our private enterprise system cannot bear the loss of the public's trust and confidence in the integrity of the financial reporting system. Treadway Commission Report, at 29.

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[25] Regulations S–X, Rule 3–01, 3–02; 17 CFR 210.3–01, 210.3–02.

[26] For purposes of its study and report, the Treadway Commission defined fraudulent financial reporting as "intentional or reckless conduct, whether act or omission, that results in materially misleading financial statements * * *. Fraudulent financial reporting differs from other causes of materially misleading financial statements, such as unintentional errors. The Commission also distinguished fraudulent financial reporting from other corporate improprieties, such as employee embezzlements, violations of environmental or product safety regulations and tax fraud, which do not necessarily cause the financial statements to be materially inaccurate." Treadway Commission Report, at 2. Copies of the Treadway Commission Report and related background materials are available from the American Institute of Certified Public Accountants, 1211 Avenue of the Americas, New York, NY 10036. Sponsoring organizations were the American Institute of Certified Public Accountants, the American Accounting Association, the Financial Executives Institute, the Institute of Internal Auditors and the National Association of Accountants.

[27] Treadway Commission Report, at 53.

[28] *Id.; see* Section II.B, *supra.*

The Treadway Commission's recommendations are generally consistent with the views expressed previously by the Commission, but they differ from the proposals being considered by the Commission in this concept release in two respects. First, the Treadway Commission report addresses quarterly information, while the Commission recognizes that registrants may include in filings with the Commisison financial information regarding interim periods other than quarterly periods.[29] Second, the Treadway Commission recommended that the reviews be performed prior to release of earnings to the public. The Commission is considering whether to propose that the reviews be performed prior to the filing of interim data with the Commission. The Commission believes that there may in fact be no substantive difference between the pre-release and pre-filing reviews since, as is understood to be the case with respect to the release of annual results, a practice may develop whereby interim financial results generally would not be released until the independent accountant has completed substantially all of the required procedures.

III. Possible Changes to Current Requirements

In view of the Commisison's experience with the current requirements concerning auditor involvement with interim data, and in view of the Treadway Commission recommendation described above, the Commission is considering requiring that

(1) Interim financial data required to be filed with the Commission be reviewed by an independent public accountant before it is filed; [30] and

(2) A report be issued by the independent accountant upon completion of the review and be included by the registrant in its Form 10–Q and in any registration statements that include interim information.

The Commission contemplates that the standards and procedures for the review and report would be the current standards for review of interim financial data as set forth in SAS 36, or, subject to revision of the current standards, might be carried out in accordance with more rigorous standards and procedures.[31]

If adopted, these requirements would expand on current requirements of Item 302(a) in three important respects because they would

(1) Apply to *all* registrants, as well as the larger, more actively traded registrants currently subject to Item 302(a); [32]

(2) Require auditor review of interim financial data to be timely; *i.e.*, to take place before the interim data is filed with the Commission, while Item 302(a) permits a review subsequent to filing; and

(3) Require the independent accountant to issue a report on the interim data and that the report be included with the data when it is filed; Item 302(a) contains no such requirement.

The Commission continues to believe that requiring timely auditor involvement with interim reports would serve to improve the reliability of financial reporting. Interim financial statements include estimates to a greater extent than is usual in annual financial statements. Such estimates are affected by judgments made at interim dates concerning anticipated results of operations for the remainder of the annual period and are thus inherently more uncertain. In addition, it appears that registrants in the current environment face increasingly complex financial transactions and events, the accounting for which may not be clearly defined in the accounting literature. Accordingly, it would appear that the reliability of interim financial statements would be improved if such estimates and the accounting for new transactions and events were reviewed by the independent accountant on a timely basis.

A. Costs and Benefits

The Commission notes that any incremental costs of requiring timely reviews of interim financial data by the independent accountant may differ between those companies presently subject to the Commission's requirements for disclosing selected quarterly financial data in their annual audited financial statements and those that are not. Although the Commission recognizes that timely reviews may have the greatest cost impact on those companies not presently subject cost impact on those companies not presently subject to Item 302(a), the Commission also acknowledges the Treadway Commission view that these companies may benefits the most from implementing such procedures.[33]

The Commission believes that due to the need for timely data and other factors, it is not necessary or practical to require that the independent accountant audit the interim financial statements. However, it is the staff's understanding that accountants presently performing timely reviews of quarterly information may be doing more extensive procedures than required by SAS 36. This could be due to the fact that it may be more efficient to perform certain audit procedures concerning significant transactions at the time of the quarterly review rather that at year-end. The timely performance of these audit procedures may result in efficiencies that mitigate any incremental costs incurred by performing the reviews on a timely basis.

The costs of auditor involvement with interim information may vary depending on whether the registrant would be required to include a report issued by its independent accountant on the interim financial information [34] in its filings with the Commission on Form 10–Q and in registration statements that include interim information. Such a report would provide a forum for auditor communication to the public of significant reservations about, or exceptions to, interim reports of the registrant.[35]

Presently, there may be situations where the auditor has performed procedures sufficient to issue a report [36] but either the report is never issued or it is issued but not included by the registrant in its quarterly filings with the Commission. It has been suggested that, even in situations where reviews are being performed on a timely basis in accordance with the existing professional standards, the imposition of a requirement to include a report would increase costs, perhaps significantly.

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[29] In accordance with Regulation S–X, Rule 3–12, 17 CFR 210.3–12, financial statements included in a registration statement filed with the Commission must be updated to ensure that they are within 135 days of the date the registration statement is expected to become effective. This may result in certain registrants including interim financial statements for other than quarterly periods. *See, e.g.*, note 22, *supra*.

[30] Thus, quarterly data included in Form 10–Qs would be required to be reviewed by the independent public accountant *before* the 10–Q is filed, not afterwards, before the filing of the annual report, as is presently allowed.

[31] for the meaning of the term "interim" for purposes of this concept release, *See* note 5, *supra*.

[32] As stated, *infra*, Section IV.A., the Commission may consider narrowing the scope of the proposal so that smaller registrants may be exempt, and is seeking comments on that subject.

[33] The Treadway Commission Report notes that "these (smaller) entities may have a disproportionately greater risk of fraudulent financial reporting and thus may reap proportionately greater benefits" from implementing the recommendations contained in the Report. Treadway Commission Report, at 29.

[34] SAS 36 contains an example of an accountant's report at paragraph 18.

[35] *See* paragraphs 20–22 of SAS 36, "Circumstances Requiring Modification of the Accountant's Review Report."

[36] *See* paragraphs 4–15 of SAS 36, "Procedures for a Review of Interim Financial Information."

Additional cost factors include the possibility that a timely interim review requirement may result in delays in prompt public release of earnings information. In addition, incremental costs may be incurred by registrants that change auditors. As prescribed by SAS 36, knowledge of the company's accounting and financial reporting practices and its system of internal control is an important factor in the performance of interim review procedures [37] and, although usually obtained during the audit of the annual financial statements, the need for such knowledge is not diminished if an audit has not been performed. As such, "the accountant needs to consider whether, under the particular circumstances involved, he can acquire sufficient knowledge about these matters for the purposes contemplated in a review of interim financial information." [38]

B. Reliance on Auditors's Reports on Interim Data

Another aspect of requiring the inclusion of SAS 36 reports involves the reliance that may be placed on such a report by the readers of the financial statements. Some autitors may believe there is a risk that readers will place a higher level of reliance on the report than the underlying procedures may warrant, even though a general description of the procedures and their scope in comparison to an audit is provided in the middle paragraph to the standard accountant's review report.[39] Further, some may believe that there is potential for misunderstanding as to the meaning of the accountant's review report that expresses negative assurance that the accountant is not aware of any modifications that should be made to the financial statements. The sample report in SAS 36 states, in part:

> Based on our review we are not aware of any material modification that should be made to the accompanying financial (information or statements) for them to be in conformity with generally accepted accounting principles.[40]

As previously discussed, a review is substantially less in scope than an audit and situations may arise where the auditor may not perform extensive procedures on certain new transactions or events. As a result, during the performance of its year-end examination the auditor may conclude that the registrant has not adopted the appropriate method of accounting for these transactions in its interim reports. The Commission staff is concerned that some registrants may inappropriately interpret the issuance of a standard interim review report as an indication of the accountant's agreement with the accounting treatment adopted for these new transactions or events.

C. Possible Changes to the Rule 436 Exemption From Liability

Under existing Commission Rule 436,[41] reports by independent accountants on interim financial information that are included in a filing with the Commission are not considered to be a part of a registration statement, or a report, prepared or certified by an accountant within the meaning of Sections 7 and 11 of the Securities Act of 1933.[42] This exemption from the liability provisions of Section 11 was adopted by the Commission in 1979 to encourage increased auditor involvement with interim financial information and greater use of reports by accountants concerning unaudited financial information.[43] If such reports are required to be included in filings with the Commission, however, this encouragement would no longer be necessary.

Removal of the exemption may result in (1) increased attention by the independent accountant to the preparation of the review report and the performance of the review, and (2) the ability under Section 11 of persons to recover damages they have suffered as a result of any untrue statement in a required accountant's report that has been included in a registration statement under the Securities Act of 1933.[44]

Maintaining the exemption from Section 11 liability, however, may continue to be appropriate because of the limited nature of the review procedures being performed. In other words, Section 11 liability may not be appropriate unless the accountant performs full audit procedures. Further, the costs of removing the exemption could include increased litigation risks for accountants that may result in increased procedures being performed by the accountant and higher fees to the registrant.

D. Possible Changes to Item 302(a)

As part of its deliberations as to whether to propose a requirement for timely reviews, the Commission also intends to reconsider the existing requirements for disclosure of interim information pursuant to Regulation S-K, Item 302(a). If the Commission decides to propose a requirement for timely reviews, it may conclude that the Item 302(a) disclosure requirements should be (1) expanded so that all registrants that would be required to have timely reviews performed would also be required to disclose the quarterly data in their annual reports to shareholders or (2) deleted. Alternatively, if the Commission decides not to pursue a rule proposal that would require timely reviews, it may decide instead to propose deleting the Item 302(a) exclusion for the smaller, less actively traded registrants. Such a proposal could result in all registrants including summarized interim information in their annual reports and having their independent accountants perform reviews of such data, although not necessarily on a timely basis.

IV. Areas in Which the Commission is Inviting Comment

A. Potential Impact of Requiring that All Registrants Have Timely Reviews of Interim Data Performed by Their Independent Accountant

The Commission invites comments regarding the incremental costs and benefits expected to be derived from a requirement that all interim financial statements be reviewed by the independent accountant on a timely basis and whether such benefits are likely to exceed the incremental costs, although it recognizes that the benefits of requiring timely review may be difficult to quantify accurately. In this regard, the Commission is interested in comments concerning the experience of registrants and independent accountants with the existing Item 302(a) requirements regarding interim financial data.

Specifically, the Commission requests comments regarding the following:

(1) Costs and benefits experienced by registrants that have been required by the existing Item 302(a) requirements to involve their independent accountant with interim financial reporting;

(2) Cost and benefit considerations that led registrants subject to the existing Item 302(a) requirements to the decision either

(a) To involve their independent accountant with interim data on a timely basis or

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[37] SAS 36, paragraph 9.

[38] SAS 36, note 4.

[39] SAS 36, paragraph 18.

[40] *Id.*

[41] 17 CFR 230.436.

[42] 15 U.S.C. 77g, 77k.

[43] ASR 274 (December 28, 1979) (45 FR 1601).

[44] The accountants, however, would remain subject to liability under Section 17 of the Securities Act of 1933, and section 10(b) of the Securities Exchange Act of 1934. *See* ASR 274, note 43, *supra.*

(b) Not to involve their independent accountant with interim data on a timely basis;[45]

(3) For those registrants excluded from the existing Item 302(a) requirements, whether such registrants have elected to involve their independent accountants with interim data, the nature of such involvement (especially, whether that involvement is timely), and the estimated costs and benefits leading to that decision;

(4) Cost and benefit considerations regarding whether reports are issued to the registrant by the independent accountant and whether such reports are then included by the registrant in its filings with the Commission;

(5) The impact the performance of timely reviews has had on the cost and efficiency of the annual audit procedures; and

(6) Experiences of independent accountants with the cost and benefit considerations of the various registrant groups described above in determining the timing and nature of procedures to be performed.

In addition to comments regarding the experience of registrants and their auditors with existing requirements, the Commission is also inviting comment that would provide any other information that could be useful in estimating the incremental costs and benefits of implementing a recommendation for timely reviews of interim date.[46] For example, commentators might make projections regarding expected costs and benefits of prospective implementation of the timely review requirement contemplated by this release.

As discussed above, the Commission recognizes that certain registrants may include financial information for interim periods on other than a quarterly basis. Therefore, comments also are requested regarding the incremental costs and benefits of applying any proposed rulemaking for timely reviews to interim periods presented on other than a quarterly basis. The Commission also requests comment as to whether certain registrants, for example smaller, less widely-traded, or foreign registants, should be exempt from a requirement that their independent accountant perform timely reviews of interim financial data.

B. Additional Matters That Should be Considered in Determining Whether to Propose a Requirement for Timely Reviews

1. Impact on Timely Release of Earnings

The Commission requests comment on whether a requirement that registrants have their independent accountants perform timely reviews of interim financial data would delay registrants from promptly releasing earnings data to the public. The Commission also requests comments on whether there would be a resource limitation concerning the accountants' ability to perform timely reviews, particularly in view of the high percentage of registrants with calendar or calendar-quarter year-ends, and whether any such limitation would materially affect the timing of the release of earnings data to the public.

2. Accountant Not Engaged to Perform Prior Year Audit

The Commission requests comment on any incremental costs that may be incurred in complying with a potential requirement for timely reviews in those situations where the registrant changes auditors during the fiscal year. Comments should address whether this is expected to be a problem, provide an estimate of any additional costs a registrant may need to incur as a result of the new accountant's need to establish sufficient knowledge to conduct a required timely review, and discuss whether registrants may encounter difficulty in complying with such a requirement. The Commission is further interested in whether there may be a need for specific guidance in these situations.

3. Adequacy of Procedures Performed by the Accountant

As previously indicated, review procedures are substantially less in scope than an examination in accordance with generally accepted auditing standards.

Specific comment is requested on (1) whether the procedures prescribed by SAS 36 provide the auditor with sufficient guidance regarding procedures that must be performed in order to conduct a timely review of interim financial information; (2) what additional procedures, if any, are necessary, and what they should entail; and (3) whether any such additional procedures would increase total audit and interim review costs or merely have an impact on the timing of the performance of certain procedures.

The Commission staff intends to take into consideration the comments received on this concept release in its further discussions with the Auditing Standards Board[47] on the matter of review procedures.

4. Inclusion of Accountant's Report

The Commission invites specific comments as to the effect that requiring inclusion of the accountant's SAS 36 report in the Form 10–Q and in registration statements that include interim information will have on the costs of the review.

5. Potential for Over-Reliance on Review Reports

The Commission requests comments as to the potential for over-reliance on a review report by users of financial information. Specific comment is also requested as to whether revisions should be made to the format of the report to mitigate the potential risk of such over-reliance. Finally, as previously indicated, commentators should indicate whether additional guidance for performing timely reviews would mitigate any such concerns.

6. Rule 436 Exemption

The Commission is requesting comment on the relative costs and benefits that should be considered in assessing whether to maintain or rescind the liability exemption, if it proposes a requirement for timely reviews and report issuance.

C. Possible Revisions to Existing Disclosure Requirements and Possible Alternatives to Required Timely Reviews

The Commission requests comment on the changes regarding Item 302(a), if any, that should be considered as part of its effort to enhance the involvement of independent accountants with quarterly information. In addition, regardless of whether it proposes a requirement for timely reviews, the Commission requests comment on whether it would be useful to investors in analyzing operating trends of issuers to have Item 302(a) data disclosed in initial public offerings under the Securities Act of 1933 and Form 10[48] under the Securities Exchange Act of 1934. If such disclosure were required, the Commission is interested in comments regarding the estimate of any incremental costs involved, including whether the auditor

[45] Comments may be particularly relevant from those registrants that have recently engaged their accountants to perform timely reviews and thus can provide the most recent information on the impact of such a change.

[46] Regarding costs of both existing and prospective interim review requirements, one of the issues in which the Commission is interested is the impact that timely reviews may have on the annual audit fee (*i.e.*, can it be expected that increased fees for timely reviews will be offset, to some extent, by reductions in audit fees?).

[47] *See* note 24, *supra*.

[48] 17 CFR 249.210.

should be required to review and issue a report on such data.

V. Solicitation of Comments

The Commission invites comments on each of the above issues as well as any other matters that should be considered in deciding whether to propose any amendments to its rules to improve the reliability of interim reporting, including a possible requirement that independent public accountant review quarterly financial data of registrants on a timely basis.

By the Commission.

Jonathan G. Katz,

Secretary.

June 20, 1989.

[FR Doc. 89-15178 Filed 6-26-89; 8:45 am]

BILLING CODE 8010-01-M

PANAMA CANAL COMMISSION

35 CFR Parts 101, 113, 121, and 123

RIN 3207-AA04

Arriving and Departing Vessels; Various Communication, Documentation; Dangerous Cargoes; Inspection and Registration of Vessels; Radio Communication

AGENCY: Panama Canal Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Panama Canal Commission is considering changes to parts of Title 35, Code of Federal Regulations concerning arriving and departing vessels, specifically those provisions relating to documentation, dangerous cargoes, inspection and registration of vessels, and radio communication. The proposed rule changes reflect a recent reorganization in the Commission's Marine Bureau which has resulted in changes of the titles of responsible officials. The proposal will clarify responsibility for reporting dangerous cargoes, as well as allow for greater consistency in the area of marine inspection.

DATE: Comments must be received on or before July 27, 1989.

ADDRESSES: Comments and other correspondence relating to this notice should be sent to the following individuals:

Mr. Michael Rhode, Jr., Secretary, Panama Canal Commissions, 2000 "L" Street NW., Suite 550, Washington, DC 20036-4996, Telephone: (202) 634-6441.

Mr. John L. Haines, Jr., General Counsel, Panama Canal Commission, APO Miami, FL 34011-5000, Telephone: 011-507-52-7511.

Comments also may be hand-delivered to: Office of the Secretary, Suite 550, 2000 "L" Street NW., Washington, DC 20036-4996. Normal office hours are between 8:00 a.m. and 4:30 p.m. Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Fuller (Assistant to the Secretary for Commission Affairs), (202)-634-6441, or Captain William Y. Clark II, USCG (Special Assistant to the Marine Director), telephone in Balboa Heights, Republic of Panama, 011-507-52-4243.

SUPPLEMENTARY INFORMATION: The Panama Canal Commission proposes to amend the rules for transporting dangerous cargoes. Since the adoption of International Maritime Organization's rules concerning dangerous or hazardous cargoes in June, 1985, considerable information has been gathered concerning the specifics necessary to the proper reporting of these cargoes and the need to be consistent throughout the regulations. The proposed amendments are mainly procedural. The intent is to clarify information for Canal users.

Further, it is proposed to revise the requirement for vessels carrying nuclear materials to provide proof of financial responsibility to establish that such vessels msut have adequate provision for indemnity and loss comparable in general scope to the protection afforded under the United States Atomic Energy Act or consistent with international practice and standards. Vessels will also be required to furnish the Commission with the results of radiation survey reports prior to transiting.

Additionally, the Commission's Marine Bureau has been reorganized. The titles of heads of certain units have changed and are published for the benefit of our customers. For example, the inspection of floating equipment is now under the direction of the U.S. Coast Guard Liaison Officer, who is also the Special Assistant to the Marine Director for Marine Safety. He heads a Marine Safety Unit consisting of four members, two of whom are floating equipment inspectors. The main purpose served by the proposed changes to Part 121, "Inspection and Registration of Vessels", is to properly reflect the present area of responsibility and to include references pertinent to U.S. Coast Guard Marine Inspection Regulations contained in 46 CFR.

Request for Comments

Interested persons are invited to participate in this rulemaking by submitting written comments. Those desiring acknowledgement that their comments have been received should enclose a stamped, self-addressed post care or envelope. The Commission will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of the comments received.

Economic Assessment and Certification

The Panama Canal Commission has determined that these proposed changes do not constitute major rules within the meaning of Executive Order 12291 dated February 17, 1981 (47 CFR 13193), inasmuch as these changes, when implemented, would not have an effect on the economy of $100 million or more per year. These proposed changes would not result in a major increase in cost or prices for consumers, individual industries, local government agencies or geographic regions.

Further, the agency has determined that implementation of the rules will have no adverse impact on competition, employment, investment, productivity innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Finally, the Commission has determined that these rules are not subject to the requirements of sections 603 and 604 of Title 5, United States Code, in that their promulgation will not have a significant impact on a substantial number of small entities.

Drafting Information

The drafters of this notice are Captain William Y. Clark II, USCG, Special Assistant to the Marine Director, and Cynthia Thomas, Assistant General Counsel, project attorney.

List of Subjects

35 CFR Part 101

Arriving and departing vessels: Documentation requirements.

35 CFR Part 113

Dangerous cargo transportation.

35 CFR Part 121

Inspection and registration of vessels.

35 CFR Part 123

Radio communication.

For the reasons set out in the premable, Title 35, Chapter I, Subchapter C of the Code of Federal Regulations is proposed to be amended as follows.

PART 101—ARRIVING AND DEPARTING VESSELS: VARIOUS COMMUNICATION, DOCUMENTATION, SANITATION AND ADMEASUREMENT REQUIREMENTS

1. The authority citation for Part 101 continues to read as follows:

Authority: 22 U.S.C. 3811, E.O. 12215, 45 FR 36043, 44 U.S.C. 3501.

2. Section 101.10 is amended by revising paragraphs (a)(3), (e) and (f) to read as follows:

§ 101.10 Same; list.

(a) *Documents for Commission Boarding Officer.* * * *

(3) Crew List (Panama Canal Form 1509)—1 Copy.

* * * * *

(e) *Dangerous cargo manifest.* The dangerous cargo manifest for vessels carrying packaged dangerous goods, as defined in § 113.2(m) of this title, shall show the correct technical name, United Nations number, International Maritime Organization class and division, storage location, and quantity for each packaged dangerous good carried as cargo.

(f) *Loading plan.* The loading plan for vessels carrying dangerous cargo in bulk, as defined in § 113.2(f) of this title, shall show the location of cargo tanks or holds and the correct technical name, United Nations number, International Maritime Organization class and division, and quantity of dangerous cargo carried in each cargo tank or hold.

PART 113—DANGEROUS CARGOES

3. The authority citation for Part 113 continues to read as follows:

Authority: Issued under authority vested in the President by 22 U.S.C. 3811, E.O. 12215, 45 FR 36043.

4. Section 113.3 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 113.3 Classifications.

(a) Dangerous cargo shall be classified in accordance with the IMO class and division. Whenever there is a doubt as to the explosive or dangerous nature of any commodity, or in case of conflict as to its classification, determination of the nature and classification of such cargoes shall be made by the Marine Safety Advisor or his designeee. Dangerous cargoes shall be divided into the following classes:

* * * * *

5. Section 113.4 is amended by revising paragraph (a) to read as follows:

§ 113.4 Safety and alarm systems.

(a) All dangerous cargo alarms, safety devices, and the vessel's firefighting systems shall be tested 24 hours prior to arrival in Canal waters by any vessel carrying dangerous cargoes. An entry shall be made in the ship's log stating that such tests were conducted and the systems found in proper working order or, if not in proper order, a detailed listing of discrepancies shall be included.

* * * * *

6. Section 113.5 is revised to read as follows:

§ 113.5 Inspections.

The Canal Operations Captain or the Marine Safety Advisor or their designees may inspect vessels carrying dangerous cargoes to ensure that such vessels are in compliance with the requirements of this part.

Supart B—Vessels Carrying Dangerous Cargoes in Bulk

7. Section 113.21 is revised to read as follows:

§ 113.21 Application.

This subpart applies to vessels carrying dangerous liquified gases, liquids and solids in bulk, or tankers in ballast condition which are not gas free. It does not apply to vessels carrying combustible liquids in bulk as prescribed in § 113.3(b), subpart A, of this title.

8. Section 113.22 is revised to read as follows:

§ 113.22 Advance notice.

Vessels subject to this subpart shall provide not less than 48 hours advance notice to Canal authorities by radio of the information required by the "GOLF" item in the prearrival radio message prescribed in § 123.4(a) of this subchapter.

(Approved by the Office of Management and budget under control number 3207–0001)

9. Section 113.26 is amended by revising paragraph (a) to read as follows:

§ 113.26 Transit requirements.

(a) To better assure the safe passage of vessels subject to this subpart, operating restrictions beyond those applicable to other vessels may be imposed by the Canal Operations Captain or his designee.

* * * * *

10. Section 113.29 is amended by revising paragraphs (b) and (c) to read as follows:

§ 113.29 Prohibited cargoes.

* * * * *

(b) Bulk dangerous cargoes not listed in the Bulk Chemical Code, Gas Carrier Codes, or Solid Bulk Code are prohibited in Canal waters unless advance approval is given by the Marine Safety Advisor or his designee to carry such cargoes.

(c) Bulk chemical and liquified gas carriers are prohibited from carrying the Canal waters dangerous cargoes that are not listed on their Certificate of Fitness or Certificate of Compliance, unless 30 days advance notice is given by the vessel and the Marine Safety Advisor or his designee approves the carriage of such cargoes in Canal waters.

(Approved by the Office of Management and Budget under control number 3207–0001)

Subpart C—Vessels Carrying Dangerous Packaged Goods

11. Section 113.42 is revised to read as follows:

§ 113.42 Advance notice.

Vessels subject to this subpart shall provide not less than 48 hours advance notice to Canal authorities by radio of the information required in the "HOTEL" item of the radio message prescribed in § 123.4 of this subchapter, except that vessels carrying explosives shall provide the information required in the "GOLF" item of the message.

(Approved by the Office of Management and Budget under control number 3207–0001)

12. Section 113.43 is amended by revising paragraph (c) to read as follows:

§ 113.43 Anchoring requirements.

* * * * *

(c) Vessels carrying explosives or especially reactive or large amounts of dangerous materials as determined by the Canal Operations Captain, or his designee, may be instructed to anchor in one of the explosive anchorage areas described in § 101.8(a) (2), (3), and (c)(2) of this subchapter.

13. Section 113.45 is revised to read as follows:

§ 113.45 Transit requirements.

Normal operating restrictions will generally apply unless such vessels are carrying more than five tons of explosives or carrying especially more reactive or large amounts of dangerous goods as determined by the Marine Safety Advisor or his designee, in which case additional operating restrictions may be imposed.

14. Section 113.49 is amended by revising paragraphs (b) and (c) to read as follows:

§ 113.49 Class 1, Explosives.

* * * * *

(b) Explosive cargo may be loaded and discharged only at the Mindi Dock. Explosive anchorages prescribed in § 101.8(a) (2), (3) and (c)(2), respectively, may be used upon approval of the Marine Safety Advisor, or his designee.

(c) The Marine Safety Advisor or his designee, upon application, may permit the discharge of explosives, whether intended for civilian or military use, at Commission docks and other locations within Canal waters in an emergency or when the character or packing of the explosives permits their safe discharge there.

15. Section 113.50 is amended by revising paragraphs (c), (d) and (e) to read as follows:

§ 113.50 Class 7, Radioactive substances.

* * * * *

(c) For the purpose of approval of shipments and prior notification of radioactive substances under the IMDG Code, Panama Canal waters will be considered a country en route. Notification shall be given to Canal authorities 30 days in advance of the arrival of the vessel in Canal waters for all fissionable materials, in order that approval may be given by the Marine Safety Advisor, or his designee, to transit such cargoes.

(d) Vessels carrying nuclear materials shall be required to provide current proof of financial responsibility and adequate provision for indemnity covering public liability and loss to the United States or any agency thereof, comparable in general scope to the protection afforded under section 170 of the United States Atomic Energy Act of 1954, as amended, 68 Stat. 919, 71 Stat. 576, or consistent with international practice and standards as set forth by the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal. Vessels shall also be required to furnish the Commission with the results of cargo radiation survey reports in accordance with the standards in IMO class 7.

(e) For the following radioactive substances, not less than 48-hour advance information required under § 123.4 shall be provided, indicating the specifics required by the IMDG Code:

(1) Low Specific Activity Substances or Low Level Solid Radioactive Substances as specified in Class 7 schedules 5, 6, and 7 of the IMDG Code.

(2) Radioactive Substances carried in limited quantities as specified in Class 7 schedules 1, 2, 3, and 4 of the IMDG Code.

(Approved by the Office of Management and Budget under control number 3207–0001)

PART 121—INSPECTION AND REGISTRATION OF VESSELS

16. The authority citation for Part 121 continues to read as follows:

Authority: 22 U.S.C. 3811, E.O. 12215, 45 FR 36043, and 44 U.S.C. 3501.

Subpart A—General Provisions

17. Section 121.2 is revised to read as follows:

§ 121.2 Definitions.

As used in this part, the following terms have the meanings indicated:

(a) "Vessel" means any vessel as defined in §111.3 other than a motorboat as defined in this section.

(b) "Motorboat" means any vessel not more than 20 meters (65 feet) in length propelled by machinery except tugboats and towboats. The word "motorboat" includes a boat temporarily or permanently equipped with a detachable motor. Motorboats are classed as follows:

Class A—Any motorboat less than 7 meters (23 feet) in length.

Class B—Any motorboat 7 meters (23 feet) or over and less than 12 meters (40 feet) in length.

Class C—Any motorboat 12 meters (40 feet) or over and less than 20 meters (65 feet) in length.

Class D—Any cayuco or piragua not more than 20 meters (65 feet) in length equipped with an outboard motor or motors operating in Madden or Gatun Lakes.

§ 121.3 [Removed]

18. Section 121.3 is removed.

Subpart B—Inspection Vessels

19. Section 121.41 is amended by revising paragraphs (a) and (c) to read as follows:

§ 121.41 Certificates of inspection.

(a) Certificates of inspection shall be issued for a period of 1 year to passenger vessels, vessels equipped with boilers, and vessels whose hull or machinery is, in the judgment of the Marine Safety Unit, in such condition as to require inspection annually.

* * * * *

(c) Application shall be made by the owner or other responsible person for inspection and issuance of a new certificate of inspection prior to expiration of the certificate.

20. Section 121.42 is revised to read as follows:

§ 121.42 Distribution of certificates.

Two copies of the certificate of inspection shall be retained on file by the Marine Safety Unit. The original and one copy shall be given to the master or owner of the vessel named therein.

21. Section 121.45 is revised to read as follows:

§ 121.45 Drawings of new vessels to be furnished to the Marine Safety Unit.

The owner or other responsible person, when applying for the first inspection on a new vessel, shall furnish the Marine Safety Unit the following drawings and prints for review prior to construction: Midship section, inboard profile, outboard profile, arrangement of decks and hatch details, capacity of double bottoms and fuel compartments, hull penetrations and shell connections, machinery installation, piping systems, lifesaving equipment, fire fighting equipment, electrical, general alarm, radio, and emergency light circuits, and such other drawings or prints as show the general construction of the vessel, including dimensions, spacing of frames, disposition of hull plates, construction of transverse and longitudinal bulkheads, and location of same.

(Approved by the Office of Management and Budget under control number 3207–0001)

22. Section 121.47 is amended by revising paragraph (c) to read as follows:

§ 121.47 Inspection of hulls.

* * * * *

(c) The outboard shaft or shafts on evey ocean or coastwise vessel shall be drawn for examination at least once every 3 years: *Provided,* That when it is shown that a vessel has had a long period of lay-up the Marine Safety Unit may grant an extension equal to the time the vessel has been out of commission, but in no case shall the extension exceed 1 year.

* * * * *

23. Section 121.58 is revised to read as follows:

§ 121.58 Safety valves.

(a) At the annual inspection of each boiler, the marine safety inspector shall check the setting of each boiler safety valve and make any adjustments that may be necessary to keep the boiler within the maximum allowable pressure. After adjusting the boiler safety valves, the marine safety inspector shall seal each safety valve separately with the official seal of the Marine Safety Unit

(b) Each chief engineer, upon taking charge of the power plant of a vessel, shall examine all safety valves and if any seals are broken, or there is any evidence that valves have been tampered with, he shall report same in writing to the Marine Safety Unit. If at any time it is necessary to break the seal on a safety valve for any purpose, the chief engineer shall advise the Marine Safety Unit in writing, giving the reason for breaking the seal and requesting the valve be examined, adjusted, and resealed.

24. Section 121.63 is amended by revising the section heading to read as follows:

§ 121.63 Guards in dangerous places.

* * * * *

25. Section 121.65 is revised to read as follows:

§ 121.65 Notice to the Marine Safety Unit of vessel on dock; alterations.

(a) Whenever any vessel under the supervision of the Marine Safety Unit is placed upon the dock for repairs it shall be the duty of the owner or responsible official to report same to the Marine Safety Unit so that a thorough inspection may be made to determine what is necessary to make such vessel seaworthy. No repairs or alterations affecting the safety of the vessel, either in regard to hull or machinery, shall be made without the knowledge and authority of the Marine Safety Unit. Notice of such repairs and alterations is necessary even if such work does not require the vessel to be placed in a drydock.

(b) When a repair or alteration ordered by the Marine Safety Unit has been completed the same shall be reported to the Marine Safety Unit in writing by the owner or responsible official.

26. Section 121.66 is revised to read as follows:

§ 121.66 Whistles.

Every inspected vessel under the supervision of the Marine Safety Unit shall be provided with an efficient whistle suitable for sounding the necessary whistle signals. Means shall be provided to operate the whistle from a position adjacent to the main steering station and from the remote steering station where such steering station is fitted. Details of the whistle operating devices shall meet the requirements of 46 CFR Chapter I, Subchapter J (Electrical Engineering).

27. Section 121.67 is revised to read as follows:

§ 121.67 Fog bells.

Inspected vessels 12 meters in length or greater, under the supervision of the Marine Safety Unit, shall be provided with an efficient fog bell. The bell, of corrosion resistant material, shall produce a clear tone at a sound pressure level of not less than 110 decibels at a distance of 1 meter. The diameter of the mouth of the bell shall not be less than 300mm for vessels of 20 meters or more in length, and shall be not less than 200mm for vessels of 12 meters to 20 meters in length. The mass of the striker shall not be less than 3 percent of the mass of the bell.

28. Section 121.69 is revised to read as follows:

§ 121.69 Proceeding to another port for repairs.

The Marine Safety Unit may issue a permit to proceed to another port for repairs, if in its judgment this can be done with safety. Such a permit shall state the conditions upon which it is granted.

29. Section 121.70 is revised to read as follows:

§ 121.70 Marking of draft on vessel.

All vessels 20 gross tons and over, under supervision of the Marine Safety Unit, shall have the draft of the vessel plainly and legibly marked upon the stem and upon the stern post or rudder post or at such other place at the stern of the vessel as may be necessary for easy observance. The draft shall be taken from the bottom of the lowest part of the keel to the surface of the water, the bottom of the mark to indicate the draft in feet. Sufficient marks shall be used to cover all working and loading conditions of the vessel. If any part of the hull or permanent equipment extends below the lowest part of the keel, the master or other responsible person shall produce evidence from which the vessel's maximum immersion may be determined.

30. Section 121.71 is revised to read as follows:

§ 121.71 Emergency lighting system.

Provision shall be made on passenger vessels, tug boats and dredges for an electric system of lighting, sufficient for all requirements of safety, throughout the vessel. There shall be a self-contained electric source capable of supplying power when necessary. Emergency lights shall be tested at least once each week. The date of the tests required by this section shall be noted in the vessel's logbook.

31. Section 121.72 is revised to read as follows:

§ 121.72 Repairs to firefighting and lifesaving apparatus.

No extensive repairs or alterations, except in an emergency, shall be made to lifesaving or firefighting equipment without prior notice to the Marine Safety Unit.

32. Section 121.74 is revised to read as follows:

§ 121.74 Repairs on boilers and unfired pressure vessels.

(a) Before undertaking repairs to a boiler or unfired pressure vessel, the engineer in charge of such vessel shall report the condition necessitating repairs and the nature of the proposed repairs to the Marine Safety Unit in writing.

(b) When damage occurs to boilers or pressure vessels through an accident that tends to render the further use of such boilers or pressure vessels unsafe until repairs are made, the engineer in charge thereof shall promptly report the facts of the accident and the proposed repairs to the Marine Safety Unit in writing.

(c) In cases requiring a written report under this section, repairs shall not commence until the Marine Safety Unit's Inspector has approved the proposed plan of repairs.

33. Section 121.76 is revised to read as follows:

§ 121.76 Inclining test.

When the Marine Safety Unit has any reason to question the stability of any vessel under its supervision, it shall require the owners of the vessel to make inclining tests on such vessels, under the general supervision of the Marine Safety Unit.

34. Section 121.79 is revised to read as follows:

§ 121.79 Carrying of excess steam.

When it is known or comes to the knowledge of the Marine Safety Unit that any steam vessel is or has been carrying an excess of steam beyond that which is allowed by her certificate of inspection, the Marine Safety Unit shall require the owner of said vessel to place on the boiler a lockup safety valve, that will prevent the carrying of an excess of steam, which shall be under the control of the Marine Safety Unit.

35. Section 121.85 is revised to read as follows:

§ 121.85 Sanitation.

The master and chief engineer of any vessel under supervision of the Marine Safety Unit shall see that the vessel and the passenger and crew quarters are kept in a sanitary condition.

36. Section 121.87 is revised to read as follows:

§ 121.87 Examination of boilers and machinery by engineer.

When an engineer assumes charge of the boilers and machinery of a vessel he shall examine the same immediately and thoroughly, and if he finds any part thereof in bad condition, he shall immediately report the fact to the master or employer and to the Marine Safety Unit, which shall thereupon investigate the matter to determine whether the former engineer has been negligent in his duties.

37. Section 121.88 is revised to read as follows:

§ 121.88 Fusible plug report.

The chief engineer of a steam vessel subject to this part shall report promptly to the Marine Safety Unit every renewal of every fusible plug in a boiler or boilers of a steam vessel upon which he is in charge as chief engineer.

38. Section 121.89 is amended by revising paragraphs (a) introductory text, (a)(1), and (b) to read as follows:

§ 121.89 Boiler steam hours.

(a) Boilers on floating equipment of the Panama Canal Commission which are inspected by the Marine Safety Unit may not be operated under steam for more than the following prescribed number of hours between boiler washout periods.

(1) Boilers which are operated under an approved system of boiler feed water conditioning with respect to which copies of reports of boiler water conditioning are filed with the Marine Safety Unit: 2,880 hours.

* * * * *

(b) The chief engineer of the vessel shall report all washouts to the Marine Safety Unit on Form 1588–4 when the washout is completed and steam raised in a boiler. The original of this report shall be forwarded to the Marine Safety Unit and a copy to his master or employer.

39. Section 121.90 is revised to read as follows:

§ 121.90 Annual report of floating equipment on hand.

The accountable officials of the Panama Canal Commission shall furnish the Marine Safety Unit with an annual report of all vessels and floating craft on hand by January 1st of each year.

This report shall show:

(a) The accountable official.

(b) The responsible official.

(c) The location of vessel or craft.

(d) The number or name of vessel or craft.

(e) The description of vessel or craft.

40. Section 121.92 is revised to read as follows:

§ 121.92 Lifesaving apparatus.

Unless otherwise provided by this part, lifesaving apparatus for vessels subject to this part shall be in accordance with the requirements of the general rules and regulations for vessel inspection of the United States Coast Guard, or with the requirements of the International Convention for the Safety of Life at Sea.

41. Section 121.99 is amended by adding paragraph (c) to read as follows:

§ 121.99 Fire axes

* * * * *

(c) The vessel's name shall be marked on each ax handle.

42. Section 121.102 is revised to read as follows:

§ 121.102 Portable fire extinguishers.

All vessels subject to this section shall be provided with good and efficient U.S. Coast Guard approved marine portable fire extinguishers. The number and type required shall be determined by the Marine Safety Unit.

42. Section 121.107 is amended by revising paragraphs (a), (b), and (c) and adding paragraph (d) to read as follows:

§ 121.107 Non-self-propelled vessels; equipment.

* * * * *

(a) Dredges, floating cranes, and drill boats:

4 Life rings (2 luminous), U.S. Coast Guard approved.
1 Life preserver for each person on board, U.S. Coast Guard approved.
1 Fire pump. Outlets from fire mains to be so arranged that one 50-foot length of hose can reach any part of the vessel.
6 Portable fire extinguishers.
4 Fire axes.
1 Anchor and anchor chain as approved by the Marine Safety Unit.

Lights and day marks as required by § 111.27 (Rule 27, 72 COLREGS).

(b) Floating pile drivers:

2 Life rings (1 luminous), U.S. Coast Guard approved.
1 Life preserver for each person on board, U.S. Coast Guard approved.
2 Fire axes.
2 Portable fire extinguishers.
1 Anchor and anchor chain as approved by the Marine Safety Unit.

Lights and day marks as required by § 111.27 (Rule 27, 72 COLREGS).

(c) Barges, lighters and scows:

1 Life ring, U.S. Coast Guard approved.
1 Suitable anchor with cable.
1 Life preserver for each person on board, U.S. Coast Guard approved.

Lights as required by Part 111 of this chapter and Rule 24 (72 COLREGS).

1 Stern light, white, and so fixed as to show the light 67.5 degrees from right aft on each side, an arc of 135 degrees, visibility of 3 miles.
1 Each sidelight, green starboard and red port, showing an unbroken light over an arc of the horizon of 112.5 degrees and so fixed as to show the light from right ahead to 22.5 degrees abaft the beam on its respective side, visibility of 3 miles.
1 Diamond black shape (on tows exceeding 200 meters) for daylight display where best seen.

(d) Inconspicuous, partly submerged vessels or objects, or combination of such vessels or objects being towed, shall exhibit:

(1) White, 32-point, 3-mile lights, one at or near the forward end and one at or near the after end, if less than 25 meters in breadth, except that dracones need not exhibit a light at or near the forward end;

(2) In vessels 25 meters or more in breadth, two additional all-round white lights at or near the extremities of its breadth;

(3) In vessels more than 100 meters in length, additional all-round white lights between the lights prescribed in subparagraphs (1) and (2) so that the distance between the lights shall not exceed 100 meters;

(4) A diamond shape at or near the aftermost extremity of the last vessel or object being towed; and, if the length of the tow exceeds 200 meters, an additional diamond shape where it can best be seen and located as far forward as is practicable.

44. Section 121.108 is revised to read as follows:

§ 121.108 Complement of officers and crew.

A certificate of inspection will not be granted to a vessel unless it has in service and on board such complement of officers and crew as may, in the judgment of the Marine Safety Unit, be necessary for safe navigation.

45. Section 121.131 is revised to read as follows:

§ 121.131 Equipment on Motorboats.

(a) Motorboats less than 7 meters (23') in length shall carry the following equipment:

2 Oars or paddles.
1 Whistle.
1 Bailer.

20 Meters (65') of manila line, not less than 15mm (⅝") diameter, or synthetic line of comparable strength.
2 Fire extinguishers, either 1¼ gallon foam, 4-lb. CO–2, or 2-lb. dry chemical, when engine is inboard, or one such extinguisher, if fixed system installed in engine space or if the engine is outboard. Extinguishers to be U.S. Coast Guard approved.
1 Combination light showing red to port and green to starboard or individual red and green side lights, visibility of one mile.
1 Stern light or all-round white light, visibility of two miles.
1. Anchor and suitable cable, 40 meters (130').
1 Red flag.
1 Live preserver for each person carried, U.S. Coast Guard approved.
1 Copy of the *Motorboat Operator's Handbook.*

(b) Motorboats 7 meters (23') or over and less than 12 meters (40') in length shall carry the following equipment:

1 Life ring buoy of not less than 600mm (24") outside diameter, U.S. Coast Guard approved.
1 Whistle, power-operated, audible at least one mile.
1 Bailer.
20 Meters (65') of manila line, not less than 18mm (3/4") diameter, or synthetic line of comparable strength.
3 Fire extinguishers, 2 of which shall be 2 ½ gallon foam, 15-lb. CO–2, or 10-lb. dry chemical. The third extinguisher shall be 1¼ gallon foam, 4-lb. CO–2, or 2-lb. dry chemical. This third extinguisher is not required if a fixed system is installed in the engine space. Extinguishers to be U.S. Coast Guard approved.
1 Boat hook
1 Combination light showing red to port and green to starboard, or individual red and green side lights, visibility one mile.
1 Stern light or all-round white light, visibility of two miles.
1 Anchor and suitable cable, 40 meters (130').
1 Red flag.
1 Red lantern.
1 Life preserver for each person carried, U.S. Coast Guard approved.
1 Copy of the *Motorboat Operator's Handbook.*

(c) Motorboats 12 meters (40') or over and not more than 20 meters (65') in length shall carry the following equipment:

2 Life ring buoys not less than 600mm (24") in outside diameter, U.S. Coast Guard approved.
1 Approved fog horn.
1 Whistle, power-operated, audible at least one mile.
1 Bailer.
25 Meters (82') of manila line, not less than 21mm (⅞") diameter, or synthetic line of comparable strength.
4 Fire extinguishers, 3 of which shall be 2½ gallon foam, 15–lb. CO–2, or 10-lb. dry chemical. The fourth extinguisher may be 1¼ gallon foam, 4-lb. CO–2, or 2-lb. dry chemical. This fourth extinguisher is not required if a fixed system is installed in engine space. Extinguishers to be U.S. Coast Guard approved.
2 Boat hooks.
1 Masthead light, white, 225 degrees, fixed to show the light from right ahead to 22.5 degrees abaft the beam on either side, minimum 2.5 meters above the gunwale, visibility three miles.
1 Combination light showing red to port and green to starboard or individual red and green sidelights, visibility two miles.
1 Stern light, white, 135 degrees, placed as nearly as practicable at the stern, and so fixed to show the light 67.5 degrees from right aft on each side, visibility two miles.
2 Emergency lights, red and all-round in a vertical line where they can best be seen, visibility two miles (daylight: two black balls) used when restricted in ability to maneuver.
1 Red lantern.
1 Red flag.
1 Anchor with 40 meters (130') suitable cable.
1 Fog bell.
1 Life preserver for each person carried, U.S. Coast Guard approved.
1 Copy of the *Motorboat Operator's Handbook.*

(1) Pilot vessels only:

2 Lights at or near the masthead, one all-round white upper and one all-round red lower not less than one meter apart, visibility two miles.

(2) For those vessels engaged in towing and pushing:

2 Masthead lights in a vertical line. When the length of the tow, measured from the stern of the towing vessel to the after end of the tow, exceeds 200 meters, three such lights in a vertical line (daylight: a black diamond shape where it can best be seen).

(d) Cayucos or piraguas less than 20 meters (65 feet) in length and equipped with an outboard motor or motors and operating in Madden and Gatun Lakes shall carry the following equipment:

2 Oars or paddles.
1 Whistle.
1 Bailer.
20 Meters (65') of manila line, not less than 21 mm (⅞") diameter, or synthetic line of comparable strength.
1 Flashlight.
1 Red flag.
1 Life preserver for each person carried, U.S. Coast Guard approved.
1 Copy of the *Motorboat Operator's Handbook.*

(e) Life preservers, ring buoys and fire extinguishers required by this section shall be U.S. Coast Guard approved and shall be permanently marked with the name of the motorboat on which they are carried.

Subpart C—Registration and Numbering

46. Section 121.171 is revised to read as follows:

§ 121.171 Registration and numbering of motorboats.

All motorboats shall be registered, certificated, and assigned numbers by the Marine Safety Unit.

47. Section 121.173 is revised to read as follows:

§ 121.173 Registration and numbering of vessels under 20 meters (65') in length not propelled by machinery.

Vessels not more than 20 meters (65') in length and not propelled in whole or in part by machinery shall be registered and numbered by the Marine Safety Unit.

PART 123—RADIO COMMUNICATION

48. The authority citation for Part 123 continues to read as follows:

Authority: Issued under authority of the President by 22 U.S.C. 3811, E.O. 12215, 45 FR 36043.

49. Section 123.3 is amended by revising paragraph (c) to read as follows:

§ 123.3 Radiotelephones required.

* * * * *

(c) A vessel of a type described in paragraph (a) of this section, which has

notified the Traffic Management Division that it is ready to transit or otherwise navigate in Panama Canal waters and requires a Panama Canal pilot, shall, until a pilot boards the vessel, maintain a continuous watch on Channel 12. Channel 12 will be used for notification to vessels of their transit time and for advisory harbor control communication in Limon Bay.

50. Section 123.4 is amended by revising its heading, paragraph (a), introductory text, and items GOLF and HOTEL thereunder to read as follows:

§ 123.4 Advance notification required by radio from vessels approaching the Canal.

(a) Vessels approaching the Panama Canal shall communicate by radio to the Traffic Management Division not less than 48 hours in advance of arrival at the Canal (or earlier if radio communication is practicable at an earlier time), the information required by this section unless this information has been previously communicated to the Canal authorities by other means. Symbols of the phonetic alphabet shall be used to identify each item and the word "NEGAT" shall be used after the items that can be answered "no", "none", or "not applicable". The following items of information shall be provided:

* * * * *

GOLF—If the vessel is carrying any explosives or bulk dangerous cargoes, as classified in § 113.3, state the technical name, quantity (in long tons), United Nations number, the International Maritime Organization class and division, (include compatibility group for explosives only), and the stowage for each dangerous cargo carried. If the vessel is a tanker in ballast condition and not gas free, state the technical name, United Nations number and the International Maritime Organization class and division of the previously carried cargo. Tankers reporting "GOLF:NEGAT" shall, in addition, state the technical names of non-dangerous cargoes carried.

HOTEL—If the vessel is carrying any packaged dangerous goods, as specified in § 113.3, other than explosives, state the International Maritime Organization class and division and the total quantity (in long tons) within each class.

* * * * *

Dated: June 12, 1989.

D.P. McAuliffe,

Administrator, Panama Canal Commission.

[FR Doc. 89-15119 Filed 6-26-89; 8:45 am]

BILLING CODE 3640-04-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL 3608-4]

Approval and Promulgation of State Implementation Plans; Colorado; Oxygenated Fuels and Inspection/ Maintenance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to approve revisions to the Colorado Carbon Monoxide (CO) and Ozone State Implementation Paln (SIP) submitted on July 29, 1987, by the Governor of Colorado. The CO SIP revision included: (1) Regulation No. 11 (Inspection/ Maintenance (I/M) program) and (2) Regulation No. 13 (oxygenated fuels program). The Ozone SIP revision included Regulation No. 11 (the I/M program). The Regulations apply to the Boulder, Colorado Springs, Denver Metropolitan, Fort Collins, and Greeley areas.

The revisions to Regulation No. 11 being proposed for approval today also incorporate earlier revisions submitted by the Governor of Colorado: (1) The legislative amendments authorizing the Regulation No. 11 revisions were submitted on July 1, 1986, and (2) the revised emission standards (cut points) for 1976 and 1977 vehicles were submitted January 30, 1986. The revisions are being proposed for approval because they reduce CO and ozone levels and, therefore, strengthen the existing SIPs.

DATES: Comments must be received on or before July 27, 1989.

ADDRESSES: Written comments should be addressed to: Douglas M. Skie, Chief, Air Programs Branch, Environmental Protection Agency, One Denver Place, Suite 500, 999 18th Street, Denver, Colorado 80202-2405.

Copies of the state submittal are available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday, at the following office: Environmental Protection Agency, Region VIII, Air Programs Branch, One Denver Place, Suite 500, 999 18th Street, Denver, Colorado 80202-2405.

FOR FURTHER INFORMATION CONTACT: Dale M. Wells, Air Programs Branch, Environmental Protection Agency, One Denver Place, Suite 500, 999 18th Street, Denver, Colorado 80202-2405. (303) 293-1773. (FTS) 564-1773.

SUPPLEMENTARY INFORMATION: On July 14, 1987 (52 FR 26419), EPA proposed to disapprove the Colorado CO SIP for the metropolitan Denver area for failing to demonstrate attainment of the CO standard by December 31, 1987, or any fixed date in the near term after 1987. In the General Preamble of that same notice, EPA also stated its intention to review the adequacy of the CO and Ozone SIPs in other areas. The proposal described below does not alter the July 14, 1987, proposed action.

On July 29, 1987, the Governor of Colorado submitted revisions to the Colordao CO and Ozone SIP. The CO SIP revision included: (1) Regulation No. 11 (Inspection/Maintenance (I/M) program) and (2) Regulation No. 13 (oxygenated fuels program). The Ozone SIP revision included Regulation No. 11 (the I/M program).

EPA Is proposing to approve these revisions because they strengthen the existing SIP by significantly reducing CO and ozone levels. The revisions also aid in attaining the standard at an earlier date, demonstrate that the State is currently making efforts to submit a plan that will produce timely attainment of the standard and will provide immediate health benefits to the population of the Boulder, Colorado Springs, Denver Metropolitan, Fort Collins and Greeley areas (inclusion of Greeley in the I/M program is the subject of a separate notice). However, as discussed in the July 14, 1987, **Federal Register** notice, these revisions are not sufficient to provide for attainment of the CO standard in the Denver/Boulder area in the near term. When a revised SIP is submitted that does address the issue of the attainment of the CO standard, the amount of emission reduction from Regulations 11 and 13 must be recalculated.

Regulation No. 11 I/M Amendments

The revisions to the I/M program (Regulation No. 11) were adopted by the Colorado Air Quality Control Commission (AQCC) on January 15, 1987, and went into effect on July 1, 1987. Regulation No. 11 applies to the Denver Metropolitan, Boulder, Colorado Springs, Fort Collins, and Greeley areas. The revisions provide for use of computerized "BAR 84" analyzers, registration enforcement, increased anti-tampering provisions (including catalyst replacement when the fuel-filler restrictor is tampered with), expanded coverage to all pre-1968 vehicles without antique license plates, and increased waiver cost limits.

The State of Colorado evaluated the old I/M program in 1985 and determined that the Mobile 3 credit for that program should be reduced by 45%. This reduced

credit is due to design flaws in the old I/M program which caused low failure rate, low compliance rate and high waiver rate. The overall effectiveness of the old program was then adjusted given the reduced credit. When compared to the revised I/M program, the calculations show that these enhancements are expected to reduce 1992 mobile source CO and hydrocarbon (HC) emissions by 18% and 9.2%, respectively. These reductions are calculated from the Mobile 3 runs provided by the State of Colorado. As stated earlier, emission reduction credit is not being addressed at this time. Recalculation of such credit will be determined when a revised SIP is submitted.

The revisions to Regulation No. 11 being proposed for approval today also incorporate earlier revisions submitted by the Governor of Colorado: (1) The legislative amendments authorizing the Regulation No. 11 revisions were submitted on July 1, 1986, and (2) the revised emission standards for 1976 and 1977 vehicles were submitted January 30, 1986. The July 1, 1986 submittal contained only the authority to revise Regulation No. 11. EPA determined that the regulation, as well as the authority, was necessary to evaluate the State submittal. The January 30, 1986, submittal contained more stringent cut points for 1976 and 1977 model year vehicles. EPA considered the revisions minor and deferred action pending submittal of more substantial revisions.

Regulation No. 13 Oxygenated Fuels Program

Regulation No. 13 was adopted by the AQCC on July 29, 1987. The regulation requires all gasoline sold in the CO nonattainment areas (Boulder, Colorado Springs, Denver Metropolitan, Fort Collins and Greeley) to contain at least 1.5% oxygen from January 1, 1988 to March 1, 1988; and thereafter requires at least 2% oxygen during each period from November 1 to March 1.

The regulation would allow the use of either gasohol (90% gasoline and 10% ethanol) or a mixture of gasoline and methyltertiary-butyl-ether (MTBE). Other EPA-approved alcohol blends could also be used, but their use is not expected initially.

The State estimates that ambient CO levels will be reduced by about 14% through this requirement and that retail gasoline prices will be increased by 0.05 cents to 3.5 cents per gallon. Based on the emission testing and EPA Technical Report EPA–AA–TSS–PA–87–4, EPA believes that the 14% air quality benefit given in the State submittal of Regulation No. 13 is reasonable. EPA analysis of the cost estimates given for Regulation No. 13 is that these are also reasonable estimates.

As stated in Regulation No. 13, the AQCC has existing authority to require oxygenated fuels. Earlier EPA analysis confirmed this authority.

The State has also evaluated the impact of the regulation on ambient levels of ozone, oxides of nitrogen and aldehydes, and concluded that there would not be a significant increase in concentrations of these pollutants. EPA agrees with the State's evaluation, in that it believes that potential increases will be more than offset by the impact of vehicle turnover resulting in more vehicles with advanced emission controls. Ozone and aldehyde levels will also be mitigated by the decreases in hydrocarbon emissions produced by the Regulation 11 amendments and exhaust and evaporative hydrocarbon emission decreases discussed below. Both ozone and aldehydes are photochemically produced from hydrocarbons and oxides of nitrogen. The levels of these pollutants should actually continue to decline in the future due to the federally-required controls on new vehicles and efforts by the State of Colorado to reduce the rate of growth in vehicle miles traveled.

The impact of the oxygenated fuels regulation on increasing evaporative emissions of HC requires explanation. Gasohol has higher volatility than the base gasoline from which it is made, and increased HC emissions due to higher volatility could result in higher levels of ozone. MTBE does not increase gasoline volatility nearly as much. MTBE would also be blended to take advantage of its octane value, and would not likely be used in amounts which would significantly increase volatility when not required by Regulation No. 13, due to its higher cost. Regulation No. 13 only requires oxygenated fuel be used in the winter, when evaporative emissions do not lead to ozone formation. There may be increased gasohol use in the summer, however, from a carry-over effect.

The Denver Metropolitan Area Ozone SIP was approved by EPA on December 12, 1983 (48 FR 55284). The control measures in the SIP included I/M, stationary source controls, and various transportation control measures including mass transit. As discussed below, the State of Colorado has implemented measures since the approval of the Ozone SIP which will offset any increased HC emissions due to oxygenated fuels.

On March 22, 1989, EPA published a Notice of Rulemaking on controlling gasoline volatility (54 FR 11868). A Regulatory Impact Analysis (RIA) was performed for this action. The RIA included an estimate of the increase in HC emissions, a precursor to ozone, resulting from the use of gasohol. According to the RIA, if 40% of the fuel used in mobil sources was gasohol, HC emissions would increase 5.6 to 12.6% depending on the Reid Vapor Pressure (RVP) of the base gasoline. Gasoline in Colorado (required to meet ASTM volatility standards since July 1, 1986) has a RVP around the midpoint of the range defined in the RIA. This would put the estimated HC increase at about 9.1% with 40% gasohol use.

The 9.1% increase is a weighted average of the evaporative emissions increase due to the increase in the volatility of the blend and the exhaust HC emission reduction due to the better combustion of the fuel resulting from the additional oxygen provided by the ethanol. The RIA used an estimate for the reduction in exhaust emissions of 2.5%.

Utlizing the same methodology, but with Colorado test data for the exhaust hydrocarbon reduction, the Colorado test results indicate a reduction in HC exhaust emissions of 9.2%. The resulting estimate of the overall increase in HC emissions from 40% gasohol use in the Denver metropolitan area is 7.7%. This increase is much more than is actually expected, since less than 5% of the gasoline sold during the first year of the program contained ethanol.

There are two mitigating factors, each sufficient to overcome the estimated 7.7% HC emission increase due to gasohol use. First, there is the 9.2% decrease in overall vehicle HC emissions due to the Regulation No. 11 amendments discussed earlier. Second, there is the previously mentioned ASTM volatility requirement which is not part of the Denver Metropolitan area Ozone SIP. According to the RIA, the RVP of gasoline in July of 1983 in Colorado averaged about ten pounds. Data from the State of Colorado, in July of 1986, shows the average RVP of gasoline in Colorado was 8.7 pounds. The RIA indicates that a one pound decrease in RVP would offset the evaporative HC emission increase due to gasohol. The Colorado gasoline volatility controls have probably provided more than enough reduction to offset any evaporative emission increase due to gasohol.

In summary, the estimated increase in evaporative HC emissions due to the use of gasohol would be more than overcome by: (1) Reductions in exhaust HC attributable to the new I/M program, (2) emission reductions of exhaust HC due to the cleaner burning properties of

gasohol, and (3) evaporative emission reductions from ASTM volatility requirements for gasoline.

In developing this regulation, the State and EPA conducted extensive meetings with affected groups, including automobile manufacturers, the petroleum industry, and the oxygenated fuels industry. The State of Colorado, with EPA assistance, tested 140 vehicles using the Federal Test Procedure. A task force appointed by the Governor of Colorado in June of 1986 held extensive meetings before recommending adoption of the program in October of 1986. These recommendations were submitted to the Denver Metropolitan Air Quality Council, the lead planning agency for the Denver metropolitan area, which then recommended their adoption by the AQCC. The AQCC formed a subcommittee which, in turn, held separate hearings on emission reduction benefits, effects on materials and vehicle drivability, and cost and supply issues before recommending adoption of the program to the full Commission.

Proposed Action

EPA proposes to approve Regulation No. 13, "Oxygenated Fuels Program", and the revisions to Regulation No. 11, the I/M program, because they strengthen the existing CO SIP. The Regulation No. 11 amendments are also being proposed for approval as strengthening the Ozone SIP.

One issue raised by Colorado's submittal of Regulation No. 13 is whether EPA must make the finding described in section 211(c)(4)(C) of the Clean Air Act (hereinafter Act) prior to any approval of the regulation as part of the Colorado SIP. For the reasons discussed below, EPA believes that such a finding is not required before EPA can approve Regulation No. 13.

Section 211(c)(4)(A) states:

> Except as otherwise provided in subparagraph (B) or (C), no State (or political subdivision thereof) may prescribe or attempt to enforce, for the purposes of motor vehicle emission control, any control or prohibition respecting use of a fuel or fuel additive in a motor vehicle or motor vehicle engine—(i) if the Administrator has found that no control or prohibition under paragraph (1) is necessary and has published his finding in the **Federal Register**, or (ii) if the Administrator has prescribed under paragraph (1) a control prohibition applicable to such fuel or fuel additive, unless (the) state prohibition or control is identical to the prohibition or control prescribed by the Administrator.

Section 211(c)(4) provides that Federal preemption will not be a bar to a State-adopted fuel control measure if the measure is included in the SIP for such State and only if the Administrator approves the measure into the State's SIP on the ground:

> That the State control or prohibition is necessary to achieve the national primary or secondary ambient air quality standard which the plan implements.

Thus, the threshold question in analyzing whether section 211(c)(4) bars EPA from approving Regulation No. 13 is whether EPA has preempted such a State measure in either of the two ways described in paragraph (A). EPA does not believe that either form of preemption has occurred.

First, EPA has not made the finding, described in suparagraph (i) of paragraph (A), that no fuel control or prohibition under paragraph (1) of section 211(c) is necessary; and EPA clearly has not published any such finding in the **Federal Register**.

Second, EPA does not believe that it has prescribed the type of fuel control described in subparagraph (ii) of paragraph (A). As in the case of subparagraph (i), EPA interprets subparagraph (ii)'s reference to "a control or prohibition applicable to such fuel or fuel additive" as including only the same type of fuel control that the State in question is attempting to prescribe. Under this interpretation, section 211(c)(4)(A)'s prohibition of the State's adoption of a particular type of fuel control would be triggered only if EPA had already prescribed, by regulation under section 211(c)(1), the same type of fuel control proffered by the State—in this case, a control on the oxygen content of fuels. Since EPA has not prescribed any control on the oxygen content of any fuel by section 211(c) rulemaking [1], in the Agency's view the preemption described in subparagraph (ii) has not occurred and hence EPA is free to approve Regulation No. 13 into the SIP.

Interested parties are invited to comment on all aspects of these proposed actions.

Under 5 U.S.C. 605(b), I certify that this SIP Revision will not have a significant economic impact on a substantial number of small entities.

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

Authority: 42 U.S.C. 7401–7642.

[1] EPA has established limits on oxygen content for certain new fuels that have been granted waivers under Section 211(f) of the Act for introduction into commerce.

Date: March 31, 1989.

James J. Scherer,

Regional Administrator.

[FR Doc. 89–15189 Filed 6–26–89; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89–286, RM–6609]

Radio Broadcasting Services: Baker, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Mount Wilson FM Broadcasters, Inc., seeking the allotment of FM Channel 268B to Baker, California, as a first local broadcast service. Reference coordinates for this proposal are 35–15–54 and 116–04–25.

DATES: Comments must be filed on or before August 11, 1989, and reply comments on or before August 28, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitoners's counsel, as follows: Robert B. Jacobi, Esq., Cohn and Marks, 1333 New Hampshire Avenue, NW, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–286, adopted June 1, 1989, and released June 21, 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 view, all *ex parte* contacts are prohibited in Commission

proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communication Commission.

Karl A. Kensinger,

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

[FR Doc. 89-15104 Filed 6-26-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-288, RM-6608]

Radio Broadcasting Services; South Lake Tahoe, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Daniel S. Tankersley, seeking the allotment of Channel 268A to South Lake Tahoe, California, as that community's third local FM service. Coordinates used for this proposal are 38-56-30 and 119-58-30.

DATES: Comments must be filed on or before August 11, 1989, and reply comments on or before June 21, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner and his consultant, as follows: Daniel S. Tankersley, 707 Geneva St., Opelika, AL 36801 and Larry G. Fuss, P.O. Box 4010, Opelika, AL 36803.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-288, adopted May 31, 1989, and released June 21, 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* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

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

[FR Doc. 89-15105 Filed 6-26-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-289, RM-6680]

Radio Broadcasting Services; Syracuse, IN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed on behalf of William A. Dixon, seeking the allotment of FM Channel 278A to Syracuse, Indiana, as that community's first local broadcast service. Coordinates for this proposal are 41-25-40 and 85-45-09.

DATES: Comments must be filed on or before August 11, 1989, and reply comments on or before August 28, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Robert G. Allen and Stephen E. Coran, Esqs., McCabe & Allen, P.O. Box 2126, Manassas Park, VA 22111.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-289, adopted May 31, 1989, and released June 21, 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* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

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

[FR Doc. 89-15106 Filed 6-26-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-283, RM-6704]

Radio Broadcasting Services; Elkins, WV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Elkins Radio Corporation, proposing the substitution of Channel 234B1 for Channel 237A at Elkins, West Virginia, and modification of the license for Station WELK(FM) to specify operation on the higher powered channel. A site restriction of 12 kilometers (7.4 miles) east of the community is required, at coordinates 38-56-14 and 79-42-41.

DATES: Comments must be filed on or before August 10, 1989, and reply comments on or before August 25, 1989.

ADDRESS: Federal Communications Commission, Washington, DC, 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Kathryn R. Schmeltzer, Esquire, John Joseph McVeigh, Esquire, Fisher, Wayland, Cooper and Leader, 1255 23rd Street

NW., Suite 800, Washington, DC 20037–1125 (Counsel for petitioner).

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–283, adopted June 1, 1989, and released June 20, 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* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

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

[FR Doc. 89–15107 Filed 6–26–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 89–282, RM–6630]

Radio Broadcasting Services; Whiting, Crandon and Oshkosh, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Sharon Broadcasting Corporation, licensee of Station WYTE(FM), Channel 244A at Whiting, Wisconsin, proposing the substitution of Channel 244C2 for Channel 244A at Whiting and the modification of its license to specify the higher class co-channel. In order to accomplish the co-channel upgrade at Whiting channel, substitutions are required at Crandon, Wisconsin, Channel 276A for vacant Channel 244A and Oshkosh, Wisconsin, Channel 245A for Channel 244A (Station WAHC(FM)). In addition, the substitution at Crandon requires concurrence of the Canadian government. The community of Whiting could receive its first wide coverage area FM service. Channel 244C2 can be allotted at the coordinates of the present transmitter site, which are 44–32–36 and 89–40–07.

DATES: Comments must be filed on or before August 10, 1989, and reply comments on or before August 25, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Jerrold Miller, Esquire, Miller & Fields, petitioner).

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–282, adopted May 31, 1989, and released June 20, 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* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

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

[FR Doc. 89–15108 Filed 6–26–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 89–287, RM–6605]

Radio Broadcasting Services; Valley, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf by Royal Broadasting Company, Inc., seeking the allotment of FM Channel 251A to Valley, Alabama, as that community's first local broadcast service. Coordinates used for Channel 251A at Valley are 32–55–27 and 85–12–48.

DATES: Comments must be filed on or before August 11, 1989, and reply comments on or before August 28, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: M. Scott Johnson and Catherine M. Grofer, Esqs., Gardner, Carton & Douglas, 1001 Pennsylvania Avenue NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–287, adopted May 31, 1989, and released June 21, 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* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

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

[FR Doc. 89-15101 Filed 6-26-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-285, RM-6582]

Radio Broadcasting Services; Gould, AR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Arkansas Radio Company, seeking the allotment of FM Channel 273A to Gould, Arkansas, as that community's first local broadcast service. Coordinates used for proposed Channel 273A at Gould, Arkansas, are 33-59-00 and 91-33-26.

DATES: Comments must be filed on or before August 11, 1989, and reply comments on or before August 28, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Arkansas Radio Company, Attn.: J. Boyd Ingram, P.O. Box 73, Batesville, MS 38606.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-285, adopted June 1, 1989, and released June 21, 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* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensington,

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

[FR Doc. 89-15102 Filed 6-26-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-284, RM-6492]

Radio Broadcasting Services; Greenwood, AR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed on behalf of Red, White and Blue Communications, Inc., licensee of Station KAJJ(FM), Channel 292A, Greenwood, Arkansas, seeking the substitution of Channel 292C2 for Channel 292A and modification of its license accordingly. Reference coordinates used for Channel 292C2 at Greenwood are 35-12-25 and 93-58-25.

DATES: Comments must be filed on or before August 10, 1989, and reply comments on or before August 25, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Aaron P. Shainis and Lee J. Peltzman, Esqs., Baraff, Koerner, Olender & Hochberg, P.C., Suite 203, 2033 M Street NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-284, adopted May 31, 1989, and released June 20, 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* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

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

[FR Doc. 89-15103 Filed 6-26-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 192

[Docket No. PS-107; Notice 1]

RIN 2137-AB50

Determining the Extent of Corrosion on Gas Pipelines

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: Gas pipeline operators who must now inspect for corrosion on buried metallic pipe that is exposed, would be required to investigate further to determine the full extent of any corrosion that is found. At least one major gas pipeline accident might have been prevented had such further investigation been required. Such investigation is required for hazardous liquid pipelines, and this proposal should result in a comparable level of safety.

DATE: Comments must be received by September 25, 1989. Late filed comments will be considered so far as is practicable.

ADDRESS: Send comments in duplicate to the Dockets Unit, Room 8417, Office of Pipeline Safety (OPS), Research and Special Programs Administration, U.S. Department of Transportation, 400

Seventh Street, SW., Washington, DC 20590. Identify the docket and notice numbers stated in the heading of this notice. All comments and docketed material will be available for inspection and copying in Room 8426 between 8:30 a.m. and 5:00 p.m. each business day.

FOR FURTHER INFORMATION CONTACT: Bernard L. Liebler, (202) 366–2392, regarding the subject matter of this proposed rule or the Dockets Unit, (202) 366–4148, regarding copies of this final rule or other material in the docket.

SUPPLEMENTARY INFORMATION:

Background

On February 21, 1986, in Lancaster, Kentucky, a natural gas pipeline operated by a major interstate transmission company failed. The leaking gas was immediately ignited. The resulting fire injured 6 persons in varying degrees, destroyed several buildings and automobiles, and burned about 15 acres of pasture and woodland.

The 30-inch pipeline failed about 30 feet from the end of a casing where it crosses under State Highway 52. At the time of the failure, the pipeline was operating at 987 psig. The National Transportation Safety Board (NTSB) investigated the accident and concluded that the pipeline had failed at a region of external corrosion where the wall thickness had been reduced beyond its ability to contain the operating pressure of the pipeline.

As part of a rehabilitation program, the operator, in 1985, began to perform in-line inspections of its pipelines, and the in-line inspection of the line that would fail in 1986 had been completed. However, after an in-line inspection device is run and the data initially reviewed, it is standard procedure to excavate at least one location to verify the line location and calibrate the in-line inspection log. The location where the pipeline crossed Highway 52 was chosen as a verification location, excavated, and visually inspected on September 12, 1985.

Although the visual examination showed corrosion potentially requiring remedial action, the inspectors did not look for corrosion adjacent to and below the portion of pipe that had been exposed. Since the exposure was for vertification of the line log and the operator did not judge the observed corrosion to be serious enough to require immediate replacement of the pipe, the excavated pipeline segment was backfilled until such time as further examination could be scheduled. The location of the failure was only about one foot from the location of the last corrosion pit measured when the pipe was uncovered.

Because of the extreme proximity of the rupture to the pipeline segment that had been excavated to verify the in-line inspection predictions, the NTSB, in its report on the Beaumont and Lancaster incidents (NTSB/PAR—87–01), made the following recommendation to the OPS:

> Amend 49 CFR 192.459 External corrosion control, examination of buried pipelines when exposed, to require pipeline operators to fully expose and fully examine pipelines exposed for any reason. The exposure and examination should continue until corroded or other damaged areas are no longer encountered. (P–87–3)

Current Requirements

The corrosion control requirements for gas operators provide in § 192.459 that, "Whenever an operator has knowledge that any portion of a buried pipeline is exposed, the exposed portion must be examined for evidence of external corrosion if the pipe is bare, or if the coating is deteriorated."

Although the regulation places an obligation on the operator to examine the exposed portion of pipe for corrosion, when corrosion is found, there is no obligation to extend that examination beyond the area already exposed.

In contrast, a corrosion control rule for hazardous liquid pipelines (49 CFR 195.416(e)) requires the operator to examine any exposed pipe for corrosion, and then requires that "If the operator finds that there is active corrosion, that the surface of the pipe is generally pitted, or that corrosion has caused a leak, it shall investigate further to determine the extent of the corrosion."

Discussion

The purpose of §§ 192.459 and 195.416(e) is to ensure that the operator uses every reasonable opportunity to visually inspect its buried pipelines for external corrosion. Otherwise, when pipelines are buried it is usually necessary to rely on indirect electrical measurements like pipe-to-soil potentials to determine the existence of external corrosion or the effectiveness of cathodic protection systems.

OPS believes that to achieve maximum benefit from visual observation of the condition of a pipeline, the examination should be as complete as possible. This is why any time corrosion is discovered on a hazardous liquid pipeline, the operator has to determine the full extent of any active corrosion. To do so, the excavation might have to be enlarged or extended, or both, for further observation, or buried pipe at or near the excavation could be examined by indirect methods.

The approach recommended by NTSB is to always require further excavation until corrosion is no longer encountered. Unfortunately, if this approach were strictly followed, an operator could never be certain that the full extent of corrosion proximate to that observed in the original excavation had been determined. Corrosion pits are not all adjacent. Thus, there may be areas of uncorroded metal between any two small regions of corrosion. If an operator stopped excavating at the point where corrosion was no longer encountered, nearby corrosion might go undetected. OPS believes it is better for operators to use their own expert judgment on where excavation should stop when determining the extent of corrosion by this means. The flexible approach of § 195.416(e) permits this. It also permits the use of indirect methods when further excavation is unwise or impractical. In addition, surface corrosion of no consequence may be present, and may be widespread, particularly in old distribution lines, its pressure could cause the operator to continue excavating indefinitely.

Proposal

OPS believes that gas pipeline operators should be required to determine the extent of corrosion damage when a pipeline segment is inspected visually after being uncovered by excavation. However, because of the need for flexibility, as discussed above, OPS is proposing to adopt the same approach in Part 192 as is taken in Part 195. Section 192.459 would be amended to require the operator to investigate the extent of the corrosion, leaving the method and the amount of investigation to operator discretion. This performance-based appraoch would allow the operator to utilize any method of investigation appropriate under the circumstances.

In addition, this proposal is consistent with OPS's policy of making Parts 192 and 195 parallel wherever practicable. The remaing distinctions between § 192.459 and § 195.416(e) are to be incorporated as part of a separate project comparing all of the Part 192 and Part 195 corrosion control requirements.

Impact

Since the proposed rule would only extend the scope of specified operator activities under limited circumstances and would permit the operator to select the method to be used for investigating the extent of corrosion, the fiscal impact of the proposal should be small.

Therefore, this proposal is considered to be nonmajor under Executive Order 12291 and is not considered significant under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). Since the proposed rule should require minimal compliance expense, it does not warrant preparation of a Draft Evaluation. Also, based on the facts available concerning the impact of this proposal, I certify under Section 605 of the Regulatory Flexibility Act that it would not if adopted as final, have a significant economic impact on a substantial number of small entities. This action has been analyzed under the criteria of E.O. 12612 and found not to warrant preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 192

Pipeline safety, corrosion, pipe.

In consideration of the foregoing, OPS proposes to amend 49 CFR Part 192 as follows:

PART 192—[AMENDED]

1. The authority citation for Part 192 continues to read as follows:

Authority: 49 App. U.S.C. 1672 and 1804; 49 CFR 1.53.

2. Section 192.459 would be revised to read as follows:

§ 192.459 External corrosion control: Examination of buried pipeline when exposed.

Whenever an operator has knowledge that any portion of a buried pipeline is exposed, the exposed portion must be examined for evidence of external corrosion if the pipe is bare, or if the coating is deteriorated. If external corrosion requiring remedial action is found, the operator shall investigate further to determine the extent of the corrosion and shall take remedial action to the extent required by § 192.483 and the applicable paragraphs of §§ 192.485, 192.487, or 192.489.

Issued in Washington, DC on June 21, 1989.

Richard L. Beam,

Director, Office of Pipeline Safety.

[FR Doc. 89–15121 Filed 6–26–89; 8:45 am]

BILLING CODE 4910–60–M

Notices

Federal Register
Vol. 54, No. 122
Tuesday, June 27, 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

Forest Service

Draft Supplement No. 1 to the Routt National Forest Land and Resource Management Plan

AGENCY: Forest Service, USDA.

ACTION: Notice of cancellation of supplementing an environmental impact statement.

SUMMARY: The Routt National Forest is rescinding Draft Supplement No. 1 to the Final Environmental Impact Statement (FEIS) for the Routt National Forest Land and Resource Management Plan (Forest Plan). This supplement was prepared to clarify language in the FEIS regarding oil and gas leasing.

On October 26, 1988, the Rocky Mountain Regional Office rendered an opinion that the Forest Plan for the Routt National Forest did not fully support oil and gas leasing decisions.

The Forest will be taking action to ensure that Forest Service consent/denial decisions regarding oil and gas leasing is fully supported by the Forest Plan, NEPA analysis, and site-specific evaluations. The material covered in Draft Supplement No. 1 will be addressed in this action. The public will be notified and invited to participate when this effort is initiated.

The Notice of Availability, published in the **Federal Register** of January 19, 1989, is hereby rescinded (54 FR 2226).

FOR FURTHER INFORMATION CONTACT: Direct questions about this action to Larry Keown, Land Management Planning Staff Officer, Routt National Forest, 29587 West U.S. 40—Suite 20, Steamboat Springs, Colorado 80487, phone 303–879–1722.

Date: June 19, 1989.

Jerry E. Schmidt,

Forest Supervisor.

[FR Doc. 89–15128 Filed 6–26–89; 8:45 am]

BILLING CODE 3410–11–M

Packers and Stockyards Administration

Certification of Central Filing System—West Virginia

The Statewide central filing system of West Virginia is hereby certified, pursuant to Section 1324 of the Food Security Act of 1985, on the basis of information submitted by Robert E. Wilkinson, Deputy Secretary of State, for all farm products produced in that State.

This is issued pursuant to authority delegated by the Secretary of Agriculture.

Authority: Sec. 1324(c)(2), Pub. L. 99–198, 99 Stat. 1535, 7 U.S.C. 1631(c)(2); 7 CFR 2.17(e)(3), 2.56(a)(3), 51 FR 22795.

Dated: June 20, 1989.

Calvin W. Watkins,

Acting Administrator, Packers and Stockyards Administration.

[FR Doc. 89–15079 Filed 6–26–89; 8:45 am]

BILLING CODE 3410–KD–M

DEPARTMENT OF COMMERCE

Agency Form 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: Bureau of the Census.

Title: Survey of Income and Program Participation 1988 Panel Wave 7.

Form Number: SIPP–8700, SIPP–8705.

Agency Approval Number: 0607–0595.

Type of Request: Revision of a currently approved form.

Burden: 12,180 hours.

Number of Respondents: 24,360.

Avg Hours Per Response 30 minutes.

Needs and Uses: This survey will provide statistics to estimate the effects of Executive and Legislative decisions. Data provided by SIPP are being used by economic policymakers, the Congress, state and local governments, and Federal agencies that administer social welfare or transfer payment programs such as the Department of Health and Human Services and the Department of Agriculture.

Affected Public: Individuals or households.

Frequency: One time only.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Don Arbuckle, 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 H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: June 21, 1989

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89–15135 Filed 6–26–89; 8:45 am]

BILLING CODE 3510–07–M

Agency Form 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: Bureau of the Census.

Title: Survey of Income and Program Participation 1990 Panel Core, Waves 1–8.

Form Number: SIPP–10100, SIPP–10001, SIPP–10105.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 42,000 hours.

Number of Respondents: 42,000.

Avg. Hours Per Responses: 30 minutes.

Needs and Uses: This survey will provide statistics to estimate the effects of Executive and Legislative decisions. Data provided by SIPP are being used by economic policymakers, the Congress, state and local governments, and Federal agencies that administer social welfare or transfer payment programs such as the Department of Health and Human Services and the Department of Agriculture.

Affected Public: Individuals or households.

Frequency: Three times a year.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Don Arbuckle, 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 H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: June 21, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89–15136 Filed 6–26–89; 8:45 am]

BILLING CODE 3510–07–M

Agency Form 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: Bureau of the Census.

Title: Carpets and Rugs & Broadwoven Fabrics (Gray).

Form Number: MQ–22Q and MQ–22T.

Agency Approval Number: 0607–0559 and 0607–0625.

Type of Request: Revision.

Burden: 1,547 hours.

Number of Respondents: Quarterly—407; Annual—75.

AVG Hours Per Responses: MQ–22Q—.5 hours; MQ–22T—1 hour.

Needs and Uses: The U.S. Government needs information on domestic output in the textile industry to monitor trade agreements with foreign countries. Government agencies, trade associations, and business firms use these data to make production, investment, and trade policy decisions.

Affected Public: Businesses or other for-profit institutions.

Frequency: Quarterly and Annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Don Arbuckle. 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 H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: June 21, 1989

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89–15137 Filed 6–26–89; 8:45 am]

BILLING CODE 3510–07–M

National Oceanic and Atmospheric Administration

Caribbean Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Caribbean Fishery Management Council's Administrative Committee will meet on July 5, 1989, at 9:30 a.m., at the Council's office (address below). The Committee will discuss issues related to its regular administrative operations, and development of fishery management plans (FMPs).

For more information contact Miguel A. Rolon, Executive Director, Caribbean Fishery Management Council, Banco de Ponce Building, Suite 1108, Hato Rey, Puerto Rico 00918–2577; telephone: (809) 766–5926.

Date: June 21, 1989.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management National Marine Fisheries Service.

[FR Doc. 89–15175 Filed 6–26–89; 8:45 am]

BILLING CODE 3510–22–M

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council and its advisory bodies will meet on July 10–13, 1989, at the Casa Marina Hotel, 1500 Reynolds Street, Key West, FL. Except as noted below, the meetings are open to the public.

The Council will meet on July 12 at 8:30 a.m. From 8:45 a.m., to 9:30 a.m., the Council will allow public comments on the Tortugas Sanctuary. Then it will receive committee recommendations on the Sanctuary, review shrimp issues, receive an enforcement report, and review the Law Enforcement Committee report. From 1:30 p.m. to 2:30 p.m., the Council will allow public comments on measures in the Reef Fish Fishery Management Plan (FMP), Amendment #1, and be followed by a review and discussion of approval of the Regulatory Impact Review/Initial Regulatory Flexibility Analysis/Environmental Assessment (RIR/IRFA/EA)/ Amendment #1, and final approval of the regulations. Also on July 12 at 4:30 p.m., the Council's Advisory Panel Selection Committee, followed by the Council's Scientific and Statistical Committee (SSC) Selection Committee will hold closed sessions (not open to the public), to discuss the background of nominees. The meeting will recess at 5 p.m.

The Council will reconvene its open session on July 13 at 8 a.m., to hear the Swordfish Management Committee report and recommendations. From 11 a.m. to 11:30 a.m., the Council will allow public testimony on the Spiny Lobster FMP, Amendment #2. It will also receive committee recommendations, review habitat protection, administrative policy, ad hoc limited access, and hear the Shark, and Billfish Committees' reports. The Council meeting will adjourn at 3:15 p.m.

On July 10 at 12:30 p.m., the Habitat Protection Committee will review mosquito control and other issues; the Spiny Lobster Management Commiteee will review the Spiny Lobster FMP, Amendment #2, the Administrative Policy Committee will review the Council's revised Statement of Organization, Practices and Procedures, and the Law Enforcement Committee will discuss the multi-day possession limit. Separately, the SSC Selection Committee will meet at 3 p.m., in a closed session, followed by a closed session of the Advisory Panel Selection Committee. (These meetings will not be open to the public for reasons already stated above.) The meeting will recess at 5:45 p.m.

On July 11 at 8 a.m., the Reef Fish Management Committee will review draft regulations, and the revised RIR/IRFA/EA/Amendment. The Shrimp Management Committee will review the Tortugas Sanctuary analyses, a triggering device for the Texas closure, shrimp stock assessment, and the impact of shrimp imports on domestic prices. The meeting will adjourn at 5 p.m.

For more information contact Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, FL 33609; telephone: (813) 228–2815.

Date: June 21, 1989.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management National Marine Fisheries Service

[FR Doc. 89–15176 Filed 6–26–89; 8:45 am]

BILLING CODE 3510–22–M

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council and its advisory entities will meet on July 10–13, 1989, at the Hanalei Hotel, 2270 Hotel Circle North, San Diego, CA. Except as noted below, the meetings are open to the public.

The Council will meet on July 12 at 8 a.m., to address numerous groundfish management issues, including but not limited to: (1) Inseason management measure adjustments to limit the harvest of rockfish and sablefish; (2) long-term sablefish management; (3) approval for public review of a draft plan amendment which will modify the process by which the groundfish fishery is managed; (4) means to minimize the incidental catch of yellowtail rockfish in the whiting joint venture fishery; (5) measures to extend the whiting joint venture season; (6) a proposal to prohibit foreign vessels from operating in the whiting fishery south of the Oregon-California border; (7) a National Oceanic and Atmospheric Administration (NOAA) survey of domestic whiting processing capacity and intent; (8) initial results of a survey of industry opinion on limited entry, and (9) consideration of a prohibition on automated hook extractors in the sablefish fishery. Groundfish agenda items will be completed on July 13. The Council will receive public comments on July 12 at 4 p.m., on any issue not on the agenda. Public comments on agenda items will be considered before Council action on each item.

The Council will convene on July 13 at 8 a.m., in closed session (not open to the public), to discuss litigation and personnel matters. The open session will start at 8:30 a.m., to finish groundfish matters. The Council will hear a report on the status of the 1989 Pacific halibut fisheries, and then discuss anchovy management for the upcoming 1989–1990 fishery. Under the topic of salmon management, the Council will hear a status report on the current ocean fisheries, and receive a technical analysis of the ocean troll closures north and south of the Klamath Management Zone. The Council also will select plan amendment issues and alternatives for review by Council advisory entities. The remaining items on the agenda include a report from the Council's Habitat Committee and various administrative matters, including adoption of a revised Statement of Organization, Practices and Procedures, as well as identification of research and data collection needs.

The Groundfish Select Group will meet on July 10 at 8 a.m., to address groundfish issues on the Council's agenda.

The Scientific and Statistical Committee (SSC) will meet on July 10 at 1 p.m., to address scientific issues on the Council's agenda, and will reconvene on July 11 at 8 a.m. The SSC will have a public comment period on July 10 at 4 p.m.

The Groundfish Advisory Subpanel will meet on July 10 at 2 p.m., to consider groundfish matters on the Council's agenda, and will reconvene on July 11 at 8 a.m.

The Budget Committee will meet on July 11 at 1 p.m., to review the status of the 1989 budget and to consider changes to the 1990 budget.

The Habitat Committee will meet on July 11 at 4 p.m., to consider timely and relevant habitat matters impacting fisheries in the Council's jurisdiction.

Detailed agenda for the above meetings will be made available to the public after June 28, 1989. For further information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, 2000 SW. First Avenue, Room 420, Portland, OR 97201; telephone: (503) 326–6352

Date: June 21, 1989.

David S. Crestin,

Acting Director Office of Fisheries Conservation and Management National Marine Fisheries Service

[FR Doc. 89–15177 Filed 6–26–89; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve a new information collection requirement concerning Computer Generation of Forms by the Public.

ADDRESS: Send comments to Ms. Eyvette Flynn, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mrs. Victoria Moss, Office of Federal Acquisition and Regulatory Policy, (202) 523–5168.

SUPPLEMENTARY INFORMATION:

a. Purpose

This rule will allow computer generation of forms prescribed by the FAR and by FAR supplements. The rule will ultimately affect several existing OMB clearances and will require reestimation of the burden associated with those clearances. It is anticipated that this rule will reduce the burden on the public associated with acquisition procedures. This rule affects all firms which do business or seek to do business with the government. Use of computer generated forms is optional. No penalties or incentives associated with use of the forms.

b. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, *1*; responses per respondent, *1*; total annual responses, *1*; preparation hours per response, *1*; and total response burden hours, *1*.

Obtaining Copies of Proposals: Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0XXX, Computer Generation of Forms by the Public.

Dated: June 19, 1989.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 89–15116 Filed 6–26–89; 8:45 am]

BILLING CODE 6820–JC–M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for Proposed Local Flood Protection (LFP) Project Along the Lackawanna River in Scranton and Olyphant, Pennsylvania

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The Baltimore District, U.S. Army Corps of Engineers is investigating the feasibility of local flood protection (LFP) projects along the Lackawanna River for the City of Scranton and

Borough of Olyphant, Pennsylvania. A feasibility study of the potential projects is being conducted under authority of a U.S. House of Representatives Committee on Public Works and Transportation resolution; adopted October 1, 1986. The Commonwealth of Pennsylvania, City of Scranton, and Borough of Olyphant are the non-Federal sponsors for the feasibility phase of the LFP project.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and DEIS can be answered by Mr. Steven Stegner, Project Manager, Baltimore District, U.S. Army Corps of Engineers, ATTN: CENAB-PL-PR, P.O. Box 1715, Baltimore, Maryland 21203-1715, telephone (301) 962-4959.

SUPPLEMENTARY INFORMATION: .

1. The Lackawanna River, a tributary of the Susquehanna River, is located in northeastern Pennsylvania. The 346 square mile drainage basin lies mostly in Lackawanna County, with the river bisecting the City of Scranton. The Lackawanna River valley has experienced flooding for many years. Flooding in September 1985 resulted in a Presidental disaster declaration for the area and, most recently, floods caused serious damages throughout the valley in March 1986.

2. A variety of remedial measures and flood control structures are being considered along the Lackawanna River. Possible solutions in Scranton that are being investigated include 19,000 feet of channel improvement (dredging and/or realignment), 17,200 feet of levee, and 1,400 feet of flood wall. In Olyphant, proposed solutions include approximately 5,500 feet of levee, 300 feet of flood wall, and the dredging of 5,000 feet of river channel. Note that these solutions may be combined to form a variety of alternative proposals which will be evaluted for selection during the feasibility phase of the LFP project. Projects at both locations may also include features such as access ramps (for channel maintenance), interior drainage facilities (for levees), and closure structures. Acquisition of residential and business properties, and the relocation of public utilities are among actions that may be required as part of the project. Sediment and debris removed from project areas would be deposited in suitable upland disposal sites.

3. The Baltimore District is preparing a Draft Environmental Impact Statement (DEIS) which will describe the impacts of the proposed projects on environmental and cultural resources in the study area and the overall public interest. The DEIS will also apply guidelines issued by the Environmental Protection Agency, under authority of section 404 (b)(1) of the Clean Water Act of 1977 (Pub. L. 95-217).

4. The public involvement program will include meetings and close coordination with interested private individuals and organizations, as well as concerned local, state, and Federal agencies. A public notice requesting comment on the proposed project and DEIS will be provided to appropriate agencies and the public through the printed media and mailings. A scoping meeting is not planned at this time. The Baltimore District invites potentially affected Federal, state, and local agencies, and other interested organizations and parties to participate in this study. Agencies that are currently involved in the feasibility study and EIS process include, but are not limited to, the U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, U.S. Geological Service, U.S. Soil Conservation Service, National Park Service, Pennsylvania Department of Environmental Resources, Pennsylvania Historical and Museum Commission, Susquehanna River Basin Commission, Lackawanna County Regional Planning Commission, and Lackawanna River Corridor Association.

5. The DEIS is scheduled to be available for public review in September 1990.

Bernard E. Stalmann,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 89-15146 Filed 6-26-89; 8:45 am]

BILLING CODE 3710-41-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before July 27, 1989

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 732-3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: June 21, 1989.

Carlos U. Rice,

Director of Information Resources Management.

Office of Special Education and Rehabilitative Services

Type of Review: New.

Title: Reporting Requirements for Free Appropriate Public Education for State Operated Programs.

Frequency: Annually.

Affected Public: State or local governments.

Reporting Burden:

Responses: 4,056.

Burden Hours: 40,560.

Recordkeeping Burden:

Recordkeepers: 0.

Burden Hours: 0.

Abstract: This form provides instructions and the forms necessary for States to report the settings in which handicapped children in State Operated

Programs receive special education and related services under Chapter 1 of the Elementary and Secondary Education Act, as amended. The information will be used by the Department to monitor States agencies and State education agencies and for Congressional reporting.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.
Title: Reporting Requirements for Free Appropriate Public Education (FAPE) under the Education of the Handicapped Act, as amended.
Frequency: Annually.
Affected Public: State or local governments.
Reporting Burden:
Responses: 15,058.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 150,580.
Burden Hours: 0.
Abstract: This form provides instructions and forms necessary for States to report the setting in which handicapped children served under the Education of the Handicapped Act, as amended, receive special education and related services. The information will be used to monitor State educational agencies and for Congressional reporting.

Office of Management

Type of Review: Reinstatement.
Title: Federal Cash Transactions Report.
Frequency: Quarterly.
Affected Public: State or local governments; businesses or other for-profit; non-profit institutions.
Reporting Burden:
Responses: 39,200.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 117,600.
Burden Hours: 0.
Abstract: Recipients report Federal cash disbursements and cash advances to the Department. The Department uses the information to monitor the Federal funds.

Office of Management

Type of Review: Reinstatement.
Title: Request for Advance or Reimbursement
Frequency: Monthly.
Affected Public: State or local governments; businesses or other for-profit; non-profit institutions.
Reporting Burden:
Responses: 66,000
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 16,500.
Burden Hours: 0.
Abstract: This form requires recipients to report cash balances at the end of the preceding advance period and to request cash advances for the next period. The Department uses the information to monitor Federal cash advances and to process recipient advance requests.

Office of Elementary and Secondary Education

Type of Review: Extension.
Title: Performance Report for the Women's Educational Equity Act Program.
Frequency: Annually.
Affected Public: Individuals or households; State or local governments; non-profit institutions.
Reporting Burden:
Responses: 30.
Recordkeeping Burden:
Recordkeepers: 30.
Burden Hours: 90.
Burden Hours: 6.
Abstract: This report is used by grantees who have participated in the Women's Educational Equity Act Program. The Department uses this information to assess the accomplishments of project goals and objectives, and to aid in effective program management.

[FR Doc. 89-15111 Filed 6-26-89; 8:45 am]
BILLING CODE 4000-01-M

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board.

ACTION: Notice of open meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Mathematics and Technical Methodology Standing Committees of the National Assessment Governing Board. This notice also describes the function of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

Date: July 11, 1989.
Time: 11:00 a.m. until adjournment
Location: U.S. Department of Education, National Assessment Governing Board, Suite 4060, Mary E. Switzer Building, 330 C Street, SW., Washington DC 20202-7583

FOR FURTHER INFORMATION CONTACT: Roy Truby, Executive Staff Director, National Assessment Governing Board, Suite 600, 555 New Jersey Avenue, NW., Washington DC 20208, Telephone: (202) 357-6050.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 406(i) of the General Education Provisions Act (GEPA) as amended by section 3403 of the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act), Title III-C of the Augustus F. Hawkins—Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100-297); 20 U.S.C. 1221e-1)

The Board is established to advise the Commissioner of the National Center for Education Statistics and policies and actions needed to improve the form and use of the National Assessment of Educational Progress, and develop specifications for the design, methodology, analysis and reporting test results. The Board also is responsible for selecting subject areas to be assessed, identifying the objectives for each age and grade tested, and establishing standards and procedures for interstate and national comparisons.

The Mathematics and Technical Methodology Standing Committees of the National Assessment Governing Board will meet via teleconference on Tuesday, July 11, 1989 from 11:00 a.m. until the completion of business. The proposed agenda includes a consideration of a proxy measure for the Opportunity to Learn Survey to be used during the 1990 assessment cycle. Discussion of this matter will result in a decision by the two Standing Committees who have been authorized by the full Board to act in that capacity on this issue. Because this is a teleconference meeting, facilities will be provided so the public will have access to the Board's deliberations during the session which will take place from approximately 11:00 a.m. until the completion of business.

Records are kept of all Board proceedings, and until permanent office site for the Board has been established, are available for public inspection at the U.S. Department of Education, Office of Educational Research and Improvement, 555 New Jersey Avenue, NW., Suite 600, Washington, DC from 8:30 a.m. to 5:00 p.m., Monday through Friday.

Bruno V. Manno,

Acting Assistant Secretary for Educational Research and Improvement.

[FR Doc. 89-14993 Filed 6-26-89; 8:45 am]
BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

[FE Docket No. 89-25-NG]

Midwestern Gas Transmission Co., Viking Gas Transmission Co.; Granting Transfer of Authorizations To Import Natural Gas

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of an order granting transfer of authorizations to import natural gas.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that it has issued an order transferring authorizations to import natural gas from Canada granted to Midwestern Gas Transmission Company (Midwestern) to Viking Gas Transmission Company (Viking). The order issued in FE Docket No. 89-25-NG authorizes Viking to continue importing natural gas under authorizations granted to Midwestern.

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, June 19, 1989.

J. Allen Wampler,

Assistant Secretary, Fossil Energy.

[FR Doc. 89-15145 Filed 6-26-89; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project No. 9049-001 West Virginia]

Carex Hydro; Availability of Environmental Assessment

June 20, 1989

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for minor license for the proposed Pioneer Hydroelectric Project located on Deckers Creek in Monongalia, near Morgantown, West Virginia, and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project, with appropriate mitigative measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices at 825 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 89-15083 Filed 6-26-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 8404-000 Connecticut]

Windsor Locks Canal Co., Windsor Locks Hydroelectric Limited Partnership; Availability of Environmental Assessment

June 20, 1989

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for major license for the proposed Windsor Locks Hydroelectric Project located on the Connecticut River in Hartford County, Connecticut, near Windsor Locks Connecticut, and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices at 825 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 89-15084 Filed 6-26-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-1623-000, et al.]

Colorado Interstate Gas Co. et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Colorado Interstate Gas Company

[Docket No. CP89-1623-000]

June 19, 1989.

Take notice that on June 13, 1989, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP89-1623-000 a request pursuant to § 157.205 of the Commission's Regulations (18 CFR 157.205) for authorization to transport natural gas on behalf of Cominco American Incorporated (Cominco), an end-user of natural gas, under CIG's blanket certificate issued in Docket No. CP86-589-000, 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.

CIG proposes to transport on a firm basis up to 5,000 Mcf of natural gas on a peak day, 4,500 Mcf on an average day and 1,642 Mmcf on an annual basis for Cominco's account. It is stated that CIG would receive the gas for Cominco's account at an existing point on CIG's system in Sweetwater County, Wyoming, and would deliver equivalent volumes of gas, less fuel and unaccounted-for gas, at two existing points on CIG's system in Hutchinson County, Texas. It is asserted that the transportation service would be effected using existing facilities and would require no construction of additional facilities. It is explained that the transportation service commenced April 6, 1989, under the automatic authorization provisions of § 284.223 of the Commission's Regulation, as reported in Docket No. ST89-3431. CIG states that the transportation service proposed herein would be pursuant to an agreement with Cominco dated April 1, 1989, which is an amendment to the transportation agreement between CIG and Cominco dated October 31, 1988. It is stated that the original transportation service was authorized under the prior notice procedure in Docket No. CP89-521-000.

Comment date: August 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. Trunkline Gas Company

[Docket No. CP89-1626-000]

June 19, 1989.

Take notice that on June 14, 1989, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas, 77251-1642, filed in Docket No. CP89-1626-000 a request pursuant to Sections 157.205 and 284.223 of the Commission Regulations under the Natural Gas Act for authorization to transport natural gas for Transtate Gas Service Company (Transtate), a shipper and marketer of natural gas, under Trunkline's blanket certificate issued in Docket No. CP86-586-00 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 for public inspection.

Specifically, Trunkline requests authority to transport up to 50,000 Dt. per day on an interruptible basis on behalf of Transtate pursuant to a Transportation Agreement dated January 3, 1989, between Trunkline and Transtate (Transportation Agreement). The Transportation Agreement provides for Trunkline to receive gas from various existing points of receipt on its system. Trunkline will then transport and redeliver subject gas, less fuel and unaccounted for line loss, to Consumers Power Company in Elkhart County, Indiana.

The Applicant further states that the estimated daily and estimated annual quantities would be 25,000 Dt. and 9,125,000 Dt., respectively. Service under § 284.223(a) commenced on May 6, 1989, as reported in Docket No. ST89–3698.

Comment date: August 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. Natural Gas Pipeline Company

[Docket No. CP89–1594–000]

June 19, 1989.

Take notice that on June 9, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois, 60148, filed in Docket No. CP89–1594–000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Total Minatome Corporation (Total), under Natural's blanket certificate issued in Docket No. CP86–582–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Natural requests authorization to transport, on an interruptible basis, up to a maximum of 300,000 MMBtu of natural gas per day (plus any additional volumes accepted pursuant to the overrun provision's of Natural's Rate Schedule ITS) for Total from receipt points located in Iowa, Illinois, Louisiana, offshore Louisiana, Oklahoma, Texas, offshore Texas and Kansas to delivery points located in Kansas, Illinois, Louisiana, offshore Louisiana, Texas, Oklahoma, Missouri, New Mexico, Iowa, Arkansas and Nebraska. Natural anticipates transporting, on an average day 20,000 MMBtu and an annual volume of 7,300,000 MMBtu.

Natural states that the transportation of natural gas for Total commenced April 5, 1989, as reported in Docket No. ST89–3856–000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to Natural in Docket No. CP86–582–000.

Comment date: August 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. United Gas Pipe Line Company

[Docket No. CP89–1620–000]

June 19, 1989.

Take notice that on June 13, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP89–1620–000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation on behalf of EnTrade Corporation (EnTrade) under United's blanket certificate issued in Docket No. CP88–6–000, 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.

United requests authorization to transport, on an interruptible basis, up to a maximum of 103,000 MMBtu of natural gas per day for EnTrade from receipt points located in Alabama, Louisiana, Mississippi and Texas to delivery points located in Alabama, Florida, Louisiana, Mississippi and Texas. United anticipates transporting, on an average day 103,000 MMBtu and an annual volume of 37,595,000 MMBtu.

United States that the transportation of natural gas for EnTrade commenced May 1, 1989, as reported in Docket No. ST89–3721–000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to United in Docket No. CP88–6–000.

Comment date: August 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. Trunkline Gas Company

[Docket No. CP89–1625–000]

June 19, 1989.

Take notice that on June 14, 1989, Trunkline Gas Company (Trunkline), P.O. Box 1642 Houston, Texas 77251–1642 filed in Docket No. CP89–1625–000 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. CP89–586–000 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.

Trunkline proposes to transport natural gas for Southern Industrial Gas Corporation (Southern Gas), an intrastate pipeline, pursuant to a transportation agreement dated April 27, 1989. Trunkline explains that service commenced May 3, 1989, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–3692. Trunkline further explains that the peak day quantity would be 2,000 dekatherms, the average daily quantity would be 500 dekatherms, and that the annual quantity would be 182,500 dekatherms. Trunkline explains that it would receive natural gas for Southern Gas' account at existing points of receipt on its system. Trunkline states that it would transport and redeliver the natural gas to Transcontinental Gas Pipe Line Company in Beauregard Parish, Louisiana.

Comment Date: August 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. Northwest Pipeline Corporation

[Docket No. CP89–1606–000]

June 19, 1989.

Take notice that on June 12, 1989, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89–1606–000 a request for §§ 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 Columbia Aluminum Corporation (Columbia) under the blanket certificate issued in Docket No. CP86–578–000 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.

Northwest states that pursuant to a Transportation Agreement dated February 10, 1989, as amended December 5, 1988, and April 11, 1989, it proposes to transport up 750 MMbtu per day for Columbia under Rate Schedule TI–1, for a term continuing on a year to year basis.

Northwest will transport the subject gas through its system from any transportation receipt point in its system to any transportation delivery point on its system.

Northwest also states that the maximum day, average day and annual transportation volumes would be approximately 750 MMbtu, 100 MMbtu, 36 MMbtu, respectively.

Northwest further states that it commenced May 5, 1989, as requested in Docket No. ST89–3762–000.

Comment date: August 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

7. United Gas Pipe Line Company

[Docket No. CP89-1619-000]

June 19, 1989.

Take notice that on June 13, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-1619-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service on behalf of LaSER Marketing Company (LaSER), a marketer of natural gas, under its blanket certificate issued in Docket No. CP88-6-000 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.

United states that it proposes to transport natural gas on behalf of LaSER from various points of receipt located in Mississippi, Alabama and Louisiana to various points of delivery located in Louisiana, Florida, Mississippi and Alabama.

United further states that the maximum daily, average daily and annual quantities that it would transport on behalf of LaSER would be 618,000 MMBtu equivalent, 618,000 MMBtu equivalent and 225,570,000 MMBbtu equivalent of natural gas, respectively.

United indicates that in Docket No. ST89-3761, filed with the Commission on June 2, 1989, it reported that transportation service for LaSER had begun under the 120-day automatic authorization provisions of § 284.223(a).

Comment date: August 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

8. Northwest Pipeline Corporation

[Docket No. CP89-1525-000]

June 20, 1989.

Take notice that on May 26, 1989, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89-1525-000, an application pursuant to section 7(b) and 7(c) of the Natural Gas Act for an order granting: (1) New or amended certificates of public convenience and necessity authorizing revisions to its storage service Rate Schedules SGS-1 and SGS-2, changes in its storage service levels for system supply and for storage customers under Rate Schedules SGS-1 and SGS-2, and construction and operation of a new meter station for delivery of natural gas to and from the Jackson Prairie storage field; and (2) permission and approval to abandon its existing Jackson Prairie meter station and a portion of its cushion gas in the Jackson Prairie storage field, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northwest requests the Commission to issue an order granting Northwest the following specific, interrelated authorizations: (1) Certificate authorization for Northwest to construct and operate a new Jackson Prairie meter station in Lewis County, Washington at the interconnection of Northwest's mainline facilities with the Jackson Prairie storage field pipeline operated by Washington Natural Gas Company (WNG). Northwest explains that the meter station will cost approximately $2.9 million and would be able to handle the increased storage field withdrawal capability proposed by WNG in Docket No. CP88-833, up to 450 MMcf/d firm plus up to 72 MMcf/d best efforts, while being able to provide deliveries to Jackson Prairie at essentially the same level as Northwest's existing meter station; (2) permission and approval for Northwest to abandon its existing Jackson Prairie meter station by removal of the facilities which would not be needed when the new meter station is operational; (3) blanket certificate authorization, with pre-granted abandonment upon expiration of applicable service agreements, for Northwest to provide additional open-access contract storage services under Rate Schedule SGS-2 utilizing: (a) Northwest's ownership share of the incremental expansion of the Jackson Prairie storage field capacity (766,668 Mcf storage capacity and 25,000 Mcf/d withdrawl capacity) and (b) Northwest's ownership share of the existing Jackson Prairie storage capacity which presently is certificated for Rate Schedule SGS-1 services to the extent that abandonment approval is hereafter received for such existing SGS-1 services; (4) certificate authorization to revise Northwest's SGS-2 Rate Schedule and form of service agreement thereunder to show that demand charges and capacity demand charges would not be applicable to SGS-2 services which utilize WNG's and The Washington Water Power Company's (WWP) owned capacity in the Jackson Prairie storage field; (5) certificate authorization for Northwest to utilize on an interruptible basis any unused injection and withdrawal capacity at Jackson Prairie and up to 1 Bcf of any available storage inventory capacity at Jackson Prairie for its system supply gas in order to help operationally balance its storage, sales and transportation services on a daily basis; (6) permission and approval to abandon 833,334 Mcf of cushion gas inventory in the Jackson Prairie storage field by conversion to working gas in the storage field for ultimate withdrawal and use as system supply. This volume represents Northwest's one-third ownership share of the 2.5 Bcf cushion gas decrease for the storage field which was proposed by WNG in Docket No. CP88-833; (7) certificate authorization to modify Rate Schedule SGS-1 storage service for WNG by increasing firm daily contract demand from 1,561,859 therms to 1,789,631 therms, decreasing best-efforts daily withdrawal volumes from 311,018 therms to 305,080 therms, increasing the maximum daily quantity (MDQ) Northwest shall be obligated to deliver to the South Seattle meter station from 572,350 therms to 743,000 therms, and adding the Duvall-Cottage Lake meter station as a delivery point with an MDQ of 56,540 therms; all in accordance with a new SGS-1 service agreement between Northwest and WNG, dated September 30, 1988; (8) certificate authorization to provide Rate Schedule SGS-2 storage service for Cascade Natural Gas Corporation (CNG) at a daily contract demand level of 150,000 therms and a seasonal capacity level of 4,800,000 therms; all in accordance with the *pro forma* proposed SGS-2 service agreement between Northwest and CNG. These service quantities are equivalent to the portion of WWP's ownership share of the incremental Jackson Prairie capacity proposed by WNG which WWP intends to release to CNG; (9) certificate authorization to modify Rate Schedule SGS-1 storage service for WWP by increasing firm daily contract demand from 680,000 therms to 762,000 therms, increasing firm seasonal capacity from 15,048,000 therms to 24,262,663 therms, decreasing best-efforts daily withdrawl volumes from 250,822 therms to 246,041 therms, and further conditioning Northwest's obligation to deliver the daily contract demand; all in accordance with a *pro firma* proposed new SGS-1 service agreement between Northwest and WWP. Northwest's concurrence to a new SGS-1 service agreement providing for increased service to WWP is contingent upon Pacific Gas Transmission Company (PGT) providing a requested transportation service from Stanfield, Oregon to Spokane, Washington for Northwest or the Commission acknowledging the inherent theoretical overcommitment of Northwest's firm capability to service WWP and explicitly absolving Northwest of any liability, other than the requisite demand charge adjustments under its tariff, its operational circumstances result in curtailments of SGS-1 service

to WWP; (10) certificate authorization to modify Rate Schedule SGS–1 storage services for CP National Corporation, CNG, Greeley Gas Company, Intermountain Gas Company, Northwest Natural Gas Company and Paiute Pipeline Company to: (a) Reflect the lower thermal quantities which result from application of an updated conversion factors (1028 Btu's per cubic foot instead of 1048) to the unchanged volumetric capacity allocated to these services; (b) further condition Northwest's obligation to deliver the daily contract demand to CPN and CNG; and (c) add the existing Aberdeen meter station as an SGS–1 delivery point to IGC with an MDQ of 25,000 therms, increase IGC's total MDQ's by an additional 4,191 therms and reallocate IGC's MDT's among the existing delivery points on its service agreement; all in accordance with the *pro forma* proposed new SGS–1 service agreements; (11) certificate authorization to revise Sections 5 and 10.4 of Rate Schedule SGS–1 and Section 5 and 8.2 of Rate Schedule SGS–2 to incorporate a modified formula tieing Northwest's daily delivery obligation for a customer to the amount of gas stored for the customer's account. The modified formula provides that Northwest's daily delivery obligation under an SGS–1 or SGS–2 service agreement would be at 100 percent of the contract demand under the service agreement only until 45 percent of the storage capacity volume under the service agreement is withdrawn (SGS–2) or delivered (SGS–1). For withdrawals or deliveries thereafter, Northwest's daily delivery obligation would be reduced by one percent of the contract demand for each additional one percent of the storage capacity volume withdrawn or delivered beyond said 45 percent. For the purpose of this calculation, the amount of storage capacity volume deemed to have been withdrawn or delivered under the service agreement is the volume equal to the full storage capacity covered by the service agreement less that actual volume of gas in storage for the customer's account under the service agreement on any day.

Comment date: July 11, 1989, in accordance with Standard Paragraph F at the end of this notice.

9. Northwest Pipeline Corporation

[Docket No. CP89–1580–000]

June 20, 1989.

Take notice that on June 6, 1989, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89–1580–000, pursuant to section 7(c) of the Natural Gas Act and section 157 of the Commission's Regulations, a petition for clarification of its existing certificate authorizations for open-access transportation and transportation on the system of Pacific Gas Transmission Company (PGT) or, in the alternative, a petition to amend those certificates to allow Northwest to provide open-access transportation to its sales delivery points located off PGT's pipeline, all as more fully set forth in the petition which is on file with the Commission and open to inspection.

Northwest states that pursuant to the certificate issued in Docket No. G–17350, PGT is authorized to transport, on a firm basis, up to 151,731 Mcf per day of natural gas from Kingsgate, British Columbia, for delivery to Northwest at the Spokane, Washington, interconnect with Northwest's Spokane Lateral and various points off PGT's transmission line in the states of Idaho, Washington and Oregon where Northwest has obligations to provide firm deliveries of sales and storage gas to Cascade Natural Gas Corporation (CNG), The Washington Water Power Company (WWP), and CP National Corporation (CPN). It is further stated that uncertainty over future availability of system supply at Kingsgate, coupled with a precipitous decline in Northwest's requirement for system supply in the current open-access transportation environment, have seriously eroded Northwest's confidence in its ability to rely upon displacement of system supply purchases at Kingsgate in order to continue guaranteeing firm deliveries of gas to delivery points located off PGT's system and off Northwest's Spokane Lateral.

Northwest avers that CPN, CNG and WWP would like Northwest to treat their off-PGT delivery points equivalently to their other delivery points with respect to the availability and flexibility of Northwest's sales and transportation service in order to take full advantage of Northwest's open-access status. Northwest states that with respect to that specific issue, the January 31, 1989, initial decision in Docket No. CP86–578–000, 46 FERC ¶ 63,006, involving Northwest's proposed gas inventory charge (GIC) created an exemption from the GIC for any customer requesting firm sales to transportation conversions at the off-PGT delivery points until Northwest is able to secure the right to use its firm transportation capacity on PGT to satisfy such conversion requests.

Further, Northwest states that CPN has elected to convert all of its remaining 7,000 MMBtu's per day of Rate Schedule ODL–1 sales contract demand to firm transportation subject to certain conditions. CPN's conditions primarily address its concern to maintain service to Klamath Falls, Oregon, its major market off the PGT system. Northwest requests that the Commission satisfy CPN's concerns prior to expiration of the existing sales service, by clarifying existing authority or granting new authority as necessary to allow transportation and storage gas to be delivered by Northwest and PGT to Klamath Falls. Accordingly, since Northwest's blanket transportation certificate and the PGT-Northwest transportation certificate do not unequivocally permit Northwest to provide the desired flexibility of service to off-PGT points, it is incumbent upon Northwest to seek the instant clarifications and/or authorizations.

Specifically, Northwest requests clarification that, in recognition of the up to 100 percent conversion opportunity mandated by 18 CFR 284.10(c)(3), its blanket transportation certificate implicitly authorized Northwest to utilize its certificated transportation service on PGT's system to implement conversions to open-access transportation at its off-PGT sales delivery points. It is suggested that this clarification apply only to the specific transportation agreements resulting from the CPN, CNG and WWP sales conversions and would be implemented by allowing such agreements to be amended to include off-PGT points at delivery points and Kingsgate as a receipt point.

With respect to the subject PGT transportation certificate, Northwest specifically requests clarification that it can tender for transportation under that authorization any gas which Northwest is authorized to transport off-PGT delivery points under its blanket transportation certificate.

Northwest alternatively requests that if the Commission declines to make the requested certifcate clarifications, the Commission amend Northwest's blanket transportation certificate and/or the PGT-Northwest transportation certificate to the extent necessary to explicitly authorize Northwest to provide transportation to off-PGT delivery points under its blanket certificate and to receive transportation service for customer owned gas under the PGT certificate to off-PGT points.

Northwest is proposing to use its transportation rights on PGT's system to allow service to Northwest's historic markets off-PGT to continue in circumstances where those markets would prefer transportation gas to sales

gas. Northwest states that this flexibility would also ensure service to off-PGT markets at times when Northwest may not have system supply sales gas available, or possibly even sales authorization, to service those particular markets. Northwest asserts that the requested flexibility is mandatory to enable service to be maintained to CPN's Klamath Falls market after the October 1, 1989, effective date of CPN's 100 percent conversion of firm sales to firm transportation.

Comment date: July 11, 1989, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, 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. 89-15085 Filed 6-26-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-1560-000, et al.]

ANR Pipeline Company, et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. ANR Pipeline Company

June 20, 1989.

[Docket No. CP89-1560-000]

Take notice that on June 2, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89-1560-000 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. CP88-532-000 pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

ANR proposes to transport gas on an interruptible basis for Sun Operating Limited Partnership (Sun), a marketer of natural gas. ANR explains that service commenced April 10, 1989, under the automatic authorization provisions of Section 284.223 of the Commission's Regulations, as reported in Docket No. ST89-3569. ANR states explains that the peak day quantity would be 95,000 dt equivalent, the average daily quantity would be 95,000 dt equivalent, and that the annual quantity would be 34,675,000 dt equivalent. ANR asserts that it would receive natural gas at designated points on its system in Oklahoma, offshore Texas and offshore Louisiana and would deliver equivalent volumes at designated points in Illinois, Indiana, Michigan, Iowa, Wisconsin, Kansas and Ohio.

Comment date: August 4, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. El Paso Natural Gas Company

[Docket No. CP89-1648-000]

June 20, 1989.

Take notice that on June 16, 1989, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed in Docket No. CP89-1648-000 a request pursuant to Section 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Cabot Energy Marketing Corporation (Cabot), under El Paso's blanket certificate issued in Docket No. CP88-433-000, 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.

El Paso requests authorization to transport, on an interruptible basis, up to a maximum of 105,000 MMBtu of natural gas per day for Cabot from any receipt point located on El Paso's system to various delivery points located at the borderline between the States of Arizona and California. El Paso anticipates transporting, on an average day 21,100 MMBtu and an annual volume of 7,701,500 MMBtu.

El Paso states that the transportation of natural gas for Cabot commenced April 20, 1989, as reported in Docket No. ST89-3516-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to El Paso in Docket No. CP88-433-000.

Comment date: August 4, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. Panhandle Eastern Pipe Line Company

[Docket No. CP89-1638-000]

June 20, 1989.

Take notice that on June 15, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1638-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a firm transportation service for Midland Cogeneration Venture, Limited Partnership (MCV), an end user, under the blanket certificate issued in Docket No. CP86-585-000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Panhandle states that pursuant to a transportation agreement dated October 1, 1988, under its Rate Schedule PT, it proposes to transport up to 15,000 dekatherms (dt) per day equivalent of natural gas for MCV. Panhandle states that it would recieve the gas from various existing firm and optional interruptible points of receipt on its system as listed in Exhibit A of the agreement. It is further stated that Panhandle would transport and deliver such gas, less fuel used and unaccounted for line loss, to Michigan Gas Storage in Oakland County, Michigan.

Panhandle advises that service under § 284.223(a) commenced May 1, 1989, as reported in Docket No. ST89-3701. Panhandle further advises that it would transport 15,000 dt on an average day and 5,475,000 dt annually.

Comment date: August 4, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. Panhandle Eastern Pipe Line Company

[Docket No. CP89-1640-000]

June 20, 1989.

Take notice that on June 15, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1640-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a firm transportation service for Anadarko Trading Company (Anadarko), a marketer, under the blanket certificate issued in Docket No. CP86-585-000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Panhandle states that pursuant to a transportation agreement dated May 1, 1989, under its Rate Schedule PT, it proposes to transport up to 100,000 dekatherms (dt) per day equivalent of natural gas for Anadarko. Panhandle states that it would receive the gas from various existing firm and optional interruptible points of receipt on its system as listed in Exhibit A of the agreement. It is further stated that Panhandle would transport and deliver such gas, less fuel used and unaccounted for line loss, to Haven Pool in Reno County, Kansas.

Panhandle advises that service under Section 284.223(a) commenced May 1, 1989, as reported in Docket No. ST89-3784. Panhandle further advises that it would transport 100,000 dt on an average day and 36,500,000 dt annually.

Comment date: August 4, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. Texas Gas Transmission Corporation

[Docket No. CP89-1614-000]

June 20, 1989.

Take notice that on June 13, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-1614-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Xebec Gas Company (Xebec), 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 request on file with the Commission and open to public inspection.

Pursuant to a gas transportation agreement dated January 3, 1989, Texas Gas requests authorization to transport up to 20,000 MMBtu of natural gas per day for Xebec under its IT Rate Schedule. Texas Gas states that the agreement provides for it to receive the gas at various existing points of receipt along its system and deliver the gas to various existing points of delivery located in Illinois, Indiana and Kentucky. Xebec estimates that the average day and annual transportation quantities would be 1,800 MMBtu and 657,000 MMBtu, respectively. Texas Gas advises that the service commenced April 29, 1989, as reported in Docket No. ST89-3546-000, under § 284.223(a) of the Commission's Regulations.

Comment date: August 4, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. Northern Natural Gas Company Division of Enron Corp.

[Docket No. CP89-1636-000]

June 20, 1989.

Take notice that on June 15, 1989, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP89-1636-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Superior Natural Gas Corporation (Superior), a marketer, under the blanket certificate issued in Docket No. CP86-435-000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northern states that pursuant to a transportation agreement dated May 12, 1989, under its Rate Schedule IT-1, it proposes to transport up to 20,000 MMBtu per day equivalent of natural gas for Superior. Northern states that it would transport the gas from multiple receipt points as shown in the transportation agreement and would deliver the gas to multiple delivery points also shown in the agreement.

Northern advises that service under § 284.223(a) commenced May 12, 1989, as reported in Docket No. ST89-3843-000 (filed June 7, 1989). Northern further advises that it would transport 15,000 MMBtu on an average day and 7,300,000 MMBtu annually.

Comment date: August 4, 1989, in accordance with Standard Paragraph G at the end of this notice.

7. El Paso Natural Gas Company

[Docket No. CP89-1647-000]

June 20, 1989.

Take notice that on June 16, 1989, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP89-1647-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Union Oil Company of California (Union), a producer, under the blanket certificate issued in Docket No. CP88-433-000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

El Paso states that pursuant to a transportation agreement dated April 10, 1989, under its Rate Schedule T-1, it proposes to transport up to 86,000 MMBtu per day equivalent of natural gas for Union. El Paso states that it would transport the gas from any receipt point on its system, as provided in Exhibit "A" of the transportation agreement, and would deliver the gas to delivery points on the borderline between the States of Arizona and California, as shown in Exhibit "B" of the agreement.

El Paso advises that service under § 284.223(a) commenced April 27, 1989, as reported in Docket No. ST89-3517. El Paso further advises that it would transport 45,000 MMBtu on an average day and 16,425,000 MMBtu annually.

Comment date: August 4, 1989, in accordance with Standard Paragraph G at the end of this notice.

8. Trunkline Gas Company

[Docket No. CP89–1602–000]

June 21, 1989.

Take notice that on June 12, 1989, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP89–1602–000 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 for Anadarko Trading Company (Anadarko), a shipper and marketer of natural gas, under Trunkline's blanket certificate issued in Docket No. CP86–586–000 pursuat 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.

Trunkline states that pursuant to a Transportation Agreement dated March 27, 1989, between Trunkline and Anadarko (Agreement), it would transport up to 70,000 dekatherms (Dt) per day equivalent of natural gas for Anadarko. Trunkline further states that the Agreement provides for Trunkline to receive the natural gas from Anadarko at East Cameron 359, offshore Louisiana. Trunkline would then transport and redeliver the natural gas, less fuel and unaccounted-for line loss, to Stingray Subsea in East Cameron 338, offshore Louisiana.

Trunkline states that Anadarko has indicated that the estimated average day and estimated annual volumes that would be transported would be 70,000 Dt and 25,550,000 Dt, respectively.

Trunkline states that it commenced that transportation of natural gas for Anadarko on April 11, 1989, as reported in Docket No. ST89–3287, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations (18 CFR 284.223(a)).

Comment date: August 7, 1989, in accordance with Standard Paragraph G at the end of this notice.

9. Panhandle Eastern Pipe Line Company

[Docket No. CP89–1639–000]

June 21, 1989.

Take notice that on June 15, 1989, Panhandle Eastern Pipe Line Company, (Panhandle) P.O. Box 1642, Houston, Texas, 77251–1642 filed in Docket No. CP89–1639–000 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 Mobil Natural Gas, Inc. (Mobil), under its blanket authorization issued in Docket No. CP86–585–000 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.

Panhandle would perform the proposed interruptible transportation service for Mobil, a shipper and marketer of natural gas, pursuant to a transportation agreement for interruptible service under Rate Schedule PT dated April 10, 1989 (Contract No. P–PLT–2738). The term of the transportation agreement is for a primary term of one month from the initial date for service, and shall continue in effect month-to-month thereafter until terminated by either party upon at least 30 days' prior notice to the other party. Panhandle proposes to transport on a peak day up to 200,000 dekatherm equivalent; on an average day up to 200,000 dekatherm equivalent; and on an annual basis 73,000,000 dekatherm equivalent of natural gas for Mobil. Panhandle proposes to receive the subject gas from various exiting points of receipt on its system. The volumes would be transported and redelivered, less fuel used and unaccounted for line loss, to Haven Pool in Reno County, Kansas. Panhandle proposes to charge the then effective, applicable rates and charges under its PT rate schedule. Panhandle avers that no new facilities nor expansion of existing facilities are required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. Panhandle commenced such self-implementing service on May 1, 1989, as reported in Docket No. ST89–3650–000.

Comment date: August 7, 1989, in accordance with Standard Paragraph G at the end of this notice.

10. United Gas Pipe Line Company

[Docket No. CP89–1645–000]

June 21, 1989.

Take notice that on June 15, 1989, United Gas Pipe Line Company (United), Post Office Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP89–1645–000 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 Texaco Gas Marketing (Texaco), a marketer, under United's blanket certificate issued in Docket No. CP88–6–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United states that pursuant to a transportation service agreement dated July 22, 1988, as amended, it proposes to receive up to 100,000 Mcf per day from Texaco at specified points located in Texas and in onshore and offshore Louisiana and redeliver the gas at specified points located in Louisiana, Texas, Alabama, Mississippi, and Florida. United states that the peak day and average day volumes would be 103,000 dt equivalent of natural gas and that the annual volumes would be 37,595,000 dt equivalent of natural gas. It is stated that on May 5, 1989, United initiated a 120-day transportation service for Texaco under § 284.223(a) as reported in Docket No. ST89–3750–000.

United further states that no facilities need be constructed to implement the service. United states that the primary term of the transportation service would expire one month from the date of first delivery but that the service would continue on a month to month basis until terminated. United proposes to charge rates and abide by the terms and conditions of its Rate Schedule ITS.

Comment date: August 7, 1989, in accordance with Standard Paragraph G at the end of this notice.

11. Texas Gas Transmission Corporation

[Docket No. CP89–1635–000]

June 21, 1989.

Take notice that on June 15, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89–1635–000 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 James River Corporation (James River), for their Brownsville Plant under its blanket authorization issued in Docket No. CP88–686–000 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.

Texas Gas would perform the proposed interruptible transportation service for James River, pursuant to an interruptible transportation service agreement date November 23, 1988. The transportation agreement is effective through November 1988, and month to month thereafter until terminated by either party on thirty days written notice. Texas Gas proposes to transport 4,500 MMBtu on a peak day; approximately 415 MMBtu on an average day; and on annual basis

approximately 150,000 MMBtu of natural gas for James River. Texas Gas proposes to transport the subject gas from receipt points located in the states of Arkansas, Illinois, Indiana, Kentucky, Louisiana, Offshore Louisiana, Ohio, Tennessee, Texas and Offshore Texas. Texas Gas proposes to deliver the gas to James River at the existing interconnection with Consolidated Gas Transmission Corporation located in Warren County, Ohio.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. Texas Gas commenced such self-implementing service on May 1, 1989, as reported in Docket No. ST89–3445–000.

Comment date: August 7, 1989, in accordance with Standard Paragraph G at the end of this notice.

12. Texas Gas Transmission Corporation

[Docket No. CP89–1633–000]

June 21, 1989.

Take notice that on June 15, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89–1633–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for James River Corporation—South Glens Falls (James River-South Glens) under its 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 request on file with the Commission and open to public inspection.

Texas Gas states pursuant to a Gas Transportation Agreement dated November 23, 1988, between Texas Gas and James River-South Glens (Agreement) it would transport on a peak day up to 4,500 MMBtu of natural gas for James River-South Glens. Texas Gas further states that the estimated average daily quantity and estimated annual volumes that would be transported would be 1,400 MMBtu and 500,000 MMBtu, respectively.

Texas Gas states that it would receive the natural gas from James River-South Glens at points of receipt in offshore Louisiana and offshore Texas and in the states of Arkansas, Illinois, Indiana, Kentucky, Louisiana, Ohio, Tennessee, and Texas and would redeliver the natural gas in the state of Ohio.

Texas Gas indicates that it commenced the transportation of natural gas for James River-South Glens on May 1, 1989, as reported in Docket No. ST89–3548, for 120-day period pursuant to § 284.223(a) of the Commission's Regulations (18 CFR 284.223(a)).

Comment date: August 7, 1989, in accordance with Standard Paragraph G at the end of this notice.

13. Texas Gas Transmission Corporation

[Docket No. CP89–1691–000]

June 21, 1989.

Take notice that on June 15, 1989, Texas Gas Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89–1633–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act to provide interruptible transportation service for Manville Sales Corporation (Manville Sales) under the 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 request on file with the Commission and open to public inspection.

Texas Gas indicates that service commenced April 20, 1989, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–3429 and estimates 20,000 MMBtu of gas volumes to be transported on a peak day, 10,000 MMBtu on an average day, and up to 3,650,000 MMBtu on an annual basis.

Comment date: August 7, 1989, in accordance with Standard Paragraph G at the end of this notice.

14. Panhandle Eastern Pipe Line Company

[Docket No. CP89–1644–000]

June 21, 1989.

Take notice that on June 15, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston Texas 77251, filed in Docket No. CP89–1644–000 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. CP86–585–000 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.

Panhandle proposes to transport natural gas on an interruptible basis for Anadarko Trading Company (Anadarko). Panhandle explains that service commenced May 1, 1989, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–3732. Panhandle explains that the peak day quantity would be 150,000 Dt., the average daily quantity would be 100,000 Dt., and that the annual quantity would be 365,000,000 dekatherms. Panhandle explains that it would receive natural gas for Anadarko's account at various existing receipt points on its system. Panhandle states that it would redeliver the gas to Haven Pool in Reno County, Kansas.

Comment date: August 7, 1989, in accordance with Standard Paragraph G at the end of this notice.

15. Panhandle Eastern Pipe Line Company

[Docket No. CP89–1642–000]

June 21, 1989.

Take notice that on June 15, 1989, Panhandle Eastern Pipe Line Company (Panhandle, P.O. Box 1642, Houston, Texas 77251, filed in Docket No. CP89–1642–000 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. CP86–585–000 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.

Panhandle proposes to transport natural gas on an interruptible basis for Mountain Iron and Supply Company (Mountain Iron). Panhandle explains that service commenced May 1, 1989, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–3699. Panhandle explains that the peak day quantity would be 100,000 Dt., the average daily quantity would be 10,000 Dt., and that the annual quantity would be 3,650,000 dekatherms. Panhandle explains that it would receive natural gas for Mountain Iron's account at various existing receipt points on its system. Panhandle states that it would redeliver the gas to Haven Pool in Reno County, Kansas.

Comment date: August 7, 1989, in accordance with Standard Paragraph G at the end of this notice.

16. Colorado Interstate Gas Company

[Docket No. CP89–1621–000]

June 21, 1989.

Take notice that on June 13, 1989, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP89–1621–000, a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act, to transport on an interruptible basis under its blanket

certificate Docket No. CP89–589, a maximum of 6,000 Mcf of natural gas for Santa Fe Minerals, a division of Santa Fe International Corp. ("Santa Fe Minerals"), all as more fully set forth in the request on file with the Commission and open to public inspection.

CIG indicates that service commenced March 14, 1989, under § 284.223(a) of the Commission Regulations, as reported in Docket No. ST89–3125–000 and estimates the volumes transported to be 6,000 Mcf per day on peak day, 3,000 Mcf on an average day and 1,095 MMcf on an annual basis.

CIG states that it would receive gas at existing points of receipt on its systems in Kansas, and redeliver that gas, less fuel gas and lost and unaccounted-for gas, for the account of Santa Fe Minerals in Moore County, Texas.

Comment date: August 7, 1989, in accordance with Standard Paragraph G at the end of this notice.

17. El Paso Natural Gas Company

[Docket No. CP89–1540–000]

June 21, 1989.

Take notice that on May 30, 1989, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed an application in Docket No. CP89–1540–000, under Section 7(c) of the Natural Gas Act, for a certificate of public convenience and necessity authorizing the construction, uprate and operation of loop pipeline, compression and metering facilities, with associated appurtenances, on a segment of El Paso's existing California Mainline interstate transmission pipeline system (hereinafter referred to as the "California Mainline System") to facilitate the delivery of additional volumes of natural gas to Southern California Gas Company (SoCal), all as more fully set forth in the application on file with the Commission and open to public inspection.

The application states that El Paso's existing certificated California Mainline System is comprised, *inter alia*, of: (i) approximately 3,127 miles of pipeline ranging in size from 12¾ inch O.D. to 36 inch O.D. and extending from El Paso's Keystone Compressor Station in the State of Texas to El Paso's Wenden Compressor Station located in La Paz County, Arizona, thence to a point of interconnection between El Paso's interstate mainline system and SoCal's natural gas transmission facilities located at the boundary between the States of Arizona and California near Blythe, California; and (ii) approximately 423,660 compressor horsepower installed at twenty-six (26) mainline compressor stations. The presently authorized maximum summer capacity of El Paso's California Mainline System is a nominal 1,493.6 MMcf per day.

The application further states that El Paso understands that SoCal has actively participated in the Public Utilities Commission of the State of California's (CPUC) proceeding instituting an investigation into interstate natural gas pipelines' supply and capacity availabilities into the State of California. The CPUC's order instituting this investigation noted that the advent of open-access transportation programs on interstate pipelines may have altered the capacity requirements of local distribution companies and other shippers receiving gas at the California border such that capacity requirements today may be different from those of natural gas distributors and consumers in the gas industry's previous form, where interstate pipelines performed a gas merchant function as well as a transportation function. The CPUC's order questioned whether it was reasonable to expect the same level of interstate pipeline performance or efficiency in capacity utilization under open access service conditions. As a part of the CPUC's order, the CPUC then directed SoCal and other CPUC-regulated utilities, to examine these issues and to determine whether new capacity additions were necessary.

In light of these expressed policy statements issued by the CPUC, SoCal has advised El Paso that it has decided to undertake an expansion of capacity on its system and that it has notified the CPUC of such decision. El Paso understands that SoCal intends to reconfigure and expand its transmission system in a manner that will permit SoCal to accept an additional 200 MMcf per day from its interconnection with El Paso's facilities at the California/Arizona border near Blythe, California.[1] In this regard, El Paso has evaluated its ability to deliver an additional 200 MMcf per day at the Ehrenberg Delivery Point and has determined that the available capacity of the short segment of its California Mainline System extending from its Wenden Compressor Station to the Ehrenberg Delivery Point is not adequate to permit the delivery of the additional 200 MMcf per day. Accordingly, El Paso and SoCal have entered into a Letter Agreement dated April 14, 1989, which sets forth the mutual agreement of El Paso and SoCal as to the expansion of El Paso's delivery capacity and SoCal's receipt of this capacity at the Ehrenberg Delivery Point.

In order to provide additional capacity sufficient to permit the delivery of 200 MMcf per day to SoCal at the Ehrenberg Delivery Point by November 1990, El Paso proposes to construct and operate: (i) Approximately 12.96 miles of 30 inch O.D. loop pipeline on El Paso's existing 30 inch O.D. California 1st Loop Line; (ii) a 5,300 horsepower gas turbine-driven centrifugal compressor unit at its Wenden Compressor Station; and (iii) two (2) additional 16 inch O.D. meter runs at the Ehrenberg Meter Station. Additionally, El Paso will be required to hydrostatically test approximately 10.60 miles of existing 26 inch O.D. California Line and 30 inch O.D. California 1st Loop Line in order to increase the maximum allowable operating pressure of such pipeline to permit an uprate in the operating pressure from 806 psig to 846 psig. El Paso also proposes to construct and operate certain pressure monitors under the authority of Section 2.55(a) of the Commission's Statements of General Policy and Interpretations. All the facilities proposed herein to be constructed, uprated and operated are estimated to cost $13,232,280, said proposal will be financed through internally generated funds.

The facilities proposed herein to be constructed, uprated and operated are required to provide El Paso with the facility capacity necessary to accommodate the increase in delivery capability to SoCal's system. Such additional facilities will provide additional market access to shippers into SoCal's system, and will enhance El Paso's ability to deliver additional volumes at the Ehrenberg Delivery Point, with a corresponding enhancement of the effective utilization of El Paso's entire interstate system. As demonstrated by the Report on Environmental factors, the proposed construction will have no significant adverse environmental impact.

Comment date: July 12, 1989, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North

[1] SoCal's projected capital investment would consist of primarily the looping of portions of SoCal's southern system in three (3) separate segments (consisting of a total of 30.3 miles of 30-inch pipeline and 24.4 miles of 36-inch pipeline). Also required as part of the SoCal system expansion is the "re-wheeling" of units at three (3) compressor stations. SoCal estimates the cost of the southern system expansion to be approximately $44,100,000.

Capitol Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, 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. 89-15172 Filed 6-26-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CS71-92-001, et al.]

TGX Corp. (Temex Energy, Inc.), et al., Applications for Small Producer Certificates [1]

June 20, 1989

Take notice that each of the Applicants listed herein has filed an application pursuant to Section 7(c) of the Natural Gas Act and § 157.40 of the Commission's regulations thereunder for a small producer certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before July 5, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

Docket No.	Date filed	Applicant
CS71-92-001...	[3] 5-15-89	TGX Corporation (Temex Energy, Inc.), 333 N. Sam Houston Parkway E., Suite 400, Houston, Texas 77060.
CS86-25-000...	[2] 5-30-89	The Caswell Silver Partnership (Caswell Silver), 1675 Larimer Street, Denver, Colorado 80202.
CS87-13-000...	[3] 5-31-89	Permian Resources, Inc./aka Earl R. Bruno and Bruno and Marshall Investments, (Permian Resources, Inc./aka Earl R. Bruno), P.O. Drawer 590, Midland, Texas 79702.
CS89-32-000...	5-26-89	Centurion Energy Corporation, P.O. Box 11144, Midland, Texas 79702.
CS89-33-000...	5-23-89	Seafirst America Corporation, 800 Fifth Avenue, 29th Floor, Seattle, Washington 98104.
CS89-34-000...	6-5-89	M. S. Energy, Rt. 4, 201 Yucca, Midland, Texas 79701.
CS89-36-000...	6-12-89	Hal Rasmussen, Operating, Inc., Six Desta Drive, Suite 5850, Midland, Texas 79705.

[1] By letter dated May 11, 1989, Applicant states that effective August 8, 1988, Temex Energy, Inc., was merged into TGX Corporation and Temex Energy, Inc., ceased to exist.

[2] By letters dated January 26, 1989, and May 26, 1989, Applicant requests that the small producer certitifcate in Docket No. CS86-25-000 be amended ot reflect THE CASWELL SILVER PARTNERSHIP as the certificate holder in lieu of CASWELL SILVER.

[3] By letter dated May 26, 1989, Applicant requests that the small producer certificate in Docket No. CS87-13-000 be amended to include Bruno and Marshall Investments.

[FR Doc. 89-15174 Filed 6-26-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI89-423-000, et al.]

Marathon Oil Co., et al.; Applications for Certificates and Abandonment of Service [1]

June 20, 1989.

Take notice that each of the Applicants listed herein has filed an application pursuant to Section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before July 10,

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

Filing Code:
A—Initial service ..... C—Amendment to add acreage ..... E—Succession
B—Abandonment ..... D—Assignment of acreage ..... F—Partial succession

Docket No. and date filed	Applicant	Purchaser and location	Description
CI89-423-000..... (CI79-450) B 5-22-89	Marathon Oil Company, P.O. Box 3128, Houston, TX 77253.	ANR Pipeline Company, High Island Block A-279 Field, Offshore, Louisiana.	All wells plugged and abandoned.
CI89-425-000..... E 5-26-89	Grace Petroleum, Corporation, 6501 N. Broadway, Oklahoma City, OK 73116.	Transcontinental Gas Pipe Line Corporation, East Lake Decade Field, Terrebonne Parish, Louisiana.	Acreage acquired 10-1-88 from Bois D'Arc Resources, *et al.*
CI89-436-000..... E 6-5-89	Exxon Corporation, P.O. Box 2180, Houston, TX 77252-2180.	El Paso Natural Gas Company, West Levelland Field, Cochran County, Texas.	Acreage acquired 1-1-88 from Westland Oil Development Corporation and Westland Oil & Gas Properties, Inc.

[FR Doc. 89-15173 Filed 6-26-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-50-000, et al.]

Florida Gas Transmission Co.; Informal Settlement Conference

June 20, 1989.

Take notice that an informal settlement conference will be convened in the above-captioned proceeding on July 12 and 13, 1989, at 10:00 a.m. at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC.

Participants, as defined by 18 CFR 385.102(b), are invited to attend. For additional information contact Donald A. Heydt, (202) 357-8570, or John J. Keating, (202) 357-5762.

Lois D. Cashell,

Secretary.

[FR Doc. 89-15086 Filed 6-26-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP89-158-002, RP89-12-005, TM89-3-25-001]

Mississippi River Transmission Corp.; Proposed Changes in FERC Gas Tariff

June 20, 1989

Take notice that on June 15, 1989, Mississippi River Transmission Corporation ("MRT") tendered for filing the following tariff sheets to its FERC Gas Tariff. Second Revised Volume No. 1:

Tariff sheet	Proposed effective date
Substitute third revised Sheet No. 4A.1.	May 1, 1989
Alternate Substitute third revised Sheet No. 4A.2.	May 1, 1989
Substitute original Sheet No. 4A.3 ...	May 1, 1989

MRT states that its filing is being submitted to comply with the Commission's May 26, 1989 Order Accepting and Suspending Tariff Sheets subject to Refund and Conditions and the Commission's June 8, 1989 Order Accepting Tariff Sheets for Filing, and Rejecting Other Tariff Sheets.

MRT states that its filing is being submitted without prejudice to its continuing challenges to the requirements that it pay various of the subject costs which it is here proposing to recover, and that it allocate and recover such costs on the basis of the cumulative purchase deficiency methodology as previously required by the Commission.

MRT states that copies of its filing have been served on all jurisdictional sales customers and interested state commissions. Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such protests should be filed on or before June 27, 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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-15087 Filed 6-26-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-196-000]

Northwest Pipeline Corp.; Proposed Change in FERC Gas Tariff

June 20, 1989

Take notice that on June 14, 1989, Northwest Pipeline Corporation ("Northwest") submitted for filing, to be a part of its FERC Gas Tariff, the following tariff sheets:

First Revised Volume No. 1

Substitute Fifth Revised Sheet No. 33
Substitute Fourth Revised Sheet No. 41
Substitute First Revised Sheet No. 110
Second Revised Sheet. No. 112
Substitute Third Revised Sheet No. 117
Substitute Second Revised Sheet No. 118
Substitute Second Revised Sheet No. 119

Original Volume No. 1-A

Eighteenth Revised Sheet No. 201
Fifth Revised Sheet No. 400
Substitute Second Revised Sheet No. 417
Original Sheet No. 417-A
Substitute Third Revised Sheet No. 418
Substitute First Revised Sheet No. 418-A
Substitute Original Sheet No. 418-B
Substitute Fifth Revised Sheet No. 419

Substitute First Revised Sheet No. 420
Original Sheet No. 420-A
Substitute Second Revised Sheet No. 421

Northwest states that the aforementioned sheets were filed to revise the existing nomination, determination of deliveries, imbalances, penalties, and unauthorized overrun provisions currently stated in Northwest's FERC Gas Tariff, First Revised Volume No. 1 and Original Volume No. 1-A. Northwest has requested an effective date of August 1, 1989 for the tendered sheets.

A copy of this filing is being served on Northwest's jurisdictional sales and transportation customers and affected state commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 27, 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. 89-15088 Filed 6-26-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 9009-002]

Pan Pacific Hydro, Inc.; Surrender of Exemption from Licensing

June 20, 1989

Take notice that Pan Pacific Hydro, Inc., exemptee for the proposed Cherry Flat Project No. 9009, requested by letter filed May 15, 1989, that it's exemption be terminated. No construction has commenced at the project site. The project would have been located on the exemptee's land on Stuarts Fork Creek in Trinity County, California. The exemptee states that a preliminary study found that the project would not be economically feasible to develop at this time.

The exemption for Project No. 9009 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the exemption shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 89-15089 Filed 6-26-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-162-001]

Ringwood Gathering Co.; Compliance Filing

June 20, 1989.

Take notice that on June 15, 1989, Ringwood Gathering Company (Ringwood) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets:

First Substitute Fourth Revised Sheet No. 1
First Substitute First Revised Sheet No. 2
First Substitute First Revised Sheet No. 3
First Substitute First Revised Sheet No. 26
First Substitute Twelfth Revised Sheet No. 59
First Substitute First Revised Sheet No. 89
First Substitute Original Sheet No. 89-A
First Substitute First Revised Sheet No. 101
First Substitute First Revised Sheet No. 110
First Substitute First Revised Sheet No. 121

By means of the above tariff sheets, Ringwood proposes to comply with ordering paragraph (A) of the Commission's May 31, 1989 order in Docket No. RP89-162-000.

Copies of this filing have been served on all parties and the appropriate state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before June 27, 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. 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. 89-15090 Filed 6-26-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-183-002]

Williams Natural Gas Co.; Proposed Changes in Commission Gas Tariff

June 20, 1989

Take notice that on June 15, 1989, Williams Natural Gas Company (WNG) filed revised tariff sheets to correct certain errors or omissions contained in: (1) the tariff sheets submitted in Volume IA, and (2) Statement G, Summary, and Statement G-2, Summary, as filed on May 31 in Volume II. The revised tariff sheets are proposed by WNG to be effective July 1, 1989.

WNG states that copies of the filing are being served on all jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before June 27, 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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-15091 Filed 6-26-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP82-114-016]

Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff

June 20, 1989

Take notice that on June 13, 1989, Williams Natural Gas Company (WNG) tendered for filing certain revised tariff sheets to its FERC Gas Tariff.

WNG states that April 4, 1989 and May 1, 1989 filings addressed in the Commission's June 8, 1989 order in this docket did not include the most recently updated cost of gas subsequently filed in WNG's annual PGA proceeding in Docket No. TA89-1-43 or the Take-Or-Pay Volumetric Surcharge (Top Surcharge) subsequently proposed in WNG's Order No. 500 proceeding in Docket No. RP89-140-000. WNG further states that the instant filing is being made to conform the May 1 filing to the April 4 base rates and to reflect the TA89-1-43 cost of gas and the RP89-140

TOP Surcharge. WNG explains that the Article 21 PGA Surcharge Adjustment is reflective of WNG's compliance filing made May 30, 1989 in Docket NO. TA89–1–43 which has not received Commission action and that the Article 29 TOP Surcharge is reflective of WNG's compliance filing made May 30, 1989 in Docket No. RP89–140 which has not received Commission action.

WNG proposes that the instant filing be effective June 1, 1989. In the event the rates filed in the compliance filings mentioned above are revised, WNG states that it will revise the instant filing to reflect any such revisions.

WNG states that copies of the filing were mailed to all of WNG's jurisdictional customers, and interested state commissions, as well as the parties listed on the Commission's official service list compiled in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulation Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such protests should be filed on or before June 27, 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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–15092 Filed 6–26–89; 8:45 am]

BILLING CODE 6717–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in §§ 560.7 and/or 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before comunicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 003–010071–006.

Title: The Cruise Lines International Association Agreement.

Parties:

Admiral Cruises
Aloha Pacific Cruises
American Hawaii Cruises
Bermuda Star Line
Carnival Cruise Lines
Chandris Fantasy Cruises
Clipper Cruise Line
Commodore Cruise Line, Ltd.
Costa Cruises
Crown Cruise Line
Crystal Cruises
Cunard Line, Ltd.
Cunard/Norwegian American Cruises
Cunard Sea Goddess
Delta Queen Steamboat Co.
Dolphin Cruise Line
Dolphin Hellas Cruises
Epirotiki Lines, Inc.
Holland America Line
Norwegian Cruise Line
Ocean Cruise Lines, Inc.
Oceanic Cruises
Ocean Quest International
Pearl Cruises of Scandinavia, Inc.
Premier Cruise Lines
Princess Cruises/(SITMAR Cruises)
Regency Cruises
Royal Caribbean Cruise Line, Inc.
Royal Cruise Line
Royal Viking Line
Seabourn Cruise Line
Sea Venture Cruises
Society Expeditions Cruises
Sun Line Cruises
Windstar Sail Cruises
World Explorer Cruises

Synopsis: The proposed modification would add Ocean Quest International as a party to the Agreement, and would delete Aloha Pacific Cruises, and Sea Venture Cruises as parties to the Agreement. It would also make other nonsubstantive changes.

Filing Party: James G. Godsman, President, Cruise Lines International Association, 500 Fifth Avenue, Suite 1407, New York, NY 10110.

By Order of the Federal Maritime Commission

Ronald D. Murphy,

Assistant Secretary.

Dated: June 22, 1989.

[FR Doc. 89–15142 Filed 6–26–89; 8:45 am]

BILLING CODE 6730–01–M

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 232–011230–011.

Title: V.A.G. Transport/Tecomar Reciprocal Space Charter and Sailing Agreement.

Parties:

V.A.G. Transport GmbH
Tecomar S.A.

Synopsis: The proposed modification would add Pacific Coast ports to the geographic scope of the Agreement.

By Order of the Federal Maritime Commission.

Ronald D. Murphy,

Assistant Secretary.

Dated: June 22, 1989.

[FR Doc. 89–15143 Filed 6–26–89; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Barnett Banks, Inc., et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or

through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 14, 1989.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. Barnett Banks, Inc., Jacksonville, Florida; to engage *de novo* through a proposed new subsidiary in making, acquiring, and servicing loans or other extensions of credit, directly or for the account of others, such as would be made by a consumer finance company pursuant to § 225.25(b)(1)(i) of the Board's Regulation Y.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Grand Bank Financial Corporation, Grand Rapids, Michigan; to engage *de novo* through its subsidiary, Grand Financial Associates, Inc., Grand Rapids, Michigan, in acting as an independent intermediary for the purpose of arranging mortgages and other extensions of credit for prospective borrowers with unaffiliated institutional lenders in exchange for a service fee pursuant to § 225.25(b)(1) of the Board's Regulation Y.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Landmark Bancshares Corporation, St. Louis, Missouri; to engage *de novo* through its subsidiary, Landmark BVI Limited, St. Louis, Missouri, in (i) carrying on the business of insurance and reinsurance companies; (ii) acting as agent and broker for insurance companies and syndicates; (iii) accepting risks, settling claims, soliciting business and all other matters incidental thereto; all of which shall be directly related to extensions of credit by Applicant or any of its subsidiaries and limited to assuring repayment of the outstanding balance due on such extensions of credit in the event of death, disability, or involuntary unemployment of the respective debtor pursuant to § 225.25(b)(8) of the Board's Regulation Y. These activities will be conducted in the states of Illinois and Missouri.

Board of Governors of the Federal Reserve System, June 21, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–15125 Filed 6–26–89; 8:45 am]

BILLING CODE 6210–01–M

First Union Corp.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843 (c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any question of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 14, 1989.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. First Union Corporation, Charlotte, North Carolina; to merge with Florida National Banks of Florida, Inc., Jacksonville, Florida, and thereby indirectly acquire Florida National Bank, Jacksonville, Florida, and Kingsley Bank, Orange Park, Florida.

In connection with this application, Applicant also proposes to acquire Florida Investment Management Company, Jacksonville, Florida, and thereby engage in investment advisory services, including management and supervision of investment portfolios on both a discretionary and non-discretionary basis pursuant to § 225.25(b)(3); and providing portfolio investment advice pursuant to § 225.25(b0(4) of the Board's Regulation Y. Applicant also proposes to acquire Florida National Insurance Services, Inc., Jacksonville, Florida, and thereby engage in underwriting, as reinsurer, of credit-related life and credit-related accident, health and disability insurance in connection with extensions of credit by the banking subsidiaries of Florida National Banks of Florida, Inc., Jacksonville, Florida, pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 21, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–15126 Filed 6–26–89; 8:45 am]

BILLING CODE 6210–01–M

Livingston Southwest Corp.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1843) and section 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than July 14, 1989.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Livingston Southwest Corporation, Chicago, Illinois, and Livingston & Company Southwest, L.P., Chicago, Illinois; to acquire up to 76.62 percent of the voting shares of First National Bank of North County, Carlsbad, California.

Board of Governors of the Federal Reserve System, June 21, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-15127 Filed 6-26-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committee Meeting of the Microbiology Devices Panel

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meeting

The following advisory committee meeting is announced:

Microbiology Devices Panel

Date, time, and place. July 31, 1989, 9 a.m., Rm. 800, Hubert H. Humphrey Bldg., 200 Independence Ave. SW., Washington, DC.

Type of meeting and contact person. Open public hearing, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m., to 5 p.m.; Joseph L. Hackett, Center for Devices and Radiological Health (HFZ-440), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7550.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before June 30, 1989, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss a premarket approval application for an over-the-counter group A *Streptococcus* device.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contract person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI-35), Food and Drug Administration, Rm. 12A-16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Docket Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address

above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: June 8, 1989.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 89–15139 Filed 6–26–89; 8:45 am]

BILLING CODE 4160–01–M

Open Meeting of the Commissioner with Representatives of Health Professional Organizations

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a forthcoming open meeting of the Commissioner of Food and Drugs with representatives of health professional organizations. The meeting will be chaired by Commissioner Frank E. Young. The agenda is food safety and nutrition. Presentations will focus on pesticides in foods, microbiological contamination, tampering, food labeling, and health claims on foods.

DATE: The meeting will be held on Monday, July 10, 1989, 2:30 p.m. to 4:30 p.m.

ADDRESSES: The meeting will be held at the Hubert H. Humphrey Bldg., Conference Room 703A, 200 Independence Ave. SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Robert Veiga, Office of Health Affairs (HFY–40) Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5470.

Dated: June 20, 1989.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 89–15095 Filed 6–26–89; 8:45 am]

BILLING CODE 4160–01–M

Health Care Financing Administration

Public Information Collection Requirements Submitted to the Office of Management and Budget for Clearance

AGENCY: Health Care Financing Administration.

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 on April 28, 1989.

1. *Type of Request:* Reinstatement; *Title of Information Collection:* Home Health Agency Cost Report; *Form Number:* HCFA–1728–86; *Frequency:* Annually; *Respondents:* Businesses or other for profit; *Estimated Number of Responses:* 6,000; *Average Hours per Response:* 160; *Total Estimated Burden Hours:* 960,000.

2. *Type of Request:* New; *Title of Information Collection:* Pilot Study—Outcomes Management for Health Maintenance Organizations; *Form Number:* HCFA–R–125; *Frequency:* On occasion; *Respondents:* Individuals or households; *Estimated Number of Responses:* 1,066; *Average Hours per Response:* .233; *Total Estimated Burden Hours:* 249.

3. *Type of Request:* Revision; *Title of Information Collection:* Hospital and Hospital Health Care Complex Cost Report; *Form Number:* HCFA–2552-Demo; *Frequency:* Annually; *Respondents:* Businesses or other for profit, non-profit institutions, and small businesses or organizations; *Estimated Number of Responses:* 700; *Average Hours per Response:* 8 (Reporting) and 142 (Recordkeeping); *Total Estimated Burden Hours:* 5,600 (Reporting) and 99,400 (Recordkeeping) = 105,000 Total.

4. *Type of Request:* Reinstatement; *Title of Information Collection:* Request for Review of Part B Medicare Claim; *Form Number:* HCFA–1964; *Frequency:* On occasion; *Respondents:* Individuals/households; *Estimated Number of Responses:* 5,700,000; *Average Hours per Response:* .25; *Total Estimated Burden Hours:* 1,425,000.

5. *Type of Request:* Extension; *Title of Information Collection:* Information Collection Requirements—Conditions of Participation for Rural Health Clinics; *Form Number:* HCFA–R–38; *Frequency:* Annually; *Respondents:* Small businesses/organizations; *Estimated Number of Responses:* 462; *Average Hours per Response:* 2.28; *Total Estimated Burden Hours:* 1,054.

6. *Type of Request:* Reinstatement; *Title of Information Collection:* Information Collection Requirements—Physician/Supplier Background Information; *Form Number:* HCFA–R–89; *Frequency:* On occasion; *Respondents:* State/local governments and businesses/other for profit; *Estimated Number of Responses:* 30,474; *Average Hours per Response:* .25; *Total Estimated Burden Hours:* 7,617.

7. *Type of Request:* Extension; *Title of Information Collection:* Corrective Action Plan; *Form Number:* HCFA–320; *Frequency:* Annually; *Respondents:* State/local governments; *Estimated Number of Responses:* 55; *Average Hours per Response:* 368 (Reporting) and 32 (Recordkeeping); *Total Estimated Burden Hours:* 20,240 (Reporting) and 1,760 (Recordkeeping) = Total 22,000.

8. *Type of Request:* Extension; *Title of Information Collection:* Medicaid Eligibility Quality Control Re-review Process; *Form Number:* HCFA–9010; *Frequency:* Monthly; *Respondents:* State/local governments; *Estimated Number of Responses:* 9,677; *Average Hours per Response:* .25; *Total Estimated Burden Hours:* 2,419.

9. *Type of Request:* Unapproved, in use; *Title of Information Collection:* Request for Medical Review Information for Part B Outpatient Bills; *Form Number:* HCFA–9027; *Frequency:* On occasion; *Respondents:* Businesses/other for profit and small businesses/organizations; *Estimated Number of Responses:* 4,649,831; *Average Hours per Response:* .5; *Total Estimated Burden Hours:* 2,324,155.

10. *Type of Request:* Extension; *Title of Information Collection:* Medicare Qualification Statement for Federal Employees; *Form Number:* HCFA–565; *Frequency:* One-time; *Respondents:* Individuals/households; *Estimated Number of Responses:* 4,300; *Average Hours per Response:* .17; *Total Estimated Burden Hours:* 731.

11. *Type of Request:* Extension; *Title of Information Collection:* Requests for Medicare Payment by Municipal Health Services Program Clinics; *Form Number:* HCFA–127; *Frequency:* Weekly; *Respondents:* State/local governments and non-profit institutions; *Estimated Number of Responses:* 370,599; *Average Hours per Response:* .16; *Total Estimated Burden Hours:* 59,296.

12. *Type of Request:* Reinstatement; *Title of Information Collection:* Attending Physician's Statement and Documentation of Medicare Emergency; *Form Number:* HCFA–1771; *Frequency:* On occasion; *Respondents:* Businesses/other for profit; *Estimated Number of Responses:* 1,500; *Average Hours per Response:* .25 *Total Estimated Burden Hours:* 375.

13. *Type of Request:* Extension; *Title of Information Collection:* Information Collection Requirements in the Sterilization Regulations and

Sterilization Consent Form; *Form Number:* HCFA–R–94; *Frequency:* On occasion; *Respondents:* State/local governments businesses/other for profit, and small businesses/organizations; *Estimated Number of Responses:* 123,040; *Average Hours per Response:* 1 (Reporting) and .25 (Recordkeeping); *Total Estimated Burden Hours:* 123,040 (Reporting) and 30,760 (Recordkeeping) = 153,800 Total.

14. *Type of Request:* Extension; *Title of Information Collection:* Hospital Providers of Long-term Care Services (Swing Bed Provisions); *Form Number:* HCFA–345; *Frequency:* Annually; *Respondents:* State/local governments, businesses/other for profit, and small businesses/organizations; *Estimated Number of Responses:* 50; *Average Hours per Response:* 10; *Total Estimated Burden Hours:* 500

15. *Type of Request:* Reinstatement; *Title of Information Collection:* Information Collection Requirements—Ambulance Service; *Form Number:* HCFA–R–88; *Frequency:* On occasion; *Respondents:* Businesses/other for profit; *Estimated Number of Responses:* 100; *Average Hours per Response:* .25; *Total Estimated Burden Hours:* 25.

16. *Type of Request:* Extension; *Title of Information Collection:* Skilled Nursing Facility and Skilled Nursing Facility Health Care Complex Cost Report; *Form Number:* HCFA–2540; *Frequency:* Annually; *Respondents:* State/local governments, non-profit institutions, and small businesses/organizations; *Estimated Number of Responses:* 6,500; *Average Hours per Response:* 103 (Reporting) and 132 (Recordkeeping); *Total Estimated Burden Hours:* 669,500 (Reporting) and 858,000 (Recordkeeping) = 1,527,500 Total.

17. *Type of Request:* New; *Title of Information Collection:* Health Maintenance Organizations Reporting Forms; *Form Number:* HCFA–HMOF–2–5; *Frequency:* Monthly; *Respondents:* Businesses/other for profit; *Estimated Number of Responses:* 216; *Average Hours per Response:* .25 (Reporting) and 12 (Recordkeeping); *Total Estimated Burden Hours:* 54 (Reporting) and 648 (Recordkeeping) = 702 Total. 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 Officer Building, Room 3208, Washington, DC 20503.

Date: June 20, 1989.

Louis B. Hays,

Acting Administrator, Health Care Financing Administration.

[FR Doc. 89–15097 Filed 6–26–89; 8:45 am]

BILLING CODE 4120–03–M

Health Resources and Services Administration

Advisory Council on Nurses Education; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of August 1989:

Name: Advisory Council on Nurses Education

Date and Time: August 16–17, 1989, 9:00 a.m.

Place: The Maryland Room, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Open on August 16, 9:00 a.m.–12:30 p.m.

Closed for remainder of meeting.

Purpose: The Council advises the Secretary and Administrator, Health Resources and Services Administration, concerning general regulations and policy matters arising in the administration of the Nurse Education Amendments of 1985 (Pub. L. 99–92). The Council also preforms final review of grants applications for Federal Assistance, and makes recommendations to the Administrator, HRSA.

Agenda: The open portion of the meeting will announcements; considerations of minutes of previous meeting; report by the Director, Bureau of Health Professions, the Director, Division of Nursing and staff reports. The meeting will be closed to the public on August 16, at 12:30 p.m. for the remainder of the meeting for the review of grant applications for Advance Nurse Education applications, Nurse Practitioner/Nurse Midwifery applications, Special Project Grants applications and Nursing Opportunities for Individuals from Disadvantaged Backgrounds applications. The closing is in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C. Code, and the Determination by the Administrator, Health Resources and Services Administration, pursuant to Pub. L. 92–463.

Anyone requiring information regarding the subject Council should contact Dr. Mary S. Hill, Executive Secretary, National Advisory Council on Nurse Training, Room 5C–14, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301)443–6193.

Agenda Items are subject to change as priorities dictate.

Date: June 22, 1989.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 89–15140 Filed 6–26–89; 8:45 am]

BILLING CODE 4160–15–M

Public Health Service

Announcement of Cooperative Agreement

Introduction

The Office of Disease Prevention and Health Promotion (ODPHP), Office of the Assistant Secretary for Health, announces the availability of funds in fiscal year 1989 for a cooperative agreement with the Association of Schools of Public Health (ASPH). This cooperative agreement will enable ASPH to facilitate an interdisciplinary collaboration among academicians in the fields of public health, business, and public administration/policy for the purpose of expanding the state of knowledge regarding worksite health promotion programs in public sector employment settings. Because of the importance of worksite health promotion as a means of reaching a majority of adult Americans with health information and services, this project will continue significantly to the achievement of the Nation's health objectives for the year 2000.

Authority

This program is authorized under section 301(a) and section 1701(a) of the Public Health Service Act [42 U.S.C. 241(a) and 300(u)], as amended. Program regulations are set forth in 42 CFR Part 52.

Eligible applicant

Assistance will be provided only to ASPH for this project. No other applications will be solicited or accepted. ASPH represents the 24 accredited schools of public health in the United States. Schools of public health are the primary academic centers for research and training relating to the Nation's health promotion and disease prevention programs and activities. A number of the schools are located in universities that also offer graduate programs in business, public administration and/or public policy. Faculties of each of these graduate schools are called upon to provide

technical consultation from the perspective of their specific fields of expertise, to assist in developing, evaluating, or improving health promotion programs operated by public and private sector employers. Although the issues involved in effective worksite-based prevention activities are multidisciplinary in nature, there has been no previous attempt to address the worksite as a setting for health promotion programs using an interdisciplinary, coordinated team approach.

As a first step in developing such an approach, ODPHP intends to establish this cooperative agreement with ASPH, serving as the coordinating agency, to form interdisciplinary teams, led by faculty of selected schools of public health and composed of colleagues from sister schools of business and public administration/policy. These teams will undertake case studies of public sector health promotion programs geographically proximate to their universities' locations. ASPH, serving as national coordinator to ensure consistency of approach, will make the findings of these case studies available to all of its member institutions both to enrich the state of knowledge regarding worksite health promotion programs and to stimulate replication of the demonstrated interdisciplinary approach.

ASPH, is the only national organization in a position to coordinate the lead faculties in these interdisciplinary teams [i.e. schools of public health) and to effect a unified approach that can substantially advance the state of knowledge on public sector worksite-based health promotion programs.

The cooperative agreement assistance mechanism will be used for this project because of the substantial interest and involvement of ODPHP as a Federal resource on health promotion programs at worksites. In addition, other Federal agencies, including the Office of Personnel Management (OPM) and the Office of Federal Employee Occupational Health (OFEOH), have indicated a commitment to be a part of a project management and review team that will participate with ASPH in refining the design and reviewing the findings of this project. Specifically, ODPHP will convene a Federal team with representatives of OPM and OFEOH to work collaboratively with ASPH in designing the case study protocols, selecting appropriate study sites, and arranging with study sites to cooperative with the project. The Federal team will participate in orientation of study teams and will review and comment on all draft materials produced by the project.

Availability of Funds

It is anticipated that approximately $325,000 will be available in fiscal year 1989 to fund the cooperative agreement beginning July 1, 1989, for a 15-month project and budget period. No continuation of this project is anticipated beyond the 15-month period.

Purpose

The purpose of this cooperative agreement is to assist ASPH in developing and implementing an interdisciplinary team approach to the study and improvement of worksite health promotion programs in public sector settings.

Program Requirements

The applicant will fulfill application requirements of P.H.S. Form 5161.

E.O. 12372 REVIEW

The application is not subject to review as governed by Executive Order 12372, Intergovernment Review of Federal Programs.

CFDA Number

The Catalog of Federal Domestic Assistance number is 13.990.

Application Submission and Deadline

ASPH has been notified of the availability of funds for this project and must submit an original and two copies of the application Form 5161 to James A. Harrell, Deputy Director, Office of Disease Prevention and Health Promotion, Office of the Assistant Secretary for Health, Department of Health and Human Services, Washington, DC 20201, before July 7, 1989.

Where To Obtain Additional Information

Additional information is available from James A. Harrell, Deputy Director, Office of Disease Prevention and Health Promotion, Office of the Assistant Secretary for Health, Department of Health and Human Services, Washington, DC 20201, Telephone 202–245–7611.

J. M. McGinnis,

Deputy Assistant Secretary for Health, (Disease Prevention and Health Promotion) Assistant Surgeon General.

[FR Doc. 89–15167 Filed 6–26–89; 8:45 am]

BILLING CODE 4161–17–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–89–2009]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). It is also requested that OMB complete its review within one day.

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the

proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: June 16, 1989.

John T. Murphy,

Director, Information Policy and Division.

Proposal: Request for Termination of Multifamily Mortgage Insurance
Office: Administration.
Description of the Need for the Information and its Proposed Use: HUD–9807 will be used to inform HUD that a mortgage has been paid in full or that a mortgagor and mortgagee mutually agree to terminate the contract of mortgage insurance with HUD
Form Number: HUD–9807.
Respondents: Businesses or Other For-Profit.
Frequency of Submission: On Occasion.
Reporting Burden:

	Number of respondents	×	Frequency of Response	×	Hours per response	=	Burden hours
HUD–9807	300		1		.125		38

Total Estimated Burden Hours: 38
Status: Reinstatement
Contact: Karen Lee, HUD, (202) 755–7022; John Allison, OMB, (202) 395–6880.

Date: June 16, 1989.

[FR Doc. 89–15183 Filed 6–26–89; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. N–89–2010]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: June 19, 1989.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Multifamily Mortgage Insurance Premium Billing Statement and Reconciliation
Office: Administration
Description of the Need for the Information and its Proposed Use: These forms will be used to rconcile the financial records of the mortgagees of their regular or deliquent payments made to HUD for Mortgage Insurance Premiums on Multifamily Housing Projects
From Number: HUD–27033, 27032A, and 27032B (Replaces 27032)
Respondents: Businesses or Other For-Profit
Frequency of Submission: Monthly
Reporting Burden:

	Number respondents	X	Frequency of resonse	X	Hours per response	=	Burden hours
HUD–27032A	491		12		.05		295
HUD–27032B	100		1		.05		5
HUD–27033	150		12		.03		54

Total Estimated Burden Hours: 354
Status: Extension
Contact: Karen Lee, HUD (202) 755–7022; John Allison, OMB, (202) 395–6880.

Date: June 19, 1989.

[FR Doc. 89–15184 Filed 6–26–89; 8:45 am]
BILLING CODE 4210–01–M

Office of Community Planning and Development

[Docket No. N–89–2003]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) or review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding the information collection in this proposal. Comments should refer to the proposal by name and should be sent within 21 days to: John Allison, OMB Desk Officer, Office of Management and Budget, New Excutive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755–6050. (This is not a toll-free number.) Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). HUD has requested that OMB complete its review following twenty-one days of comment on the information collection

The Notice lists the following: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare information submissions, including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department; and (10) a description of the information collections proposed to be included in the grant program to be announced.

Audrey E. Scott,

General Deputy, Assistant Secretary for Community Planning and Development.

Proposal: Notice of Fund Availability to Establish Youth Sports Clubs at Public Housing Sites.

Office: Community Planning and Development.

Description of the Need for the Information and Its Proposed Use: The growing crisis of drug use and drug related crime in public housing requires immediate action to protect residents' lives and property. To initiate this competition and to select those projects which will have the greatest impact in improving the environment for youths in public housing projects impacted by severe drug problems, we require the information requested to make the selections.

Form Number: SF 424 and narrative.

Respondents: States or Local Government.

Frequency of Submission: One-time.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
SF 424 and narrative	175		1		40		7,000

Total Estimated Burden Hours: 7,000.
Status: New.
Contact: Leroy P. Gonnella, HUD, (202) 755–6087; John Allison, OMB, (202) 395–6880.

Date: May 23, 1989.

Section III

Supporting Statement, Secretary's Discretionary Program

Justification

1. The growing crisis of drug abuse and drug related crime in public housing projects requires immediate action to protect residents' lives and property. One immediate approach is to establish positive youth programs in public housing projects impacted by severe drug problems. This effect will have an immediate impact by placing public housing youths in a positive environment and a long term impact by leading these youths into a productive life.

2. The information collected will be used by HUD to rate applications and to select 56 that best address the objective of this competition.

3. This is a one time emergency collection. This approach is considered to be the most cost-effective method of beginning to create a positive atmosphere for public housing youths.

4. The information required to rate these proposals does not currently exist.

5. There is no similar information available.

6. The programs proposed are not expected to be complicated and given the small amount of funds involved, there should not be a lot of paperwork.

7. This is a one time only competition.

8. The Secretary has recently made personal visits to public housing projects to observe the situation first hand and discuss his actions with local officials.

9. The information collected may be shared with others.

10. There is no request for information of a sensitive nature.

11. The only costs to the Department relating to this information collection will be the costs for receiving, reviewing proposals, awarding grants and monitoring them to close-out.

12. Receiving responses (175 responses × 15 min. × $17/hr)	$744
Reviewing responses (175 responses × 4 hrs. × $17/hr)	11,900
Monitoring and Close-out (56 × 8 hrs. × $17/hr)	7,616
Awarding Grants (56 × 8 hrs. × $17/hr)	7,616
Total Cost to Government	27,876
13. Reporting Burden:	
Number of Respondents	175
Average hours per response	40

Number of responses per respondent per year	1
Total Burden Hours	7,000

14. NA
15. NA

Public reporting burden for this collection of information is estimated to average forty hour(s) per response, including the time for reviewing instructions, searching existing data sources, gathering and compiling the data sources, and completing and submitting the proposal. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; and to the Office of Management and Budget, Paperwork Reduction Project (2506–xxxxx), Washington, DC 20503.

Description of the Program to which these Information Collections will Pertain:

As part of the Department's effort to promote a drug-free environment in public housing, the Secretary will make $1,400,000 available to aid public housing youths in areas affected by severe drug problems. The funds are to be used in conjunction with local CDBG and other public or private funds to establish positive youth programs, with sports, cultural and other activities as alternatives to the drug environment. Applicants for these funds must be planning or undertaking vigorous efforts to rid public housing areas of the drug problem. Each applicant will be given discretion to design a youth sports clubs program that best addresses its local situation and most effectively leverages local resources. It is expected that each application or proposal will include the involvement of local sports organizations or major sports figures.

This document, when published for effect, will (a) notify the public of the availability of funds for aiding in the establishment or enhancement of youth sports clubs to combat drugs at Public Housing Authority (PHA) sites; (b) identifies the objective of the program; (c) indicates the amount of funds available and matching requirements; (d) set forth eligible activities; (e) sets forth application requirements for the funds; (f) identifies the evaluation criteria for the award of funds; and (g) specifies notification procedures.

Program Objective: The objective of this program is to aid public housing youths in areas affected by severe drug problems, by providing positive youth programs, with sports, cultural and other activities, as alternatives to the drug environment. Such programs will be undertaken in conjunction with vigorous efforts to rid the areas of their drug problems.

Eligible Activities: All activities eligible under the Community Development Block Grant (CDBG) Program, 24 CFR Part 570, Subpart C. These include the acquisition, construction or rehabilitation of community centers, parks and playgrounds to be used by the youth sports clubs. Eligible activities also include redesigning and modifying public spaces in assisted housing projects to permit increased utilization of the areas by the youth sports clubs. Public service activities (including salaries and expenses for staff for the youth sports clubs, cultural activities, educational programs related to drug abuse, the purchase of sports equipment, etc.), are also eligible, subject to the limitation that no more than 15 percent of the Special Projects grant may be for public services. The entire local match can be used for public services except that any portion thereof comprised of local CDBG funds is subject to the 15 percent limitation. (The 15 percent limitation and other information about the eligibility of public services is found at 24 CFR 570.201(e) of the CDBG entitlement regulations.)

Amount of Funds Available: $1,400,000.

Amount of Awards: $25,000, with a required 100 percent cash match of local CDBG or other local public or private funds.

Application Requirements: The application or proposal must include the following elements:

1. A Standard Form 424 signed by the chief executive officer of the State or unit of local government;

2. An identification of the specific public housing site or sites to be assisted, the nature of the drug problem at each site, and the planned or actual efforts being undertaken to rid the site or sites of the drug problem;

3. A description of how the youth sports club is or will be organized, the nature of the services to be provided, the number of youth involved, the extent to which local sports organizations or major sports figures are involved, the facilities to be utilized, plans to continue the youth sports club in the future, and other facets of the program;

4. A narrative statement of the proposed activities to be funded with the Special Projects grant and the matching funds, along with an explanation of how the Federal grant, local CDBG funds, and other local funds will be used to establish or enhance youth sports clubs;

5. A work plan which describes the planned schedule and the financial and other resources committed to each task or activity;

6. The technical and financial feasibility of the activity;

7. The capacity of the community to carry out the activity and the level of support to be provided by local sports organizations.

8. The PHA support of the project and coordination with the applicant; and

9. A budget showing the HUD share of the costs and other sources of funds, including the required 100 percent cash match of local CDBG or other local public or private funds.

Evaluation Criteria: Each application or proposal will be reviewed against the following evaluation factors:

Total 100 Points

1. Unique or innovative methods, approaches or ideas originated or assembled by the applicant or proposer; (10 points)

2. Overall technical or socio-economic merits of the application or proposal; (5 points)

3. The qualifications, capabilities, and experience of the proposed key personnel who are critical to achieving the proposal objectives; (15 points)

4. The applicant's and any proposed subrecipient's capabilities, related experience, facilities, techniques, potential for continuing the youth sports club activities in the future, or unique combination of these which are integral factors for achieving the application or proposal objectives; (10 points)

5. The severity of the drug problem at the local public housing site or sites, and the extent of the planned or actual efforts to rid the site or sites of the drug problem; (20 points)

6. The extent to which local sports organizations or major sports figures are involved; (10 points)

7. The extent of the PHA support of the support or the project and coordination with the applicant; (20 points)

8. The extent of private sector contributions which exceed the required addition to the 100 percent match of local CDBG or other local funds. (10 points)

The Department reserves the right to select applications or proposals out of rank order to ensure an equitable geographical distribution.

Where to Apply: When published for effect, the notice will instruct applicants

to submit an original and two copies of your application or proposal to: Department of Housing and Urban Development, Office of Community Planning and Development, Secretary's Fund Division, Room 7144, 451 7th Street SW., Washington, DC 20410, Attention: Mr. Leroy P. Gonnella.

[FR Doc. 89-15185 Filed 6-26-89; 8:45 am]
BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of an Environmental Assessment on the Proposed Construction of the Nisqually Fish Hatchery, Pierce County, Washington

AGENCY: Fish and Wildlife Service (Service), Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that an Environmental Assessment on the construction of the Nisqually Fish Hatchery, to be located within the boundaries of the Nisqually Indian Reservation on Clear Creek (a tributary to the Nisqually River), Pierce County, Washington is available for public review. Comments received during the 30 day review period following publication of this Notice will be considered.

Legislation enacted by Congress directed the Service, in coordination with the Nisqually Indian Tribe (Tribe), to construct a fish hatchery on Clear Creek, in Pierce County, Washington (Section 22, Township 18 North, Range 1 East, W.M.). The proposed action would include a hatchery building, rearing ponds, pollution abatement lagoons, fish barrier racks, fish ladder, and water distribution systems. As mitigation for lost spawning habitat resulting from the hatchery construction, a 2,000 foot long spawning channel would be constructed in Fishhouse Slough, Thurston County, Washington (Section 21 and 28, Township 18 North, Range 1 East, W.M.).

Water for the hatchery would be supplied through a gravity fed system which allows for low cost operation and efficient reuse. The system involves the construction of two small dams to impound water from springs and seeps into two small forebays. The forebays would be contained between a steep bluff and a series of constructed dikes. Water for incumbation would be piped directly from springs to the hatchery.

The hatchery would be operated and maintained by the Tribe under an agreement with the Service. Annual production from the hatchery would total 108,000 pounds of chinook, coho, and chum salmon.

DATES: Written comments can be provided up to July 27, 1989.

ADDRESS: Comments should be addressed to: Mr. Marvin L. Plenert, Regional Director, U.S. Fish and Wildlife Service, 1002 N.E. Holladay Street, Portland, Oregon 97232-4181.

FOR FURTHER INFORMATION CONTACT: Henry E. Forner, Jr., Senior Fishery Biologist, U.S. Fish and Wildlife Service, 1002 NE Holladay Street, Portland, Oregon 97232-4181. Phone: (503) 230-5972.

Individuals wishing copies of this Environmental Assessment should immediately contact Mr. Forner. Copies have been sent to all agenices and individuals who participated in the scoping process public meetings, and to those who previously requested copies.

SUPPLEMENTARY INFORMATION: The technical author of this document is: Ms. Joyce Mercuri, Natural Resources Planner, Nisqually Indian Tribe, 4820 She-Nah-Num Dr., S.E., Olympia, Washington 98503. Phone: (206) 456-5221.

This action is designed to construct a hatchery which would rebuild and enhance anadromous fish runs in the Nisqually River Basin, which have been depleted as a result of environmental degradation and interceptory fisheries. The rebuilding of fish runs is necessary to meet the needs of the Nisqually Indian Tribe, other domestic and International Treaties, and non-treaty commercial and sport fisheries utilizing the resource. When at full production, the estimated annual economic benefits from hatchery production is over $5.1 million.

Construction of the dikes to contain the forebays (hatchery water supply) would involve filling of 7.3 acres of wetlands. Eight (8) acres of wetlands would be created when the side slopes of the dikes and several upland areas are inundated by the forebays. Approximately 15 acres of vegetation on the project site would be permanently converted to buildings, roads, facilities, and developed areas. A total of 21.65 acres of uplands and wetlands would be flooded for impoundment of the forebays.

The hatchery is located within the floodplain, but is outside the floodway. All facilities would be built above the 100 year flood level. Pollution abatement lagoons would act as settling basins for effluent from the cleaning of rearing facilities. Hatchery waste water discharges would result in some organic enrichment to ¼ mile of Clear Creek. Organic enrichment of the Nisqually River would be negligible.

The Environmental Assessment considers three alternatives to the proposed action. Two of the alternatives are variations of fill to contain the forebays. The alternatives are (1) Fill Wetlands at Backswamp and (2) Use Perimeter Dike at Upper Forebay. The adverse impacts in comparison to the proposed action are: Alternative 1—Increased wetland fill and increased size of forebay; Alternative 2—Increased size of forebay.

The third alternative is No Action. This alternative would not fulfill the goal of restoring anadromous fish runs in the Nisqually River and delay meeting goals of the Tribe and the U.S./Canada Pacific Salmon Treaty.

Development of this environmental assessment has involved a lengthy scoping process. The process included input from the general public as well as extensive interagency involvement. The construction of a new Service National Fish Hatchery normally requires Environmental Impact Statement. However, based upon the little public response from the **Federal Register** Notice of Intent and the scoping process, the Service decided to prepare an Environmental Assessment instead of an Environmental Impact Statement.

Issued in Portland, Oregon, June 16, 1989.

William Martin,

Acting Regional Director.

[FR Doc. 89-15141 Filed 6-26-89; 8:45 am]
BILLING CODE 4310-55-M

Bureau of Indian Affairs

Receipt of Petition for Federal Acknowledgment of Existing as an Indian Tribe

June 9, 1989.

This is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.8(a) (formerly 25 CFR 54.8(a)) notice is hereby given that the Ohlone/Costanoan Muwekma Tribe, c/o Ms. Rosemary Cambra, 31 Fountain Alley, Ste. 2B, San Jose, California 95113, has filed a petition for acknowledgment by the Secretary of the Interior that the group exists as an Indian Tribe. The petition was received by the Bureau of Indian Affairs on May 9, 1989, and was signed by members of the group's governing body.

This is a notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be

sent by mail to the petitioner and other interested parties at the appropriate time. Under § 83.8(d) (formely § 54.8(d)) of the Federal regulations, interested parties may submit factual and/or legal arguments in support of or in opposition to the group's petition. Any information submitted will be made available on the same basis as other information in the Bureau of Indian Affairs' files. Such submissions will be provided to the petitioner upon receipt by the Bureau. The petitioner will be provided an opportunity to respond to such submissions prior to a final determination regarding the petitioner's status.

The petition may be examined by appointment in the Department of the Interior, Bureau of Indian Affairs, Branch of Acknowledgment and Research, Mail Stop 4627–MIB, 18th and C Streets, NW., Washington, DC 20240, Phone: (202) 343–3592.

W.P. Ragsdale,

Deputy to the Assistant Secretary—Indian Affairs (Operations).

[FR Doc. 89–15117 Filed 6–26–89; 8:45 am]

BILLING CODE 4310–02–M

Bureau of Land Management

[NV–930–09–4212–14; N–39982]

Battle Mountain District; Shoshone-Eureka Resource Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Realty Action; Noncompetitive Sale of Federal Lands in Lander County, Nevada.

SUMMARY: The following land has been found suitable for direct sale under Sections 203 and 209 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713) at no less than the appraised fair market value. The land will not be offered for sale until at least 60 days after the date of this Notice.

Mount Diablo Meridian

T. 16N., R. 44E.,
Sec. 17, Lot 7;
Sec. 20, NE¼NE¼,
Sec. 21, NE¼NE¼, NW¼NW¼;
Sec. 23, SE¼SE¼;
Sec. 24, NE¼NW¼, SW¼SW¼.

A parcel of land containing 268.98 acres, more or less.

The land described is hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action of 270 days from the date of publication of this Notice, whichever occurs first.

Ralph A. Young has asked to buy this land to expand his agricultural operation and to resolve a trespass of long standing in the Big Smoky Valley, Nevada. The lands are not required for any Bureau resource program. The sale is consistent with the Shoshone-Eureka Resource Management Plan. No conflicts with State or local land use plans have been identified. The subject lands are within the Kingston grazing allotment and grazing permittees will be sent the required two-year grazing notices prior to sale.

The mineral report prepared for this action recommends sale of the surface estate with simultaneous conveyance of the locatable, saleable, oil and gas, phosphate and energy solid leasable minerals estates. Acceptance of the sale offer will constitute an application for conveyance of the available mineral interests. A nonrefundable fee of $50 will be required from purchaser for purchase of the available mineral interests.

The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, in accordance with the Act of August 30, 1890 (26 Stat. 391; U.S.C. 945).

2. Geothermal, sodium and potassium resources together with the right to prospect for, mine and remove such deposits from the lands under applicable law.

And will be subject to valid existing rights, including:

CC–022622, 400' highway
N–34387, 20' telephone line
N–46509, 25' powerline
N–50104, 25' powerline

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Bureau of Land Management, P.O. Box 1420, Battle Mountain, Nevada 89820. Objections will be reviewed by the State Director who may sustain, vacate or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Date Signed: June 14, 1989.

Thomas H. Jury,

Acting District Manager.

[FR Doc. 89–15118 Filed 6–26–89; 8:45 am]

BILLING CODE 4310–HC–M

Minerals Management Service

Outer Continental Shelf (OCS) Operations, Current List of Notices to Lessees and Operators (NTL) Issued by Each OCS Region

AGENCY: Minerals Management Service, Interior.

ACTION: Notice.

SUMMARY: This notice informs the public, industry, and other Government Agencies of NTL's that were current and effective as of June 1, 1989, in each OCS Region. If an NTL issued before June 1, 1989, is not included in this listing, it is hereby canceled and no longer in effect.

ADDRESSES: Requests to obtain a copy of an NTL should be directed in writing or by telephone to the Regional Director at the following appropriate address:

Alaska OCS Region, 949 East 36th Avenue, Room 110, Anchorage, AK 99508–4302—(907) 261–4010
Atlantic OCS Region, 381 Elden Street, Herndon, VA 22070—(703) 787–1110
Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, LA 70123–2394—(504) 736–2589
Pacific OCS Region, 1340 West 6th Street, Suite 244, Los Angeles, CA 90017—(213) 894–2048

FOR FURTHER INFORMATION CONTACT: Chief, Offshore Rules and Operations Division, Minerals Management Service, telephone (703) 787–1598 or FTS 393–1598.

SUPPLEMENTARY INFORMATION: The current NTL's for each OSC Region are as follows:

ALASKA OCS REGION

80–1	Feb. 05, 1980	Furnishing Food, Quarters, and Transportation to USGS Personnel.
80–2	June 13, 1980	Guidelines for Preparing Outer Continental Shelf Environmental Reports. Note: See additional guidelines prepared March 30, 1982, entitled "Guidelines for Outer Continental Shelf Exploration Plans, Environmental Reports and Application for Permit to Drill Exploratory Wells."
83–5	Sept. 07, 1983	Minimum requirements, Shallow Hazards Survey.
84–4	Aug. 01, 1984	Preliminary Activities Conducted on Leased Areas; Gulf of Alaska/Cook Inlet.
85–2	Aug. 09, 1985	Preliminary Activities Conducted on Leased Areas; Bering Sea (Supersedes NTL Nos. 83–2, 83–4, and 84–1).

86–1	Feb. 20, 1986	Submission of Digitized Well Log Data on Magnetic Tape.
86–2	Jan. 15, 1987	Preliminary Activities Conducted on Leased Area; Beaufort Sea (Supersedes NTL Nos. 83–1 and 84–3).
86–3	Oct. 06, 1986	New Form for Designation of Operator (MMS Form 1123).
87–1	Nov. 30, 1987	Preliminary and Other Activities Conducted on Leased Areas; Chukchi Sea.
87–2	Dec. 10, 1987	District Office Hours and Phone Call Procedures (Supersedes NTL No. 86–5).
		ATLANTIC OCS REGION
78–9	May 04, 1979	Requirements for Submission of Digitized Well Log Data on Magnetic Tape.
	June 22, 1979	Ban on the Use of Halogenated Phenols in OCS Oil and Gas Operations. (Published in the Federal Register on July 3, 1979.)
NA80–10	May 06, 1980	Minimum Criteria for Training Programs in Fishing Industry Operations.
83–2	Sept. 07, 1983	Minimum Requirements for Site Surveys for Exploration Activities (Supersedes NTL 78–2; NTL 78–2 South Atlantic Supplement 1; and NTL 80–2).
		GULF OF MEXICO OCS REGION
72–9	Sept. 22, 1972	OCS Operations Safety Alert Notice No. 1, Flash Fire From Liquid Phase Heat Transfer Unit.
73–3	Feb. 16, 1973	The Use of Polychlorinated Biphenyls (PCB's).
74–1	Jan. 04, 1974	Applicability of OCS Orders Nos. 2 and 4 to OCS Leases Issued off the Coasts of Mississippi, Alabama, and Florida. (Note: NTL will be updated to include reference to regulations rather than OCS Orders. The intent of the NTL remains in effect.)
82–7	Aug. 13, 1982	Clarification of Requirements of Subparagraph 5.7, Safety Device Training of OCS Order No. 5, "Production Safety Systems." (Note: NTL will be updated to include reference to Subpart O of 30 CFR Part 250 when it is issued. The intent of the NTL remains in effect.)
75–3	Oct. 01, 1982—Revision No. 1.	OCS Cultural Resource Requirements for the Gulf of Mexico OCS Region (See NTL 75–3, January 20, 1975, for copy of Revision No. 1).
83–3	Sept. 07, 1983	OCS Shallow Hazards Requirements for the Gulf of Mexico OCS Region (Cancels NTL Nos. 75–8 and 80–5).
85–2	Feb. 04, 1985	Effect of Drilling "Window" Approvals.
85–5	Apr. 15, 1985	Lake Jackson District Address, Office Hours, and Phone Call Procedures (Supersedes NTL Nos. 81–11, 79–3, 78–7, 76–3, 75–5, and 74–19).
85–6	Sept. 30, 1985	Submittal of Electric, Radioactive, and Other Wellbore Surveys.
85–8	Nov. 26, 1985	Minimizing Oil and Gas Structures in the Gulf of Mexico.
86–3	May 23, 1986,	Gulf of Mexico OCS Region Relocation and Reorganization (Supersedes NTL 82–4).
86–5	June 18, 1986,	New Forms for Designation of Operator.
86–9	Oct. 13, 1986	Outer Continental Shelf Environmental Report/Information Guidelines for Plans Submitted in the Gulf of Mexico OCS Region (Supersedes NTL 80–6).
86–11	Nov. 17, 1986	Guidelines for Reducing or Eliminating Trash and Debris in the Gulf of Mexico.
87–1	July 21, 1987	Houma District Office Hours and Phone Call Procedures.
88–2	June 10, 1988	Submission of List of Safety and Pollution-Prevention Equipment.
88–3	June 29, 1988	Information to be Made Available to the Public on the Reports Required in Subpart K of 30 CFR Part 250.
88–7	Sept. 15, 1988	Reorganization of Office of Field Operations and Realignment of New District Boundaries.
88–8	Oct. 06, 1988	New Orleans District Office Hours and Phone Call Procedures.
88–10	Nov. 08, 1988	LaFayette District Office Hours and Phone Call Procedures.
88–11	Feb. 01, 1989	Implementation of Measures to Detect and Protect Deepwater Chemosynthetic Communities.
		Outer Continental Shelf Functional Responsibility of New Regulations.
89–2	Mar. 30, 1989	Special Security Handling of Well Logs and Data Generated from Oil and Gas Leases.
		PACIFIC OCS REGION
77–3	Mar. 01, 1977	Minimum Cultural Survey Requirements, OCS Exploratory Drilling.
78–1	Oct. 23, 1978	Minimum Requirements for Biological Surveys (Supersedes NTL 77–4).
80–2	Mar. 20, 1980	Minimum Requirements for Environmental Reports.
86–4	Aug. 18, 1986	New Form for Designation of Operator.
88–1	June 27, 1988	Submission of List of Safety and Pollution-Prevention Equipment.
88–2	Sept. 28, 1988	NTL's Cancellation.
88–3	Dec. 20, 1988	Ventura District Office Hours and Phone Call Procedures (Supersedes NTL 87–01).
88–5	May 05, 1989	Requirements for Exploratory Operations OCS California (Supersedes NTL 82–3).
88–6	May 05, 1989	Guidelines for Shallow Hazards Survey for OCS Exploratory Drilling (Supersedes NTL 85–01).
88–7	May 05, 1989	Guidelines for Shallow Hazards Survey for OCS Development Platforms (Supersedes NTL 85–02).
88–8	May 05, 1989	Guidelines for Shallow Hazards Survey for OCS Pipeline Routes (Supersedes NTL 85–03).
88–9	May 05, 1989	Submission of Digitized Well Log Data on Magnetic Tape (Supersedes NTL 86–01).
89–01	Apr. 12, 1989	Santa Maria District Office Hours and Phone Call Procedures.

An updated NTL List will be published annually in the **Federal Register.**

Dated: June 1, 1989.

William D. Bettenberg,

Associate Director for Offshore Mineral Management.

[FR Doc. 89–15131 Filed 6–26–89; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nomination for the following properties being considered for listing in the National Register were received by the National Park Service before June 17, 1989. Pursuant to section 60. 13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by July 12, 1989.

Carol D. Shull,

Chief of Registration, National Register.

ARIZONA

Yavapai County

Mayer Apartments, Central Ave. SW of Ash St., Mayer, 89000860
Mayer Business Block, Oak St. and Central Ave., Mayer, 89000859

CALIFORNIA

Alameda County

Loring House, 1730 Spruce St., Berkeley, 89000857

Humboldt County

Andereasen, F.W.—John Rossen House, Port Kenyon Rd. and Bush St., Ferndale vicinity, 89000855

Los Angeles County

Lincoln, Abraham, Elementary School, 1200 M. Gordon Ave., Pomona, 89000935
Pacific Electric Railroad Bridge, Torrance Blvd. and Bow St., Torrance, 89000854

Santa Cruz County

Bockius, Godfrey M., House, 322 E. Beach St., Watsonville, 89000937

COLORADO

Pitkin County

Osgood Gamekeeper's Lodge (Redstone MPS), 18679 CO 133, Redstone, 89000933
Redstone Historic District (Redstone MPS) Roughly along the Crystal River from Hawk Creek to 226 Redstone Blvd., Redstone, 89000934

CONNECTICUT

Fairfield County

Cos Cob Railroad Station, 55 Station Dr., Greenwich vicinity, 89000928
Fairfield Railroad Stations, Carter Henry Dr., Fairfield vicinity, 89000926
Sound Beach Railroad Station, 160 Sound Beach Ave., Greenwich vicinity, 89000929
Southport Railroad Stations, 96 Station St. and 100 Center St., Fairfield, 89000927

Hartford County

Worthington Ridge Historic District, Roughly Worthington Ridge from Mill St. to Sunset Ln., Berlin, 89000925

FLORIDA

Dade County

Venetian Causeway, NE. 15th St. and Dade Blvd., Miami, 89000852

Liberty County

Hare, Otis, Archelological Site (8LI172), Address Restricted, Blountstown vicinity, 89000862

GEORGIA

Douglas County

Douglasville Commercial Historic District, Roughly bounded by Broad St., Adair St., Church St., and Club Dr., Douglasville, 89000850

Fulton County

Home Park School, 1031 State St., NW., Atlanta, 89000851

IOWA

Jasper County

Bergman, August H., House (Architectural Legacy of Proudfoot and Bird in Iowa, 1882–1940 MPS), 629 First Ave. E., Newton, 89000856

MAINE

Androscoggin County

Free Baptist Church, Riverside Dr., Auburn, 89000843
Lamoreau Site, Address Restricted, Auburn vicinity, 89000837
St. Joseph's Catholic Church, 253 Main St., Lewiston, 89000845

Aroostook County

Larsson—Noak Historic District, Station Rd. NE of New Sweden, New Sweden vicinity, 89000847

Cumberland County

Dunstan Methodist Episcopal Church, US 1, Starborough, 89000839

Franklin County

Rangeley Trust Company Building, Main St., Rangeley, 89000846
Union Church, Main and Pleasant Sts., Phillips, 89000844

Lincoln County

Hinton, Anne, Site, Address Restricted, Newcastle vicinity, 89000838

Penobscot County

Milford Congregational Church, Main and Perry Sts., Milford, 89000841

Sagadahoc County

Donnell, William T., House, 279 Washington St., Bath, 89000340
Purinton Family Farm, 65 Elm St., Topsham, 89000842

MINNESOTA

St. Louis County

WILLIAM A. IRUIN (freighter), Minnesota Slip, Duluth Harbor, Duluth 89000858

MISSISSIPPI

Lauderdale County

Meridian Waterworks Pumping Station and Clear Water Basin (Meridian MRA), B St. and 17th Ave., Meridian, 89000931

MISSOURI

Greene County

Mid-Town Historic District, Roughly bounded by Pacific, Clay, Pythian, Summit, Calhoun, Washington, Central, Benton, Division, and Jefferson, Springfield, 89000938

NORTH CAROLINA

Buncombe County

Guastavino, Rafael, Sr., Estate, NC 9, 0.8 mi. S of jct. with SR 2713, Black Mountain vicinity 89000849

OKLAHOMA

Garfield County

Jackson School, 415 E. Illinois, Enid, 89000848

OREGON

Linn County

Fields, Hugh, House, 36176 OR 228, Brownsville vicinity, 89000853

SOUTH DAKOTA

Beadle County

Grace Episcopal Church, Fourth St. and Kansas Ave., SE., Huron, 89000828

Codington County

Hanson, Mels M., Farmstead, 4 mi. N of Henry, Henry vicinity, 89000831
Watertown Commercial Historic District, Roughly bounded by First Ave. N., Third St., E., Second Ave. S., and First St. W., Jefferson, 89000834
Watertown Light and Power Company Plant, 524 W. Kemp St., Watertown, 89000830

Corson County

Harding Schoolhouse, 5.5 mi. NW of Trail City, Trail City vicinity, 89000832

Lawrence County

Dickey, Eleazer C. and Guinnie, House, 735 Eighth St., Spearfish, 89000824
Driskill, William D., House, 335 Canyon St., Spearfish, 89000822
Knight, Webb S., House, 514 Seventh St., Spearfish, 89000823
Riley, Almira, House, 938 Ames, Spearfish, 89000825
Uhlig, OTto L., House, 230 Jackson, Spearfish, 89000827
Walters, Benjamin F., House, 740 Seventh St., Spearfish, 89000826

Roberts County

New Effington Hospital, Oddin Ave., New Effington, 89000829

Union County

St. Peter's Catholic Church, 400 Main St., Jerrerson, 89000833

TENNESSEE

Blount County

Alcoa West Plant Office (Blount County MPS), Lodge St., Alcoa, 89000863
Alexander, John, House (Blount County MPS), 714 Hillside Ave., Maryville, 89000864
Alumni Gym (Blount County MPS), Maryville College campus, Maryville, 89000865
Bartlett, Peter, House (Blount County MPS), 315 High St., Maryville, 89000866
Bethlehem Methodist Church (Blount County MPS), Bethlehem Rd., 0.5 mi. S of Ellejoy Rd., Wildwood vicinity, 89000867
Brick Mill Site (Blount County MPS), Brick Mill Rd., Maryville vicinity, 89000868
Brickey, Peter, House (Blount County MPS), Wears Valley Rd., 0.1 mi. W of Bonner Hollow Rd., Townsend vicinity, 89000869
Clark, Langston, Barn (Blount County MPS), Sixmile Rd., 0.4 mi. E of Knob Creek Rd., Maryville vicinity, 89000870
Clover Hill Mill (Blount County MPS), Jct. of Mill Rd. and Clover Hill Rd., Maryville vicinity, 89000871
Cloyd's Creek Presbyterian Church (Blount County MPS), Jct. of Buzzard's Roost Rd. and Kirk Rd., Friendsville vicinity, 89000873
Cochrane, Mary, Barn (Blount County MPS), Binfield Rd., 0.2 mi. N of Clover Hill Rd., Maryville vicinity, 89000872
Craig, John J., Quarry Historic District (Blount County MPS), Marmor Rd., 0.5 mi. S of Miser Station Rd., Friendsville vicinity, 89000874
Crawford, Gideon, House (Blount County MPS), Maryville College campus, Maryville, 89000875
Davis, James R., House (Blount County MPS), Jct. of River Rd. and Davis Ford Rd., Walland vicinity, 89000876
Fisher, A.J., House (Blount County MPS), Old Walland Hwy., Walland, 89000877
Frazier, Samuel, House (Blount County MPS), Jct. of Marble Hill Rd. and Big Springs Rd., Friendsville vicinity, 89000878
Friends Church (Blount County MPS), 314 W. Broadway, Maryville, 89000879
Gillespie, James, House (Blount County MPS), Lowes Ferry Rd., 1 mi. N of Louisville, Louisville vicinity, 89000880
Hackney, John, House (Blount County MPS), Front and Main Sts., Friendsville, 89000881
Hackney, John, Mill Site (Blount County MPS), Main St. near Front St., Friendsville, 89000882
Hamil, Alexander, House (Blount County MPS), Morganton Rd., 0.5 mi. E of Clover Hill Rd., Maryville vicinity, 89000883
Happy Valley School (Blount County MPS), Happy Valley Rd., Maryville vicinity, 89000884
Harper Memorial Library (Blount County MPS), 300 E. Church St., Maryville, 89000885
Henderson, William, House (Blount County MPS), Louisville Rd., 0.75 mi. S of Lowes Ferry Rd., Louisville vicinity, 89000886
Hood, Pete, House (Blount County MPS), 827 W. Broadway, Maryville, 89000888
Jones, David, House (Blount County MPS), 404 High St., Maryville, 89000889
Kerr, Macklin, House (Blount County MPS), Big Gully Rd., 0.3 mi. N of Kyker Rd., Maryville vicinity, 89000889
Kizer, Hezekiah, House (Blount County MPS), 0.5 mi. S of jct. of Marble Hill Rd. and Dunlap Hollow Rd., Maryville vicinity, 89000892
Martin, James, House (Blount County MPS), Martin Rd., 1 mi. E of East Millers Cove Rd., Walland vicinity, 89000893
Martin, John, Mill (Blount County MPS), Mill Rd., 0.3 mi. S of W. Millers Cove Rd., Walland vicinity, 89000894
Martin, Warner, House (Blount County MPS), Central Point Rd. at Old Nails Creek, Rockford vicinity, 89000895
McCampbell, James, Barn (Blount County MPS), Old Cades Cove Rd., 0.1 mi. S of Dry Valley Rd., Townsend vicinity, 89000896
McCampbell, Minnis Barn (Blount County MPS), Old Cades Cove Rd., 0.1 mi. S of Dry Valley Rd., Townsend vicinity, 89000897
McConnell, John, House (Blount County MPS), McConnell Rd., 0.5 mi. W of Maple Lane Rd., Maryville vicinity, 89000898
McCullock, Thomas, House (Blount County MPS), Jct. of Martin Mill Pike and IN 33, Rockford vicinity, 89000899
McNutt—Howard House (Blount County MPS), 825 W. Broadway Ave., Maryville, 89000900
McNutt—McReynolds House (Blount County MPS), 803 W. Broadway Ave., Maryville, 89000901
Miser Station Store (Blount County MPS), Jct. of Union Grove Rd. and Chestnut Hill Rd., Friendsville vicinity, 89000902
Montgomery, James, House (Blount County MPS), Tomotley Rd., 0.2 mi. S of Trigonia Rd., Maryville vicinity, 89000903
Morningside (Blount County MPS), Maryville College campus, Maryville, 89000904
Patton, Samuel A., Building (Blount County MPS), 114 E. Broadway Ave., Maryville, 89000905
Peery Mill Site (Blount County MPS), Old Walland Hwy, 0.1 mi. N of Cold Springs Rd., Walland vicinity, 89000887
People's Bank of Friendsville (Blount County MPS), College St., Friendsville, 89000906
Pistol Creek Dam and Mill Race (Blount County MPS), Pistol Creek between Church Ave. and Ellis St., Maryville, 89000907
Porter, Stephen, House (Blount County MPS), Martin Mill Pike, 0.2 mi. W of Glover Rd., Rockford vicinity, 89000908
Rorex, John M., House (Blount County MPS), Jct. of Brick Mill Rd. and Old Miles Ferry Rd., Maryville vicinity, 89000909
Shea, John F., House (Blount County MPS), Old Walland Hwy., Townsend, 89000910
Southern Railroad Bridge (Blount County MPS), Southern Railroad right-of-way over Little River, Rockford vicinity, 89000911
Southern Railroad Freight Depot (Blount County MPS), Southern Railroad right-of-way between Sevierville Rd. and Washington Ave., Maryville, 89000912
Stevenson, Dr. William P., House (Blount County MPS), Maryville College campus, Maryville, 89000913
Trundle, Carl., Barn (Blount County MPS), Jct. Wildwood Rd. and US 411, Wildwood vicinity, 89000890
Vineyard, Tobler. House (Blount County MPS), Hollybrook Rd., 1 mi. N of Martin Mill Pike, Rockford vicinity, 89000914
Walland Bridge (Blount County MPS), Old Walland Rd. over Little River, Walland, 89000915
Walland Power Plant (Blount County MPS), Old Walland Hwy., 0.75 mi. N of Walland, Walland vicinity, 89000916
Warren, Marcus, House (Blount County MPS), Miser Station Rd., 0.2 mi. S of Middle Settlement Rd., Louisville vicinity, 89000917
White's Mill (Blount County MPS), Old White's Mill Rd., Maryville vicinity, 89000918
Willard—Clark House (Blount County MPS), 1125 Broadway, Maryville 89000919
Yearout, Isacc, House (Blount County MPS), Big Springs Rd., 0.3 mi. M of Morganton Rd., Alcoa vicinity, 89000920

Hamilton County

Glenwood Historic District, Roughly bounded by Parkwood Dr., Glenwood Dr., Oak St., and Derby St., Chattanooga, 89000861

VIRGINIA

Arlington County

Pentagon Office Building Complex, Jefferson Davis Hwy./VA 110 at I-395, Arlington, 89000932

[FR Doc. 89-15052 Filed 6-26-89; 8:45 am]
BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-6 (Sub 310X)]

Burlington Northern Railroad Co.—Abandonment Exemption—in Denver County, CO

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 3.26-mile line of railroad between milepost 0.45 near 6th Avenue and milepost 3.71 near Prospect Junction (Denver West Side Line), in Denver County, CO.

Applicant has certified that: (1) No local or overhead 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 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, any 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 July 27, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by July 7, 1989.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by July 17, 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: Steven A. Brigance, Burlington Northern Railroad Company, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102.

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 June 30, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Acting Chief, SEE at (202) 275-7684. 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: June 20, 1989.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-15180 Filed 6-26-89; 8:45 am]

BILLING CODE 7035-01-M

[1] 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.

[2] *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).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

[Docket No. AB-321X]

Kansas City Public Service Freight Operation—Exemption—Abandonment in Jackson County, MO; Exemption

Kansas City Area Transportation Authority (Transportation Authority) and Kansas City Public Service Freight Operation (Freight Operation) have filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances* to abandon and/or discontinue service [1] over a 7.4-mile line of railroad between milepost 7.40 and milepost 0.00 in Kansas City, Jackson County, MO.

Applicants have 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 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. The circumstances surrounding the abandonment of this line are unusual. This Commission had previously authorized the abandonment of this line by its then owner, Freight Operation, in *Modern Handcraft, Inc.—Abandonment*, 363 I.C.C. 969 (1981) on petition by an adjacent property owner, and by its current owner, the Trasnportation Authority. We noted: "Although it is true that the grant of an abandonment application is permissive and the railroad can choose not to surrender its common carrier status and obligations, a certificate of abandonment is evidence in any court proceeding that the line is not required by the public for rail operations." 366 I.C.C. at 972. The Transportation Authority, which joined in Modern Handcraft's abandonment application to permit the line to be condemned, did not pursue condemnation. Rather, it acquired the line form Freight Operation. Thus Transportation Authority, applicant herein, states that the abandonment authorized by the Commission has not been consummated, despite a long and continuous cessation of service, and that this agency retains jurisdiction to issue this notice. Applicants also state that this class exemption presupposes the retention of Commission jurisdiction over lines which have been out of service for a long time.

Applicants have set forth a basis for Commission jurisdiction to issue this notice. Due to the unusual circumstances of this case, however, we will require applicants to serve a copy of this **Federal Register** notice on all adjacent landowners known to hold, or known to claim to hold, reversionary interests in the right of way.

The Transportation Authority also requests issuance of a Notice of Interim Trail Use or Abandonment (NITU). It indicates its willingness to assume financial responsibility for interim trails use and rail banking under the National Trails System Act, 16 U.S.C. 1247(d), and the corresponding regulations at 49 CFR 1152.29. We have authority to impose a NITU where discontinuance of operations rather than abandonment is involved. *See Vermont & VT RY—Discontinuance—Crittenden Co., VT*, 3 I.C.C.2d 903 (1987). However, offers of financial assistance under 49 U.S.C. 10905 take priority over interim trail use conditions. Since this notice involves only a discontinuance, there can be no offer to acquire the line. A request could be filed to subsidize the existing operator, however. Therefore, we will not issue a NITU until the time for filing offers of financial assistance has expired, or until it is clear that the line will not be subsidized under the financial assistance procedures. Moreover, other parties are not foreclosed form filing requests for interim trail use within 10 days after publication of this notice of exemption.

[1] The Transportation Authority claims ownership of the line, and Freight Operation claims trackage rights over the line. Under Pub. L. 89-599, in which the United States assented to the creation of the Transportation Authority by the States of Missouri and Kansas, the Transportation Authority was exempted from the applicability of the provisions of the Interstate Commerce Act and rules, regulations, and orders promulgated thereunder. The Transportation Authority is beyond our jurisdiction and may abandon this track without our authority. We will treat the notice as a request for discontinuance of the trackage rights operations only.

The Commission will also accept a late-filed trail use statement so long as it retains jurisdiction to do so.

Employee protective conditions will not be imposed because the discontinuance of operations over this line is equivalent to discontinuance of the entire operations of Freight Operation.[2]

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on July 27, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[3] formal expressions of intent to file an offer or financial assistance under 49 CFR 1152.27(c)(2)[4] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by July 7, 1989. Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by July 17, 1989. Any such petition must be filed 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 representatives: L. John Osborn, Verner, Liipfert, Bernhard, McPherson and Hand, 901 15th Street, NW., Suite 700, Washington, DC 20005–2301; and Jerome D. Riffel, Lathrop Koontz & Norquist, Twenty-Sixth Floor, Mutual Benefit Life Building, 2345 Grand Avenue, Kansas City, MO 64108.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicants have 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 June 30, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Acting Chief, SEE at (202) 275–7684. 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: June 22, 1989.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89–15266 Filed 6–26–89; 8:45 am]

BILLING CODE 7035–01–M

[2] *See Modern Handcraft, Inc.—Abandonment*, 363 I.C.C. 969, 973 (1981), and cases cited thereunder.

[3] 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.

[4] *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).

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(h)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on May 17, 1989, Research Diagnostics, Inc., Attn: Bret G. Wien, President, Pleasant Hill Road, Flanders, New Jersey 07836, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Alfentanil (9737)	II
Fentanyl (9801)	II
Sufentanil (9740)	II

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than (30 days from publication).

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42(b), (c), (d), (e) and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42(a), (b), (c), (d), (e) and (f) are satisfied.

Dated: June 20, 1989.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 89–15082 Filed 6–26–89; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping Reporting Requirements Under Review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in. Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523–6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503, (Telephone (202) 395–6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New Collection

Bureau of Labor Statistics
Permanent Mass Layoff and Plant Closing Program
State Operations Review
Biennially
State or local governments
51 responses; 1,632 hours; 32 hours per response; 1 form
The PMLPC State Operations Review is the principal source of information concerning State procedures used in the production of PMLPC data and their adherence to BLS program specifications. It is designed to examine each aspect of data production and provide documentation which can be used in future program analyses.

Extension

Bureau of Labor Statistics
Report on Occupational Employment
1220–0042; BLS–2877
Annually
State or Local Governments: Businesses or other for-profit; Non-profit institutions; Small businesses or organizations 240,375 respondents; 120,188 hours; 30 minutes per response;
32 forms
The OES Survey program is a Federal/State sample survey of employment by occupation in non-farm establishments that is used to produce data on current occupational employment and is a component in the development of employment and training programs and occupational information systems.

Extension

Employment Standards Administration
29 CFR Part 575—Waiver of Child Labor Provisions for Agricultural Employment of 10 and 11-year-old Minors in Hand Harvesting of Short Season Crops
1215–0120; FLSA 575
On occasion
Farms
1 respondent; 4 total hours; 4 hours per response
Agricultural employers are required to supply certain information to DOL when applying for a waiver of the FLSA child labor provisions to employ 10 and 11-year-olds in hand harvesting of short season crops. Agricultural employers granted waivers are required to maintain certain records regarding compliance with the waiver.

Extension

Mine Safety and Health Administration
Application for Waiver of Surface Facilities Requirement
1219–0024
On occasion
Businesses or other for profit; small businesses or organizations 1,730 respondents; 30 minutes per response; 865 total burden hours
Coal mine operators are required to provide bathing facilities, clothing change rooms, and sanitary flush toilet facilities in a location that is convenient for use of the miners. Regulations provide procedures by which an operator may apply for and be granted a waiver.

Extension

Employment and Training Administration
Service Delivery Area Job Training or Modification or Plan Revocation Appeals
1205–0208
On occasion
State or local governments
25 respondents; 50 total hours; 2 hrs. per response; no forms
The information collected will be used to determine whether the SDA Job Training Plan or Modification or the Plan Revocation disapprovals are in conformance with the Job Training Partnership Act (JTPA).

Signed at Washington, DC this 21st day of June, 1989.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 89–15163 Filed 6–26–89; 8:45 am]

BILLING CODE 4510–24–M

Employment and Training Administration

[TA–W–22,561]

Bates Fabrics, Inc., Lewiston, ME; Affirmative Determination Regarding Application for Reconsideration

The New England Regional Joint Board of the Amalgamated Clothing and Textile Workers Union requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for Workers and former workers of Bates Fabrics, Inc., Lewiston, Maine. The negative determination was issued on May 5, 1989.

The union claims that an entire department (Yarn Mill) was permanently closed as a result of the company imports of yarn.

Conclusion

After careful review of the application, I conclude that the claims are of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC this 19th day of June 1989.

Barbara Ann Farmer,

Director, Office of Program Management, UIS.

[FR Doc. 89–15164 Filed 6–26–89; 8:45 am]

BILLING CODE 4510–30–M

Dresser Industries, Incorporated, Guiberson Division; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In the matter of TA–W–22,355, Houston, Texas; TA–W–22,394, Dallas, Texas; TA–W–22,394A, all other locations in Texas; TA–W–22,394B, all locations in Wyoming; TA–W–22,394C, all locations in Illinois; TA–W–22,394D, all locations in Kansas; TA–W–22,394E, all locations in Louisiana; TA–W–22,394F, all locations in Oklahoma; TA–W–22,394G, all locations in New Mexico; TA–W–

22,394H, all locations in California; TA-W-22,394I, all locations in Alaska.

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 10, 1989 applicable to all workers of the Guiberson Division of Dresser Industries, Inc. The certification was amended on May 5, 1989 and on June 9, 1989 to include locations in additional States.

Information from the company was submitted that shows worker separations from the instant firm at Houston, Texas a few weeks prior to the August 1, 1988 impact date set in the certification.

The notice, therefore, is amended by including an impact date of June 1, 1988 for workers of the Guiberson Division of Dresser Industries, Houston, Texas.

The amended notice applicable to TA-W-22,355 and TA-W-22,394 is hereby issued as follows:

All workers of the Guiberson Division of Dresser Industries, Inc., in Houston, Texas who became totally or partially separated from employment on or after June 1, 1988 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974 and all workers of the Guiberson Division of Dresser Industries, Inc., Dallas, Texas and in all other locations of Texas and in all locations in the States of Wyoming, Illinois, Kansas, Louisiana, Oklahoma, New Mexico, California and Alaska who became totally or partially separated from employment on or after August 1, 1988 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 20th day of June 1989.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89-15161 Filed 6-26-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-21,452]

Marine Drilling Co., Corpus Christi, Texas et al.; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In the matter of TA-W-21,452A, Operating at Various Other Locations, in the State of Texas, TA-W-21,452B, Operating at Various Locations in the State of Louisiana

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certificate of Eligibility to Apply for Worker Adjustment Assistance on December 20, 1988 applicable to all workers of Marine Drilling Company, Corpus Christi, Texas and in other locations in the State of Texas.

Based on new information from the company, additional workers were separated from Marine Drilling in the State of Louisiana. The notice therefore, is amended by including all locations of Marine Drilling in the State of Louisiana.

The amended notice applicable to TA-W-21,452 is hereby issued as follows:

All workers of Marine Drilling Company, Corpus Christi, Texas and in all other locations of Texas and all locations in the State of Louisiana who became totally or partially separated from employment on or after October 1, 1985 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 20th day of June 1989.

Stephen A. Wandner,

Deputy Director, Office of Legislative and Actuarial Services, UIS.

[FR Doc. 89-15162 Filed 6-26-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-22,828]

Petromar Corp., Rockport, TX; Negative Determination Regarding Application for Reconsideration

By an application dated May 31, 1989 the company requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on May 10, 1989 and will be published soon in the **Federal Register.**

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances;

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The company claims that the Department is inconsistent in denying certification for workers at Petromar while certifying workers for Tenneco Management and Tenneco Realty.

Petromar Corporation provided administrative activities and management services to affiliated firms engaged in transportation services to unaffiliated producers of petroleum products.

The Department's denial was based on the fact that the workers do not produce an article within the meaning of section 222(3) of the Trade Act. This was addressed in the Department's notice of negative determination. However, worker groups providing a service may be certified eligible for trade adjustment assistance if their layoffs were caused importantly by a reduced demand for their services from a production facility of a parent firm or a firm otherwise related by ownership or control whose workers independently meet the statutory criteria for certification. These conditions were not met for workers of Petromar.

Workers at Tenneco Management (TA-W-22,551) and Tenneco Realty (TA-W-22,554) were certified because their layoffs were directly related to a reduced demand for their services from Tenneco Oil Exploration and Production and Tenneco Oil Processing and Marketing whose workers independently met the worker group criteria for certification under (TA-W-22,187-96 and TA-W-22,552A-E), respectively.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law of the facts which would justify reconsiderable of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 20th day of June 1989.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89-15165 Filed 6-26-89; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-89-90-C]

Drummond Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Drummond Company, Inc., P.O. Box 10246, Birmingham, Alabama 35202 has filed a peition to modify the application of 30 CFR 75.313 (methane monitor) to its Bibby Mine (I.D. No. 01-02776) located in Jefferson County, Alabama. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on electric face cutting equipment, continuous mining machines, longwall face equipment and loading

machines. The monitor is required to be properly maintained and frequently tested.

2. Petitioner presently operates the continuous miner by radio remote control and utilizes flooded-bed scrubbers.

3. The mine is located above the water table and there has been no methane detected.

4. In lieu of providing and maintaining a machine-mounted methane monitor on the continuous miner, petitioner proposes the following:

(a) A permissible hand-held (MX-240) combination methane and continuous oxygen detection instrument, or comparable device, would at all times be in possession of the continuous miner operator or helper while the miner is being operated in the working place;

(b) Each miner required to use the detector would be trained and would be made qualified in its use;

(c) Each detector would be inspected daily and calibrated at not less than 30 day intervals by a qualified person experienced in maintenance and calibration procedures; and

(d) An extra detector would be maintained available on the working section at all times during production shifts.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 27, 1989. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Dated: June 21, 1989.

[FR Doc. 89-15157 Filed 6-26-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-87-C]

McElroy Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

McElroy Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.1403-5(g) (belt conveyors) to its McElroy Mine (I.D. No. 46-01437) located in Marshall County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a clear travelway at least 24 inches wide be provided on both sides of all belt conveyors.

2. With the longwall installations at the mine, a monorail cable handling system will be used to handle the electrical cable, water line and other cables, and will be installed on the tight side of the longwall belt conveyor.

3. In lieu of providing a clear travelway of at least 24 inches wide on both sidses of all belt conveyors, petitioner proposes the following procedures:

(a) Signs would be kept posted at the outby end and at all crosscuts leading into the monorail area informing miners not to enter the area of the monorail system for any purpose until the conveyor is deenergized;

(b) At the beginning of each production shift after the conveyor has been deenergized, a thorough examination of the monorail area would be performed by a certified person. Any coal spillage or sloughage material between the belt conveyor and solid rib would be removed. Belt rollers would be examined and replaced as needed. A rcord of the examination, including date, time ands corrective actions taken would be recorded in a ledger book located at the headgate and would be made available to interested parties;

(c) Any hazardous conditions encountered during the shift would be corrected immediately. A record of such occurrences and corrective actions would also be listed in the ledger book;

(d) All persons who are required to work in the longwall area would be trained in the proper procedures required to walk or work on the tight side of the belt in the affected area;

(e) A belt crossover would be provided and maintained immediately outby the monorail system; and

(f) Remote control (start/stop) switches would be provided on both sides of the conveyor at the outby end of the monorail system.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 27, 1989. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: June 16, 1989.

[FR Doc. 89-15158 Filed 6-26-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-92-C]

Peabody Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Peabody Coal Company, 301 North Memorial Drive, P.O. Box 373, St. Louis, Missouri 63166 has filed a petition to modify the application of 30 CFR 75.303 (preshift examination) to its Martwick Mine (I.D. No. 15-14074) located in Muhlenberg 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 belt conveyors on which coal is carried be examined after each coal producing shift has begun.

2. As an alternate method, petitioner proposes to examine the belts beginning at 6:00 a.m. and continuing through to the first shift, thereby eliminating the need to walk the belts at both midnight and 8:00 a.m.

3. In support of this request, petitioner states that—

(a) The belts don't begin to run until after 6:00 a.m., which is six hours after the midnight shift begins;

(b) The belts are only used to remove scoopings which contain coal and rock;

(c) No coal is mined on the midnight shift; and

(d) It takes a full shift to walk the entire belt system at the mine.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or

received in that office on or before July 27, 1989. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Dated: June 16, 1989.

[FR Doc. 89-15159 Filed 6-26-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-81-C]

The Pittsburg and Midway Coal Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

The Pittsburg & Midway Coal Mining Company, 6400 South Fiddler's Green Circle, Englewood, Colorado 80111 has filed a petition to modify the application of 30 CFR 75.807 (installation of high-voltage transmission cables) to its North River No. 1 Mine (I.D. No. 01-00759) located in Fayette County, Alabama. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that all underground high-voltage transmission cables be guarded where persons regularly work or pass under them unless they are 6½ feet or more above the floor or rail.

2. As an alternate method to guarding such cables, petitioner proposes to use mine power feeder (MPF) cables with improved characteristics of insulation, jacketing, and shielding which are detailed in the petition.

3. The MPF cable would incorporate a neutral resistance grounding system which would automatically limit touch potential to 100 volts under fault conditions, thereby eliminating the possibility of exposing miners to fatal shocks.

4. The system would also incorporate a fail safe ground check circuit.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the Standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 27, 1989. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: June 16, 1989.

[FR Doc. 89-15160 Filed 6-26-89; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of the Humanities Panel

AGENCY: National Endowment for the Humanities, NFAH.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone 202/786-0322.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or (3) information the disclosure of which would significantly frustrate implementation of proposed agency action, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

1. *Date:* July 10, 1989.
   Time: 8:30 a.m. to 5:00 p.m.
   Room: 415.
   Program: This meeting will review applications submitted to the Humanities Projects in Museums and Historical Organizations program, Division of General Programs, for projects beginning after September 1, 1989.

2. *Date:* July 13-14, 1989.
   Time: 8:30 a.m. to 5:00 p.m.
   Room: 415.
   Program: This meeting will review applications submitted to the Humanities Projects in Museums and Historical Organizations program, Division of General Programs, for projects beginning after September 1, 1989.

3. *Date:* July 20-21, 1989.
   Time: 8:30 a.m. to 5:00 p.m.
   Room: 415.
   Program: This meeting will review applications submitted to the Humanities Projects in Museums and Historical Organizations programs, Division of General Programs, for projects beginning after September 1, 1989.

4. *Date:* July 27-28, 1989.
   Time: 8:30 a.m. to 5:00 p.m.
   Room: 415.
   Program: This meeting will review applications submitted to the Humanities Projects in Museums and Historical Organizations programs, Division of General Programs, for projects beginning after September 1, 1989.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 89-15171 Filed 6-26-89; 8:45 am]

BILLING CODE 7536-01-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* 10 CFR Part 61—Licensing Requirements for Land Disposal of Radioactive Waste.

3. *The form number if applicable:* Not applicable.

4. *How often the collection is required:* Applications for licenses are submitted once. Applications for renewals or amendments are submitted as needed. Other reports are submitted annually and as other events require.

5. *Who will be required or asked to report:* Applicants for and holders of an NRC license for land disposal of low-level radioactive waste.

6. *An estimate of the number of responses:* 98.

7. *An estimate of the total number of hours needed to complete the requirement or request:* The average burden is estimated to be approximately 164 hours per response, and 2,080 recordkeeping hours per licensee annually. The total industry burden is estimated to be 20,274 hours annually.

8. *An indication of whether section 3504(h), Pub. L. 96–511 applies:* Not applicable.

9. *Abstract:* 10 CFR Part 61 establishes the procedures, criteria, and license terms and conditions for the land disposal of low-level radioactive waste. The information collected in the applications, reports and records is evaluated by the NRC to ensure that the licensee's or applicant's physical plant, equipment, organization, training, experience, procedures and plans provide an adequate level of protection of public health and safety, common defense and security, and the environment.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW., Washington, DC.

Comments and questions may be directed by mail to the OMB reviewer: Nicolas B. Garcia, Paperwork Reduction Project (3150–0135), Office of Management and Budget, Washington, DC 20503.

Comments may also be communicated by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 19th day of June 1989.

For the Nuclear Regulatory Commission.

Joyce A. Amenta,

Designated Senior Official for Information Resources Management.

[FR Doc. 89–15156 Filed 6–26–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–10]

Commonwealth Edison Co.; Consideration of Issuance of Amendment to Facility License and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to License No. DPR–2, issued to Commonwealth Edison Company (the licensee), for the Dresden Nuclear Power Station, Unit 1 (Dresden 1) located in Grundy County, Illinois. The amendment would involve approval of the Dresden 1 Decommissioning Plan and associated Technical Specifications (TS) and the renewal of License No. DPR–2.

In October, 1978 Dresden 1 was permanently shutdown. All spent fuel has been transferred from the reactor to the spent fuel pool and License No. DPR–2 was amended to possess-but-not-operate status on July 23, 1986. This amendment would accomplish the following:

(1) Approval of the licensee's Decommissioning Plan which involves on-site storage of residual radioactivity (SAFSTOR) until about 2029 followed by facility dismantling. The licensee also proposes to retain spent fuel onsite in the spent fuel pool until a Federal repository is available for spent fuel disposal. The Decommissioning Plan analyzes the proposed monitoring, maintenance and operation of the spent fuel pool and the monitoring maintenance of the remainder of the facility. The Plan also analyzes potential accidents at the facility and the controls established for radiation protection and the prevention of the release of radioactivity from the site. A supplement to the Dresden 1 Environmental Report analyzes the environmental impacts of the SAFSTOR decommissioning option;

(2) Revision of the TS to reflect the long term storage of fuel and residual radioactivity onsite. The TS requirements would be revised to reflect the SAFSTOR status such as requirements for radiation protection, monitoring, facility maintenance and spent fuel pool operations.

(3) Deletion of certain license conditions that were applicable for reactor operations but not permanent shutown Possession-Only conditions.

(4) Renewal of License No. DPR–2 from its May 4, 1996 expiration date to April 10, 2029 to be consistent with the licensee's Decommissioning Plan which proposes a SAFSTOR period followed by facility dismantling.

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.

By July 27, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility 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 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 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 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 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 licensing action 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.

A request for a hearing or a petition for leave to intervene shall be filed with Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Section, or may be delivered to the Commission's Public Document Room, at 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 or representative for 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 Charles L. Miller: 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 Michael L. 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 or the presiding officer of the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and § 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment for Items 1, 2 and 3 above after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92. Issuance of the license renewal, Item 4, would require the completion of any required hearing regardless of the outcome of a no significant hazards consideration finding.

For further details with respect to this action, see the licensee's application dated January 7, 1986, as revised December 22, 1987, April 29, September 2 and November 21, 1988 and March 27, April 10 and May 16, 1989 which is available for public inspection at the Commission's Public Document Room at 2120 L Street, NW., Washington, DC 20555 and at the Morris Public Library, 604 Liberty Street, Morris, Illinois 60450.

Dated at Rockville, Maryland this 21st day of June 1989.

For the Nuclear Regulatory Commission.

Peter B. Erickson,

Project Manager, Standardization and Non-Power Reactor Project Directorate, Division of Reactor Projects III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-15155 Filed 6-26-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-423]

Northeast Nuclear Energy Co., Millstone Nuclear Power Station, Unit No. 3; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-49 to Northeast Nuclear Energy Company (the licensee), for Millstone Unit 3 located in the Town of Waterford, Connecticut.

Environmental Assessment

Identification of Proposed Action:

The proposed amendment would revise the provisions in the Technical Specifications (TS) relating to fuel enrichment.

The proposed action is in accordance with the licensee's application dated January 24, 1989.

The Need for the Proposed Action:

The proposed changes are needed so that the licensee can use higher enrichment fuel, and provide the flexibility of extending the fuel irradiation and permitting operation of longer fuel cycles.

Environmental Impacts of the Proposed Action:

The staff has completed its evaluation of the proposed revisions to the Technical Specifications. The proposed revision would permit use of fuel enriched with Uranium 235 up to 5.0 nominal weight percent. The expected Cycle 3 burnup is 17,000 MWD/MTU. The safety considerations associated with reactor operation with higher enrichment and extended irradiation have been evaluated by the NRC staff. The staff has concluded that such changes would not adversely affect plant safety. The proposed changes have no adverse effect on the probability of any accident. The increased burnup may slightly change the mix of fission products that might be released in the event of a serious accident but such small changes would not significantly affect the consequences of serious accidents. No changes are being made in the types or amounts of any radiological effluents that may be released offsite during normal operation. There is also no significant increase in the allowable individual or cumulative occupational radiation exposure.

With regard to potential nonradiological impacts of reactor operation with higher enrichment and extended irradiation, the proposed changes to the TS involve systems located within the restricted area as defined in 10 CFR Part 20. They do not affect nonradiological plant effluents and have no other environmental impact.

The environmental impacts of transportation resulting from the use of higher enrichment fuel and extended irradiation have been discussed in the staff assessment entitled, "NRC Assessment of the Environmental Effects of Transportation Resulting from Extended Fuel Enrichment and Irradiation," dated July 7, 1988 (53 FR 30355). As indicated therein, the environmental cost contribution of the proposed increase in the fuel enrichment and irradiation limits are either unchanged or may in fact be reduced from those summarized in Table S-4 as set forth in 10 CFR 51.52(c).

Therefore, the staff concludes that there are no significant radiological or nonradiological environmental impacts associated with the proposed amendment.

Alternative to the Proposed Action:

Since the staff concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or

greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources:

This action does not involve the use of any resources not previously considered in the "Final Environmental Statement related to the operation of Millstone Nuclear Power Station Unit No. 3" dated December 1984.

Agencies and Persons Consulted:

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The staff has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, the staff concluded that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated January 24, 1989, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Dated at Rockville, Maryland, this 20th day of June 1989.

For the Nuclear Regulatory Commission.

Alexander W. Dromerick,

Acting Director, Project Directorate I–4, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89–15151 Filed 6–26–89; 8:45 am]

BILLING CODE 7590–01–M

[Dockets Nos. 50–282 and 50–306]

Northern States Power Co.; Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–42 and DPR–60, issued to the Northern States Power Company (the licensee), for operation of the Prairie Island Nuclear Generating Plant, Units Nos. 1 and 2, located in Goodhue County, Minnesota.

In accordance with the licensee's application for amendments dated April 6, 1989, the amendments would change the fuel enrichment limits permitted in the storage pool from 3.9 wt% U–235 (39.0 gm U–235/axial cm of fuel assembly) average to 4.25 wt% U–235. The enrichment increase will result in a longer fuel cycle for the Prairie Island Nuclear Generating Plant.

Prior to issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By July 27, 1989, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses 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. 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 that are sought to be litigated in the matter and the bases for each contention set fourth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendments 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.

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, 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 Lawrence A. Yandell (petitioner's name and telephone number); (date petition was mailed); (plant name); and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

Nontimely filings 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 president 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).

If a request for hearing is received, the Commission's staff may issue the amendments after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendments dated April 6, 1989, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Dated at Rockville, Maryland, this 5th day of June 1989.

For the Nuclear Regulatory Commission.

Albert De Agazio,

Acting Director, Project Directorate III–1, Division of Reactor Projects—III, IV, V & Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89–15152 Filed 6–26–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–263]

Northern States Power Co.; Issuance of Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has issued Amendment No. 67 to Facility Operating License No. DPR–22, issued to the Northern States Power Company (the licensee), which revised the Technical Specifications for operation of the Monticello Nuclear Generating Plant, located in Wright County, Minnesota. The amendment was effective as of the date of issuance.

The amendment changed Table 3.11.1 (page 214) of the plant Technical Specifications to add a 45,000 MWD/MTU Maximum Average Planar Linear Heat Generation Rate (MAPLHGR) for fuel types P8DRB265L and BP8DRB265L in order to extend the length of the current operating cycle through to August 1989 and meet expected power demands during the peak load summer months of 1989.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings, as required by the Act and the Commissions rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on February 22, 1989 (54 FR 7621). No request for hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see (1) the application for amendment dated January 31, 1989, as supplemented by letter dated February 3, 1989; (2) Amendment No. 67 to License No. DPR–22; (3) the Commission's related Safety Evaluation and Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401. A copy of items (2), and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20055, Attention: Director, Division of Reactor Project III, IV, V & Special Projects

Dated at Rockville, Maryland, this 19th day of June 1989.

For the Nuclear Regulatory Commission.

John J. Stefano,

Project Manager, Project Directorate III–1, Division of Reactor Projects—III, IV, V & Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89–15153 Filed 6–26–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–483]

Union Electric Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–30, issued to Union Electric Company (the licensee), for operation of the Callaway Plant, located in Callaway County, Missouri.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would increase the allowed flow variations of the control room emergency ventilation system and reduce the control room pressurization requirement from ¼ inch water gauge to ⅛ inch water gauge.

The proposed action is in accordance with the licensee's application for amendment dated March 25, 1988, as supplemented by letters dated December 28, 1988 and March 31, 1989.

The Need for the Proposed Action

The proposed change to the technical specifications (TS) is necessary because of difficulties identified when verifying the capability of the emergency ventilation system to comply with the flow tolerances and pressurization level indicated in TS 3/4.7.6. This condition is caused by changes in filter loading as particulate accumulates over time.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revision to TS and finds that the resulting value of the iodine protection factor (IPF) for use in the radiological dose calculations for control room personnel is not decreased significantly with the proposed increase in flow variations and lower control room pressurization in comparison to the IPF without these changes. The staff has also calculated the potential radiation doses to control room operators following a design basis accident and finds them to be within the acceptance criteria of General Design Criterion 19 and Standard Review Plan Section 6.4. Therefore, the proposed changes do not increase the probability of consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

The Notice of Consideration of Issuance of Amendment and Opportunity for Prior Hearing in connection with this action was published in the Federal Register on May 20, 1988 (53 FR 18187). No request for hearing or petition for leave to intervene was filed following this notice.

With regard to potential nonradiological impacts, the proposed change to the TS involves systems located within the restricted area as

defined by 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Callaway Plant dated January 1982.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated March 25, 1988 and supplements dated December 28, 1988 and March 31, 1989, which are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC and at the Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251 and the John M. Olin Library, Washington University, Skinker and Lindell Boulevards, St. Louis, Missouri 63130.

Dated at Rockville, Maryland, this 16th day of June 1989.

For the Nuclear Regulatory Commission.

Timothy G. Colburn,

Acting Director, Project Directorate III–3, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89–15154 Filed 6–26–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–320–OLA (Disposal of Accident-Generated Water)]

General Public Utilities Nuclear Corp. (Three Mile Island Nuclear Station, Unit 2); Oral Argument

Notice is hereby given that, in accordance with the Appeal Board's order of June 14, 1989, oral argument on the appeal of the Susquehanna Valley Alliance and Three Mile Island Alert from the Licensing Board's February 2, 1989, initial decision authorizing an operating license amendment, LBP–89–7, 29 NRC (1989), will be heard at 2:00 p.m., Wednesday, July 26, 1989, in the NRC Public Hearing Room, Fifth Floor, East-West Towers Building, 4350 East-West Highway, Bethesda, Maryland.

For the Appeal Board.

Barbara A. Tompkins,

Secretary to the Appeal Board.

Dated: June 20, 1989.

[FR Doc. 89–15081 Filed 6–26–89; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–17018; 811–3689]

Venture Trust Tax-Free Money Market Fund; Notice of Application

DATE: June 20, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "1940 Act").

Applicant: Venture Trust Tax-Free Money Market Fund.

Relevant 1940 Act Section: Section 8(f).

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company under the 1940 Act.

Filing Date: The application on Form N–8F was filed on May 23, 1989.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 17, 1989, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 124 E. Marcy Street, Santa Fe, New Mexico 87501.

FOR FURTHER INFORMATION CONTACT: Patricia Copeland, Legal Technician, (202) 272–3009, or Brion Thompson, Branch Chief, (202) 272–3016 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. Applicant is a business trust organized under the laws of the Commonwealth of Massachusetts. Applicant is registered under the 1940 Act as an open-end, diversified management investment company. On March 19, 1983, Applicant filed a Notification of Registration pursuant to Section 8(a) of the 1940 Act on Form N–8A. On that same date, Applicant filed a registration statement under the Securities Act of 1933 on Form N–1 which was declared effective on June 10, 1983, and its initial public offering commenced.

2. On October 20, 1988, Applicant's Board of Trustees ("Board") authorized the Plan of Reorganization ("Plan") of Applicant into, Venture Trust Money Market Fund ("Venture", formerly First Trust Money Market Fund), a registered open-end management investment company (File No. 811–3076). Under the Plan, Applicant would become a new separate series portfolio of Venture by transferring its assets to Venture in return for shares of the Tax-Free Portfolio of Venture ("Tax-Free Portfolio"). On December 15, 1988, at a special meeting, Applicant's shareholders approved the Plan by a vote of a majority of its shares in accordance with the requirements of its Agreement and Declaration of Trust. In connection with such shareholder vote, the Applicant solicited proxies pursuant to a Proxy Statement sent to shareholders on or about November 11, 1988.

3. On February 1, 1989, all of Applicant's assets were transferred to the Tax-Free Portfolio of Venture at net asset value and assumption of Applicant's liabilities. On that same date, 14,192,117.648 shares of Tax-Free Portfolio, were distributed pro rata to the shareholders of the Applicant in

liquidation of their interests. After this distribution, the Applicant was left with one share outstanding owned by one shareholder, Venture Advisers, L.P., its former investment adviser and distributor. Both Applicant and the Tax-free Portfolio of Venture are money market funds which value securities on the basis of amortized costs. All securities transferred had maturities of one year or less as determined under Rule 2(a)(7) under the 1940 Act. The Tax-Free Portfolio of Venture was created initially for the purpose of this reorganization.

4. Applicant has total assets of $1.00 in cash to retain its identity as a trust and one shareholder, Venture Advisers, L.P. Expenses associated with the reorganization were paid by Applicant. Applicant is not a party to any litigation or administrative proceeding. Applicant is not engaged, nor does it propose to engage in any business activities other than those necessary to wind up its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-15179 Filed 6-26-89; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

Strategic Minerals Certification

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Department of State is considering possible revisions to the certification of strategic minerals, dated January 7, 1987 (Public Notice 997, 52 FR 4454), pursuant to Section 303(a)(2) of the Comprehensive Anti-Apartheid Act of 1986, Pub. L. 99-440, 100 Stat. 1086, as amended by H.J. Res. 756, Pub. L. 99-631, 100 Stat. 3515 ("the Act"). The Department requests written public comments not later than July 31, 1989.

FOR FURTHER INFORMATION CONTACT: John Medeiros or Jeffrey Cunningham, Office of International Commodities, (202) 647-6690, or John R. Byerly or Antonio F. Perez, Office of the Legal Adviser, (202) 647-4110, Department of State.

SUPPLEMENTARY INFORMATION: Section 303(a) of the Act prohibits the importation of articles "grown, produced, manufactured by, marketed, or otherwise exported by a parastatal organization of South Africa." Section 303(a)(2) contains an exception to this prohibition for "those strategic minerals for which the President has certified to the Congress that the quantities essential for the economy or defense of the United States are unavailable from reliable and secure suppliers." In Executive Order 12571 of October 27, 1986, 51 FR 39505 (Oct. 29, 1986), the President delegated authority to the Secretary of State, in consultation with the Secretary of Commerce and the Secretary of Defense, for determining which articles are strategic minerals within the meaning of the Act. Pursuant to this authority, the Acting Secretary of State certified the following list of strategic minerals on January 7, 1987: Andalusite; antimony; asbestos, chrysotile; chromium (includes ferrochromium); cobalt; diamonds, industrial (natural); manganese (includes ferromanganese and ferrosilicomanganese); platinum group metals; rutile (includes titanium-bearing slag); and vanadium (includes ferrovanadium).

A preliminary review of market developments, changes in consumption patterns, and other considerations which have come to the attention of the Department indicates that certain changes in the original list may be required. In particular, the Department, in consultation with other concerned Federal agencies, has under active consideration proposals for the deletion from the list of chrysotile asbestos, the substitution of type II-b diamonds for the generic category "diamonds, industrial (natural)," and the addition to the list of pyrophyllite and zirconium (including zircon sands, baddeleyite, and zirconium-bearing materials).

Changes in the certification of strategic minerals deal with a foreign affairs function of the United States and are thus excluded from the major rule procedures of Executive Order 12291 (46 FR 13193) and the procedures of 5 U.S.C. 553 and 554. In light of the desirability of obtaining the public's views, however, the Department is requesting public comments with respect to changes in the list of strategic minerals, particularly the specific changes noted above as under active consideration. Comments should address the essentiality of these materials for the national economy or the national defense and the degree and conditions of their availability from reliable and secure suppliers. All comments should be submitted in writing not later than July 31, 1989, to the Office of International Commodities (EB/ERF/ICD), Room 3425, Department of State, Washington, DC 20520-5816.

Dated: June 15, 1989

Eugene McAllister,

Assistant Secretary of State for Economic and Business Affairs

[FR Doc. 89-15132 Filed 6-26-89; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice 1113]

Delegation of Authority No. 178 Under Secretary for Economic Affairs Certifications Under 18 U.S.C. 203;

By virtue of the authority vested in me as Secretary of State, including by Sections 2656 and 2658 of Title 22 and the Note to Section 203 of Title 18 of the United States Code, I hereby delegate the functions vested in me by the Note to 18 U.S.C. 203 to the Under Secretary for Economic Affairs. The Under Secretary for Economic Affairs may redelegate this authority to the Under Secretary for Management.

May 25, 1989.

James A. Baker, III,

Secretary of State.

[FR Doc. 89-15133 Filed 6-26-89; 8:45 am]

BILLING CODE 4710-10-M

DEPARTMENT OF TRANSPORTATION

DEPARTMENT OF STATE

Statement of U.S. International Air Cargo Policy

AGENCIES: Office of the Secretary, DOT; Bureau of Economic and Business Affairs, State.

SUMMARY: This notice sets forth a final statement of U.S. international air cargo policy.

FOR FURTHER INFORMATION CONTACT: Mr. Edward P. Oppler, Office of International Aviation, Room 6402, Department of Transportation, 400 Seventh Street SW, Washington, DC 20590. Telephone (202) 366-2358.

SUPPLEMENTARY INFORMATION: This statement of U.S. international air cargo policy, which was developed jointly by the Departments of State and Transportation, sets forth objectives and guidelines for use by U.S. Government officials in carrying out U.S. air cargo policy. A proposed statement of U.S. international air cargo policy was published in the **Federal Register** on August 4, 1988 in order to provide interested persons an opportunity to comment on the proposed statement. After thorough consideration by the Departments of State and

Transportation of the comments received, the Department of Transportation, on May 10, 1989, issued Order 89-5-29 which promulgated a final statement of policy in this area. The statement that follows is that final statement.

Statement of U.S. International Air Cargo Policy

In many respects, the air cargo industry is the most dynamic and fastest changing sector of air transportation. With an increasing percentage of U.S. exports and imports moving by air, the economic importance of air cargo services is expanding rapidly. A competitive air cargo industry ensures the availability of efficient freight services to exporters and importers, stimulates new service options and promotes trade. Competitive air cargo services also provide a stimulus to airport development, regional economies, and employment and make an important contribution to the national defense through industry participation in the Civil Reserve Air Fleet (CRAF) program.

The air cargo industry involves many participants engaged in a wide variety of cargo activities. Combination carriers, all-cargo carriers, charter specialists, firms providing door-to-door service, small package specialists, freight forwarders, airport operators and shippers all play a role in this industry.

Air cargo services have specific qualities and requirements which are significantly different from the passenger market. Unlike passengers, air cargo moves in one direction only. Speed is critical to competitive air cargo services. Nonetheless, cargo is less sensitive to the number of stops made enroute, to the circuitry of the routing or to changes in aircraft.

Cargo is nonambulatory. Therefore, the movement and storage of air cargo on the ground is a necessary part of the air cargo business. With the growth of door-to-door service between the U.S. and other countries, the oportunity to establish sort centers and hubs, to operate or contract for pickup and delivery services and to perform take-offs and landings during nightime hours has become increasingly important.

In order to develop an up-to-date information base and evaluate the air cargo industry's contribution to furthering broader U.S. economic objectives, the Departments of State and Transportation undertook a comprehensive study of the international air cargo industry. The findings and conclusions of the Study were carefully considered in the course of developing this statement.

The Federal Aviation Act

U.S. international air cargo policy is based on the principles and objectives contained in sections 102(a), 102(b), 1102(b) and 1102(c) of the Federal Aviation Act (Act), as amended by the International Air Transportation Competition Act of 1979. (The texts of these sections are included as Appendix A to this statement.)

Section 102(a) identifies a variety of "Factors for Interstate, Overseas, and Foreign Air Transportation" that are to be considered as being "in the public interest" by U.S. authorities in carrying out the duties and responsibilities mandated by the Act.

Section 102(b) sets forth additional public interest factors aimed specifically at all-cargo services. The provisions of this section include the encouragement and development of an all-cargo air service system "responsive to (A) the present and future needs of shippers, (B) the commerce of the United States, and (C) the national defense * * *."

Section 1102(b), added by the International Air Transportation Competition Act of 1979, establishes specific "Goals for International Aviation Policy" which the U.S. must pursue in the conduct of its aviation relations with foreign countries. These goals, some of which are similar to the public interest factors contained in section 102(a), identify "a negotiating policy which emphasizes the greatest degree of competition that is compatible with a well-functioning international air transportation system * * *."

Section 1102(c) requires that in developing and implementing international aviation negotiating policy, the Secretaries of State and Transportation consult "to the maximum extent practicable" with interested parties including government agencies, airport operators, air carriers, airline labor and consumer interest groups.

Thus, the policy principles enunciated by the Federal Aviation Act identify broad public interest considerations to be taken into account in the conduct of U.S. international aviation affairs. These principles are designed to apply over a long period of time and to a wide variety of circumstances. Within this general framework, this statement of air cargo policy provides specific policy objectives and guidelines. This statement also takes into consideration cargo airlift needs of the U.S. military as expressed in the National Airlift Policy Statement. (See Appendix B of this statement.)

Policy Objectives

Consistent with the Federal Aviation Act, the findings of the International Air Cargo Study, and broader U.S. economic and security interests, the principal aims of U.S. air cargo policy are to ensure the provision of efficient, competitive air transport services for U.S. shippers and consignees and to seek expansion of opportunities for the U.S. international air cargo industry. An open, liberal operating environment serves this end by facilitating the establishment and expansion of efficient, innovative, competitive air cargo services.

Accordingly, the United States seeks to achieve the following specific objectives for all types of cargo services including scheduled and charter services:

1. Freedom of Carrier Entry

The U.S. seeks unrestricted entry into international air cargo markets for all types of U.S. cargo operators, including direct air carriers and freight forwarders. Elimination of restrictions on entry is critical if the shipping public is to enjoy fully the benefits of a competitive international aviation marketplace.

2. Routing Flexibility

The U.S. seeks maximum international routing flexibility for U.S. carriers so that they can serve intermediate and beyond points freely and efficiently utilize their hubs in the U.S. and abroad. The U.S. also seeks broader rights to change aircraft at any point on a route and to position aircraft in the most cost effective manner to serve markets that are directionally imbalanced. Increased routing flexibiligy expands cargo opportunities, and in some cases may be critical to the viability of a cargo operation.

3. Pricing Freedom

The U.S. seeks to establish regimes that permit airline management maximum flexibility in the setting of prices. Government intervention in air cargo pricing should be limited to exceptional cases involving unfair and/or discriminatory practices. Pricing freedom for air cargo services promotes efficiency and cost competitiveness.

4. Elimination of Restrictions on Frequency and Capacity

The U.S. seeks to eliminate governmental controls on U.S. carrier cargo capacity that restrict frequency of service, aircraft type, and/or the amount of cargo that may be carried. These restrictions impair carrier efficiency and adversely affect the availability to

shippers of competitive air cargo services.

5. Efficient Ground-Side Environment

The U.S. seeks to eliminate restrictions, impediments or unduly burdensome requirements in the ground-side environment that interfere with efficiency of service and a carrier's ability to compete effectively. Among the areas the U.S. aviation authorities examine closely are: (1) The rights of an airline to perform its own ground handling and to offer ground handling services to other airlines, (2) the availability of adequate warehouse facilities at reasonable cost, and (3) the efficiency of the clearance process.

6. Broad Intermodal Rights

The U.S. seeks broad rights for U.S. carriers and freight forwarders to move cargo by truck and other surface means. Intermodal rights have become particularly critical as air cargo systems have evolved to include door-to-door services.

7. Elimination of Discriminatory Practices

The U.S. insists on elimination of discriminatory practices in all aspects of international air cargo operations. Restrictions which result in discrimination deny carriers the fundamental right of fair competition: they will not be tolerated and may result in countermeasures.

Negotiating Guidelines

In seeking to further U.S. policy objectives through the negotiating process U.S. authorities confront conflicting interests and objectives. For example, a city's desire to stimulate its local economy and promote commerce through additional air services may conflict with the U.S. airline industry's expectation that additional route rights will be offered to the carriers of a foreign country only in the context of a balanced exchange of new opportunities. Different objectives also exist between the U.S. and its aviation partners. Most foreign countries take a more regulatory and protectionist approach to international air cargo services.

Moreover, because negotiations involve issues that are complex and technical, differences in understanding can arise at the implementation stage. To minimize the possibilty of such misunderstandings, U.S. negotiators will seek to commit agreements to writing and to define the terms of an agreement as precisely as possible.

The following guidelines are designed to assist U.S. negotiators in pursuing the above objectives:

1. Argeements and Proposals Will Be Evaluated in Terms of Actual Opportunities and Public Interest Factors

The value of air cargo opportunities granted to a country should be comparable to the value of opportunities available to U.S. interests in that country. In practice, air cargo opportunties conferred by an aviation agreement are only of value to the extent U.S. air cargo interests are able to capitalize on them. Key considerations in measuring actual opportunities available are the size of the air cargo market to be accessed through the agreement and quality of the operating environment in the foreign country. The airlines of a foreign country characterized by a restrictive operating environment should be granted less access than if its environment were more open.

U.S. aviation authorities will also take into account public interest factors in considering the value to the United States of a proposed exchange of new opportunities. Key factors include the vital importance of air services to remote locations and underutilized airports, the benefits for the local business economy of more convenient air services, and the important contribution of air cargo operators to the CRAF program.

Thus, in evaluating whether a proposed exchange would be in the overall interest of the United States, U.S. negotiators must consider a variety of factors, some of which may not be amenable to economic analysis. Certain factors, however, such as air transport revenues, are usually amendable to economic analysis. This analysis can assist U.S. negotiators in determining whether a proposed exchange is reasonably balanced. In evaluating a proposed exchange, therefore, U.S. negotiators will endeavor to estimate its economic impact.

2. Cargo Issues Merit Special Attention

Specific treatment of cargo issues in negotiations is essential. Cargo routes and routing flexibility, the pricing regime for cargo, capacity limitations (if any), the regime for cargo charters, the requirements of express traffic, and the ground-side operating environment are all matters that should be addressed. Specific treatment includes recognition of the important role combination service, including maindeck "combi" services, play in determining market shares of bilateral air cargo markets. This is particularly important in any negotiation involving a restricted cargo capacity regime.

The Government also must continue to develop expertise and commit resources to cargo issues. It must maintain a close dialogue with industry, as well as with other constitutency groups affected by air cargo operations, to ensure that air cargo issues are properly addressed.

3. A Flexible Negotiating Posture Best Serves U.S. Cargo Interests

If both the foreign government and the United States are seeking new cargo opportunities that are economically comparable, then a cargo-for-cargo exchange may represent a satisfactory exchange for the two sides. In many negotiations where the U.S. is seeking a new cargo opportunities, however, the foreign government involved is often primarily interested in obtaining new combination opportunities. In these cases, U.S. negotiators can maximize cargo benefits by negotiating agreements based on the leverage available—leverage that is a function of what the other side is seeking.

A flexible negotiating approach preserves the ability of the United States to pursue satisfactory resolution of cargo needs and issues, regardless of the particular circumstances. It should be emphasized, however, that trades between the passenger and cargo sectors will be entertained only when the U.S. Government determines such a trade to be in the overall interest of the United States.

4. Special Procedures May Be Necessary To Resolve Doing Business Problems

Regulations and policies of a foreign government that impede a carrier's ground-side operations have a serious impact on the competitiveness of that carrier's service. Such policies may interfere with the exercise of rights specifically conferred by a bilateral agreement and thus may represent a violation of that agreement. The United States is committed to seeking prompt resolution of such problems.

When a doing business issue arises, interested U.S. Government agencies involved will coordinate their actions to bring about a satisfactory resolution of the issue whether or not it involves a violation of bilateral agreement. U.S. authorities first will seek prompt resolution through diplomatic efforts including, if necessary, consultations with all foreign government agencies having relevant jurisdiction. When useful, the U.S. will seek to convene

special working groups or task forces composed of industry representatives and U.S. and foreign government officials at an appropriately responsible level.

In cases involving actual violations of bilateral agreements where solutions are not found through diplomatic consultations, it may become necessary to take countermeasures against foreign governments or airlines.

Appendix A—Excerpts From the Federal Aviation Act

Section 102(a)—Factors for Interstate, Overseas, and Foreign Air Transportation

(a) In the exercise and performance of its powers and duties under this Act, the Board [1] shall consider the following, among other things, as being in the public interest, and in accordance with the public convenience and necessity:

(1) The assignment and maintenance of safety as the highest priority in air commerce, and prior to the authorization of new air transportation services, full evaluation of the recommendations of the Secretary of Transportation on the safety implications of such new services and full evaluation of any report or recommendation submitted under section 107 of this Act.

(2) The prevention of any deterioration in established safety procedures, recognizing the clear intent, encouragement, and dedication of the Congress to the furtherance of the highest degree of safety in air transportation and air commerce, and the maintenance of the safety vigilance that has evolved within air transportation and air commerce and has come to be expected by the traveling and shipping public.

(3) The availability of a variety of adequate, economic, efficient, and low-price services by air carriers and foreign air carriers without unjust discriminations, undue preferences or advantages, or unfair or deceptive practices, the need to improve relations among, and coordinate transportation by, air carriers, and the need to encourage fair wages and equitable working conditions for air carriers.

(4) The placement of maxmium reliance on competitive market forces and on acutal and potential competition (A) to provide the needed air transportation system, and (B) to encourage efficient and well-managed carriers to earn adequate profits and to attract capital, taking account, nevertheless, of material differences, if any, which may exist between interstate and overseas air transportation on the one hand, and foreign air transportation, on the other.

(5) The development and maintenance of a sound regulatory environment which is responsive to the needs of the public and in which decisions are reached promptly in order to facilitate adaption of the air transportation system to the present and future needs of the domestic and foreign commerce of the United States, the Postal Service, and the national defense.

(6) The encouragement of air service at major urban areas in the United States through secondary or satellite airports, where consistent with regional airport plans of regional and local authorities, and when such encouragement is endorsed by appropriate State entitles encouraging such service by air carriers whose sole responsibility in any specific market is to provide service exclusively at the secondary or satellite airport, and fostering an environment which reasonably enables such carriers to establish themselves and to develop their secondary or satellite airport services.

(7) The prevention of unfair, deceptive, predatory, or anticompetitive practices in air transportation, and the avoidance of—

(A) Unreasonable industry concentration, excessive market domination, and monopoly power; and

(B) Other conditions; that would tend to allow one or more air carriers or foreign air carriers unreasonably to increase prices, reduce services, or exclude competition in air transportation.

(8) The maintenance of a comprehensive and convenient system of continuous scheduled interstate and overseas airline service for small communities and for isolated areas in the United States, with direct Federal assistance where appropriate.

(9) The encouragement, development, and maintenance of an air transportation system relying on actual and potential competition to provide efficiency, innovation, and low prices, and to determine the variety, quality, and price of air transportation services.

(10) The encouragement of entry into air transportation markets by new air carriers, the encouragement of entry into additional air transportation markets by existing air carriers, and the continued strengthening of small air carriers so as to assure a more effective, competitive airline industry.

(11) The promotion, encouragement, and development of civil aeronautics and a viable, privately owned United States air transport industry.

(12) The strengthening of the competitive position of United States air carriers to at least assure quality with foreign air carrier, including the attainment of opportunities for United States air carriers to maintain and increase their profitability, in foreign air transportation.

Section 102(b)—Factors for All-Cargo Air Service

(b) In addition to the declaration of policy set forth in subsection (a) of this section, the Board [2] in the exercise and performance of its powers and duties under this Act with respect to all-cargo service shall consider the following, among other things, as being in the public interest:

(1) The encouragement and development of an expedited all-cargo air service system, provided by private enterprise, responsive to (A) the present and future needs of shippers, (B) the commerce of the United States, and (C) the national defense.

(2) The encouragement and development of an integrated transportation system relying upon competitive market forces to determine the extent, variety, quality, and price of such services.

(3) The provision of services without unjust discriminations, undue preferences and advantages, unfair or deceptive practices, or predatory pricing.

Section 1102(b)—Goals for International Aviation Policy

(b) In formulating United States international air transportation policy, the Congress intends that the Secretary of State, the Secretary of Transportation, and the Civil Aeronautics Board [2] shall develop a negotiating policy which emphasizes the greatest degree of competition that is compatible with a well-functioning international air transportation system. This includes, among other things:

(1) The strengthening of the competitive position of United States air carriers to at least assure equality with foreign air carriers, including the attainment of opportunities for United States air carriers to maintain and increase their profitability, in foreign air transportation;

(2) Freedom of air carriers and foreign air carriers to offer fares and rates

[1] On January 1, 1985, the international functions of the Civil Aeronautics Board were transferred to the Department of Transportation. See Civil Aeronautics Board Sunset Act of 1984. Pub. L. 96-443, October 4, 1984. 40 U.S.C. 1551.

[2] See footnote 1 of this Appendix A.

which correspond with consumer demand;

(3) The fewest possible restrictions on charter air transportation;

(4) The maximum degree of multiple and permissive international authority for United States air carriers so that they will be able to respond quickly to shifts in market demand;

(5) The elimination of operational and marketing restrictions to the greatest extent possible;

(6) Te integration of domestic and international air transportation;

(7) An increase in the number of nonstop United States gateway cities;

(8) Opportunities for carriers of foreign countries to increase their access to United States points if exchanged for benefits of similar magnitude for United States carriers or the traveling public with permanent linkage between rights granted and rights given away;

(9) The elimination of discrimination and unfair competitive practices faced by United States airlines in foreign air transportation, including excessive landing and user fees, unreasonable ground handling requirements, undue restrictions on operations, prohibitions against change of gauge, and similar restrictive practices; and

(10) The promotion, encouragement, and development of civil aeronautics and a viable, privately owned United States air transport industry.

Section 1102(c)—Consultation with Affected Groups

(c) To assist in developing and implementing such an international aviation negotiating policy, the Secretaries of State and Transportation and the Civil Aeronautics Board [3] shall consult, to the maximum extent practicable, with the Secretary of Commerce, the Secretary of Defense, airport operators, scheduled air carriers, charter air carriers, airline labor, consumer interest groups, travel agents and tour organizers, and other groups, institutions, and government agencies affected by international aviation policy concerning both broad policy goals and individual negotiations.

Appendix B—National Airlift Policy Statement (National Security Decision Directive 280)

Key objectives and policies of the National Airlift Policy Statement which are significant to the U.S. international air cargo policy are as follows:

* * * The national defense airlift objective is to ensure that military and civil airlift resources will be able to meet defense mobilization and deployment requirements in support of U.S. defense and foreign policies * * *

* * * The broad purpose of this directive is to provide a framework for implementing actions in both the private and public sectors that will enable the U.S. efficiently and effectively to meet established requirements for airlift in both peacetime and in the event of crisis or war * * *

1. United States policies shall be designed to * * * enhance the mobilization base of the U.S. commercial air carrier industry * * *

* * * It is therefore the policy of the United States to recognize the interdependence of military and civilian airlift capabilities in meeting wartime airlift requirements, and to protect those national security interests contained within the commercial air carrier industry * * *

8. The Department of State and other appropriate agencies shall ensure that international agreements and federal policies and regulations governing foreign air carriers foster fair competition, safeguard important U.S. economic rights and protect U.S. national security interests in commercial cargo capabilities.

9. United States aviation policy, both international and domestic, shall be designed to strengthen the nation's airlift capability and where appropriate promote the global position of the United States aviation industry.

Approved:

Patrick V. Murphy,

Deputy Assistant Secretary for Policy and International Affairs, Department of Transportation.

Eugene J. McAllister,

Assistant Secretary for Economic and Business Affairs, Department of State.

[FR Doc. 89-15120 Filed 6-26-89; 8:45 am]

BILLING CODE 4910-62-M

[3] See footnote 1 of this Appendix.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-89-26]

Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: July 17, 1989.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on June 20, 1989.

Deborah Swank,

Acting Manager, Program Management Staff, Office of the Chief Counsel

Petitions for Exemption

Docket No: 24165
Petitioner: Headquarters United States Air Force, Military Airlift Command
Regulations, Affected: 14 CFR 91.73(a) and (b)
Description of Relief Sought: To extend and amend Exemption No. 4764 that permits petitioner to conduct night flight military training operations in helicopters without lighted aircraft position lights. The amended exemption would apply to fixed-wing aircraft also.

Docket No: 24541
Petitioner: Boeing Commercial Airplanes
Section of the FAR Affected: 14 CFR 91.45
Description of Relief Sought: To extend Exemption No. 4467, as amended, that allows petitioner to conduct ferry flights with one engine inoperative on its Boeing 707, 720, 727, or 747 turbine-

engine-powered transport category airplanes without obtaining a special flight permit.

Docket No.: 24761
Petitioner: Executive Jet Aviation, Inc.
Sections of the FAR Affected: 14 CFR 91.191(a)(4) and 135.165(b)
Description of Relief Sought: To amend Exemption No. 4709A that allows petitioner to operate turbojet aircraft in extended overwater operations with single Omega/very low-frequency, long-range navigation systems and single high-frequency radios. The amended exemption would add LORAN–C as an approved long-range navigation system in extended overwater operations.

Docket No.: 25017
Petitioner: Systems International Airways, Inc.
Sections of the FAR Affected: 14 CFR 121.411(a)(4) and (5); 121.411(b)(2)(i) and (ii); 121.413(a)(1), (2), (3), (4)(i), and (4)(ii); 121.413(b)(1), (2), and (3); and 121.413(c)(1), (2), and (3)
Description of Relief Sought: To allow petitioner to train its pilots in the Martin 404 aircraft without meeting all of the applicable training requirements of the FAR.

Docket No.: 25815
Petitioner: Ameriflight, Inc.
Sections of the FAR Affected: 14 CFR 135.89(a)
Description of Relief Sought: To allow petitioner to carry crewmembers and employees of other companies, as well as petitioner's crewmembers and employees, without complying with the passenger-carrying provisions of Part 135.

Docket No.: 25897
Petitioner: MarkAir, Inc.
Sections of the FAR Affected: 14 CFR 121.590(a)
Description of Relief Sought: To allow petitioner to operate aircraft carrying more than 30 passengers into and out of McGrath Airport, McGrath, Alaska, a noncertificated airport.

Docket No.: 24715
Petitioner: American Cyanamid Company
Sections of the FAR Affected: 14 CFR 91.191(a)(4), 135.165(a), and 135.165(b)(6)(7)
Description of Relief Sought/ Disposition: To extend Exemption No. 4807 that allows petitioner to operate its Grumman Aircraft Corporation Gulfstream (G–1159A), registration number N750AC, and Gates Learjet Corporation Model 55 (Learjet 55), registration numbers N740AC and N760AC, with one long-range navigation system and one high-frequency communication system subject to certain conditions and limitations. *GRANT, June 9, 1989, Exemption No. 4807A.*

Docket No.: 22091
Petitioner: Garrett Engine Division of Allied-Signal Aerospace Company
Regulations Affected: 14 CFR 21.325(b)(1)
Description of Relief Sought/ Disposition: To allow Class I, II, and III products that are assembled and tested by Rolls-Royce Limited in East Kilbride, Scotland, to be eligible for issuance of export airworthiness approvals *GRANT, June 13, 1989, Exemption No. 4830A*

Docket No.: 25489
Petitioner: University of Alaska
Sections of the FAR Affected: 14 CFR 141.91(a), 141.93(a), and 141.93(b)
Description of Relief Sought/ Disposition: To allow petitioner of conduct instruction at satellite bases located more than 25 nautical miles from its main operations base. Additionally, to allow petitioner to issue a condensed version of the course outline on the first day of class rather than at the time of enrollment and allow a class roster to be submitted during the third week of the semester rather than submit individual certificates within 5 days of enrollment. *PARTIAL GRANT, June 9, 1989, Exemption No. 5060*

Docket No.: 25900
Petitioner: Aero Ventures, Inc.
Sections of the FAR Affected: 14 CFR 105.43(a)(2)
Description of Relief Sought/ Disposition: To allow foreign nationals from Canada to participate in a skydiving seminar on June 10 and 11, 1989, without having to comply with the parachute equipment and packing requirements of § 105.43(a)(2). *Grant, June 9, 1989, Exemption NO. 5059.*

[FR Doc. 89–15122 Filed 6–26–89; 8:45 am]
BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement: Delaware and Franklin Counties, Ohio

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for a proposed highway project in Delaware and Franklin Counties, Ohio.

FOR FURTHER INFORMATION CONTACT: Mr. Fred J. Hempel, Division Administrator, or Mr. Roberto Fonseca-Martinez, District Engineer, Federal Highway Administration, 200 North High Street, Columbus, Ohio 43215; Telephone: (614) 469–6896 or 469–7443.

SUPPLEMENTARY INFORMATION: The Federal Highway Administration, in cooperation with the Ohio Department of Transportation, will prepare an environmental impact statement on the proposed construction of a new interchange on Interstate Route 71 between the Delaware-Franklin County line and Powell Road in Delaware County with related improvements to Interstate 71 between its interchange with Interstate Route 270 in Franklin County and the proposed new interchange. The proposed construction would also include connecting roads with Powell Road to the north and west of the proposed interchange and Worthington Road to the east of it. There is currently no interchange on Interstate 71 between Interstate 270 in north Columbus and United States Route 36 to the north near the City of Delaware, a distance of 11.42 miles.

The build alternatives under consideration represent a range of interchange locations on Interstate 71 from approximately 1.75 miles to approximately 4.0 miles north of Interstate 270. The configuration of the interchange will be established during the design process. The no-build alternative is also being considered.

The proposed project would provide a needed interchange in an area of pronounced current and anticipated development, facilitate local access, relieve pressures on other area routes, divert traffic from existing interchanges on Interstate 270 now serving northern Franklin and southern Delaware Counties, give increased capacity to Interstate 71 north of the Columbus Outerbelt, and fulfill the goals of established planning for the region.

A program of public involvement and coordination with Federal, State, and local agencies has been conducted. It is envisioned that involvement with the public and other agencies will continue throughout the development of the project and, therefore, it is not anticipated that a formal scoping meeting will be held.

To insure that the full range of issues related to this proposed action are addressed and that all significant issues are identified, comments or questions concerning this action and the EIS should be addressed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning

and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Roberto Fonseca-Martinez,

Acting District Engineer.

[FR Doc. 89-15134 Filed 6-26-89; 8:45 am]

BILLING CODE 4910-22-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 122
Tuesday, June 27, 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).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, July 7, 1989.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 89–15244 Filed 6–23–89; 10:03 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, July 14, 1989.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 89–15245 Filed 6–23–89; 10:03 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, July 21, 1989.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 89–15246 Filed 6–23–89; 10:03 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, July 28, 1989.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 89–15247 Filed 6–23–89; 10:03 am]

BILLING CODE 6351–01–M

FEDERAL ENERGY REGULATORY COMMISSION

June 21, 1989.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. 94–49), 5 U.S.C. 552B:

DATE AND TIME: June 28, 1989, 10:00 a.m.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 357–8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Public Reference Room.

Consent Power Agenda, 899th Meeting—June 28, 1989, Regular Meeting (10:00 a.m.)

CAP–1.
Docket No. UL89–8–002, Sheldon Jackson College

CAP–2.
Project No. 10002–005, American Power Producers, Inc.

CAP–3.
Project No. 8191–019, BMB Enterprises, Inc.

CAP–4.
Project No. 8142–014, Henwood Associates, Inc.

CAP–5.
Project No. 9085–002, Richard Balagur

CAP–6.
Project No. 7267–006, Joseph Martin Keating

CAP–7.
Project Nos. 7802–006 and 10488–000, Natural Energy Resources Company

CAP–8.
Omitted

CAP–9.
Project No. 9175–001, Rivers Electric Company, Inc.

CAP–10.
Project No. 5073–016, Benton Falls Corporation

CAP–11.
Project Nos. 2322–006, 2325–003 and 2552–003, Central Maine Power Company

CAP–12.
Project No. 2574–007, Merinul Limited Partnership

CAP–13.
Project No. 2611–009, Scott Paper Company and UAH-Hydro Kennebec Limited Partnership

CAP–14.
Docket No. ER89–203–000, Carolina Power & Light Company

CAP–15.
Docket No. ER80–259–012, Kansas Gas and Electric Company

CAP–16.
Docket No. ER84–560–008, Union Electric Company

CAP–17.
Docket No. ER89–17–000, Cincinnati Gas & Electric Company
Docket No. EL89–19–000, City of Hamilton, Ohio v. Cincinnati Gas & Electric Company

CAP–18.
Docket No. ER84–348–012, American Electric Power Service Company

CAP–19.
Docket No. EC89–5–001, Southern California Edison Company and San Diego Gas and Electric Company

CAP–20.
Docket No. ER89–255–001, Arizona Public Service Company

CAP–21.
Docket No. ER88–554–000, Ohio Edison Company

CAP–22.
Docket No. ER88–562–000, New England Power Pool

CAP–23.
Docket Nos. ER88–630–001, ER88–631–001 and ER89–38–001, New England Power Company

Consent Miscellaneous Agenda

CAM–1.
Docket No. FA85–71–004, Central Illinois Public Service Company

CAM–2.
Docket No. GP84–42–000, The Oil Conservation Division of the State of New Mexico

CAM–3.
Docket No. GP89–40–000, Oil Conservation Division of the State of New Mexico

CAM–4.
Docket No. GP89–31–000, State of Kansas, Kansas Corporation Commission

Consent Gas Agenda

CAG–1.
Docket No. RP89–172–000, ANR Pipeline Company

CAG–2.

Docket No. RP88–41–003, Algonquin Gas Transmission Company
CAG–3.
Docket Nos. RP89–183–000, RP89–183–002 and TC89–8–000, Williams Natural Gas Company
CAG–4.
Docket No. RP89–186–000, Great Lakes Gas Transmission Company
CAG–5.
Docket No. RP89–34–003, Williston Basin Interstate Pipeline Company
CAG–6.
Docket No. RP88–47–021, Northwest Pipeline Corporation
CAG–7.
Docket Nos. RP85–177–061, CP88–136–005 and RP88–67–012, Texas Eastern Transmission Corporation
CAG–8.
Docket Nos. RP89–23–000 and RP89–182–000, Northern Natural Gas Company, a Division of Enron Corp.
CAG–9.
Docket No. RP88–191–010, Tennessee Gas Pipeline Company
CAG–10.
Docket No. RP89–120–002, Questar Pipeline Company.
CAG–11.
Docket No. RP89–124–002, CNG Transmission Corporation.
CAG–12.
Omitted.
CAG–13.
Docket No. RP89–171–000, Northwest Alaskan Pipeline Company.
CAG–14.
Docket No. RP89–185–000, Panhandle Eastern Pipe Line Company.
CAG–15.
Docket No. RP89–184–000, Texas Eastern Transmission Corporation.
CAG–16.
Docket Nos. RP89–181–000 and TM89–4–21–000, Columbia Gas Transmission Corporation.
CAG–17.
Docket No. TA89–1–8–000, South Georgia Natural Gas Company.
CAG–18.
Docket No. TM89–2–2–000, Eastern Tennessee Natural Gas Company.
CAG–19.
Docket Nos. TM89–4–26–000, RP89–189–000, RP89–188–000 and RP89–188–001, Natural Gas Pipeline Company of America
CAG–20.
Docket No. TM89–1–23–000, Eastern Shore Natural Gas Company.
CAG–21.
Omitted.
CAG–22.
Docket No. TM89–2–37–000, Northwest Pipeline Corporation.
CAG–23.
Docket Nos. TQ89–2–1–000 and TQ89–2–1–001, Alabama-Tennessee Natural Gas Company.
CAG–24.
Docket No. TQ89–3–11–000, United Gas Pipe Line Company.
CAG–25.
Docket Nos. TA89–1–33–000, RP89–132–004 and TA89–1–33–001, El Paso Natural Gas Company.
CAG–26.
Docket No. TA89–1–42–000, Transwestern Pipeline Company.
CAG–27.
Docket No. RP89–47–000, Natural Gas Pipeline Company of America.
CAG–28.
Omitted.
CAG–29.
Docket Nos. RP89–140–002, TA89–1–43–001 and RP88–39–002, Williams Natural Gas Company.
CAG–30.
Docket No. RP89–145–003, Transcontinental Gas Pipe Line Company.
CAG–31.
Docket No. RP85–169–042, Consolidated Gas Transmission Corporation.
CAG–32.
Docket No. RP88–267–009, South Georgia Natural Gas Company.
CAG–33.
Docket No. RP89–118–001, Williston Basin Interstate Pipeline Company.
CAG–34.
Docket No. RP89–126–001, Southern Natural Gas Company.
CAG–35.
Docket Nos. RP89–132–005, RP88–184–000, RP88–184–010 and TA88–1–33–003, El Paso Natural Gas Company.
CAG–36.
Docket No. RP89–141–001, Sea Robin Pipeline Company.
CAG–37.
Docket Nos. RP89–116–001 and RP88–207–009, Columbia Gas Transmission Corporation.
CAG–38.
Docket No. RP89–120–001, Questar Pipeline Company.
CAG–39.
Docket Nos. RP88–263–012 and RP88–92–016, United Gas Pipe Line Company.
CAG–40.
Docket No. RP88–267–010, South Georgia Natural Gas Company.
CAG–41.
Docket Nos. RP88–27–015, RP88–242–012, CP87–524–006 and CP87–524–004, United Gas Pipeline Company and Texas Gas Transmission Corporation.
CAG–42.
Docket No. RP88–184–009, El Paso Natural Gas Company.
CAG–43.
Docket Nos. RP88–198–008 and RP89–59–002, Transwestern Pipeline Company.
CAG–44.
Docket No. RP89–119–001, Texas Gas Transmission Corporation.
CAG–45.
Docket No. RP89–75–002, Black Marlin Pipeline Corporation.
CAG–46.
Docket No. RP89–114–001, Trunkline Gas Company.
CAG–47.
Docket Nos. RP88–228–018 and RP89–149–001, Tennessee Gas Pipeline Company.
CAG–48.
Docket Nos. TA88–4–37–007 and RP89–1–010, Northwest Pipeline Company.
CAG–49.
Docket Nos. TA89–1–43–002 and RP89–39–001, Williams Natural Gas Company.
CAG–50.
Docket Nos. CP88–434–001 and RP88–185–001, El Paso Natural Gas Company.
CAG–51.
Omitted.
CAG–52.
Docket Nos. RP88–44–005 and RP85–58–018, El Paso Natural Gas Company.
CAG–53.
Docket Nos. ST88–5599–001 and ST88–5761–001 through ST88–5770–001, Gulf South Pipeline Company.
CAG–54.
Docket No. CS76–135–001, Grand Isle Corporation and the Estate of John Dabney Murchison, deceased (formerly, The Royal Gorge Company of Texas).
CAG–55.
Docket No. CP87–451–021, Northeast U.S. Pipeline Projects.
Docket Nos. CP86–329–001 and CP86–330–001, Erie Pipeline System.
Docket Nos. CP86–523–000, CP86–523–001, CP86–523–002, CP86–523–003, CP86–524–000 and CP88–198–000, Iroquois Gas Transmission System.
Docket Nos. CP88–168–000 and CP88–169–000, Champlain Pipeline Company.
Docket Nos. CP88–173–000, CP88–174–000 and CP88–176–000, Tennessee Gas Pipeline Company.
Docket No. CP88–175–000, Northeastern Gas Transmission Company.
Docket Nos. CP88–182–000 and CP88–182–001, PennEast Gas Service Company, CNG Transmission Corporation and Eastern Transmission Corporation.
Docket Nos. CP88–182–000 and CP88–192–000 and CP88–192–001, Algonquin Gas Transmission Company.
Docket Nos. CP88–190–000 and CP88–191–000, Greater Northeast Pipeline Corporation.
Docket No. CP88–193–000, Eastern American States Transmission Company.
CAG–56.
Docket No. CP88–332–003, El Paso Natural Gas Company.
CAG–57.
Docket Nos. CP89–1–001 and CP89–2–001, Mojave Pipeline Company.
CAG–58.
Docket Nos. CP84–441–027, CP84–441–028, CP84–441–029, CP80–65–062, CP80–65–063 and CP82–358–003, Tennessee Gas Pipeline Company.
CAG–59.
(A) Docket No. CP89–3–002, Panhandle Eastern Pipe Line Company.
(B) Docket Nos. CP88–490–001 and CP88–548–001, Panhandle Eastern Pipe Line Company.
(C) Docket Nos. CP89–23–000, CP89–64–000 and CP89–67–000, Williams Natural Gas Company.
CAG–60.
Omitted.
CAG–61.
Docket No. CP81–296–017, Tennessee Gas Pipeline Company.
CAG–62.
Docket No. RP86–14–017, Columbia Gulf Transmission Company.

Docket Nos. RP86-15-017 and CP83-452-034, Columbia Gas Transmission Corporation.

CAG-63.
Docket No. CP89-1555-000, United Gas Pipe Line Company.

CAG-64.
Docket No. CP88-418-000, Northwest Pipeline Corporation.
Docket No. CI88-489-000, ARCO Oil and Gas Company, Division of Atlantic Richfield Company.

CAG-65.
Omitted.

CAG-66.
Docket No. CP89-930-000, Texas Eastern Transmission Corporation.

CAG-67.
Docket Nos. CP89-866-000 and CP68-187-000, Trunkline Gas Company.

CAG-68.
Docket No. CP89-834-000, Panhandle Eastern Pipe Line Company.

CAG-69.
Docket No. CP89-959-000, Northern Natural Gas Company, Division of Enron Corp.

CAG-70.
Docket No. CP89-1134-000, Northern Natural Gas Company, Division of Enron Corp.

CAG-71.
Docket No. CP89-1621-000, Colorado Interstate Gas Company.

CAG-72.
Omitted.

I. Licensed Project Matters

P-1.
Reserved.

II. Electric Rate Matters

ER-1.
Docket No. EL88-39-000, Northern States Power Company (Wisconsin)
Docket No. EL89-9-000, Northern States Power Company (Minnesota). Order on recovery of minimum take payments.

ER-2.
Docket No. ER89-256-000, Palisades Generating Company. Order on proposed purchase agreement.

Miscellaneous Agenda

M-1.
Docket No. FA86-70-001, Missouri Public Service Company, A Division of UtiliCorp United, Inc. Opinion and order on accounting adjustment.

M-2.
Docket No. FA86-51-001, Indianapolis Power & Light Company. Opinion and order on accounting adjustment.

M-3.
Reserved.

M-4.
Reserved.

M-5.
Docket No. GP84-23-029 (Phase 2), Stowers Oil & Gas Company, Panhandle Energy Corporation, Prairie Oil Company, Sharon Oil Company, Almac Oil Company, Judy Oil Company, Kim Petroleum Company, Inc., Komanche Oil & Gas Company, Omega Energy, Tumbleweed Production, Panstar Oil & Gas, Inc., Dennis Mills Enterprises, Wy-Vel Corporation, Walker Operating Corporation, and 3W Oil, Inc. Order on rehearing of Opinion No. 307.

M-6.
Docket No. GP86-51-001, Northern Natural Gas Company, Division of Enron Corp. v. Cabot Pipeline Corporation and Texaco Producing Inc. Order denying request for rehearing.

I. Pipeline Rates Matters

RP-1.
(A) Docket Nos. RP86-169-000, RP86-105-000 and RP87-25-000, ANR Pipeline Company Order on settlement.
(B) Docket No. RP82-80-028, ANR Pipeline Company. Order on remand.

RP-2.
Docket Nos. RP88-68-000, RP87-7-012, RP87-7000,RP89-122-000, RP89-123-000, TA88-1-29-000, TA88-4-29-000, TQ88-1-29-000, TA88-5-29-000, TQ89-1-29-000, TQ89-2-29-000, TQ89-4-29-000, Transcontinental Gas Pipe Line Corporation. Order concerning settlement on take-or-pay liability.

RP-3.
Docket Nos. CP82-487-001, CP82-487-016, TA84-2-49-000, TA84-1-49-000 (Phase 3), CP82-487-014, RP84-62-000, CP82-45-014, RP84-93-000 (Phase 2), Williston Basin Interstate Pipeline Company. Initial decision on gas purchase contracts being prudent or abusive.

Lois D. Cashell,
Secretary.

[FR Doc. 89-15235 Filed 6-23-89; 9:02 am]
BILLING CODE 6717-01-M

FEDERAL HOME LOAN MORTGAGE CORPORATION

DATE AND TIME: Thursday, June 29, 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 May 3, 1989 Board of Directors' Meeting
Closed—President's Report
Closed—Mid-Year Operations Report

Date sent to Federal Register: June 22, 1989

Maud Mater,
Secretary.

[FR Doc. 89-15228 Filed 6-22-89; 4:07 pm]
BILLING CODE 6719-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

June 21, 1989.

TIME AND DATE: 9:30 a.m, Wednesday, June 28, 1989.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument on the following:

1. *Pennsylvania Electric Co.*, Docket No. PENN 88-227 (Issues include whether the judge erred in finding that the Secretary had jurisdiction under the Mine Act to inspect head drives of two coal conveyors at Penn. Electric's generating station).

The Commission will then hear oral argument on the following:

2. *Westwood Energy Properties*, Docket No. PENN 88-42-R, etc. (Issues include whether the judge erred in finding that the Secretary had jurisdiction under the Mine Act to inspect operations, involving culm bank, at Westwood's power plant).

Any person intending to attend this hearing who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR § 2706.150(a)(3) and § 2706.160(e).

TIME AND DATE: Immediately following oral argument.

STATUS: Closed [pursuant to 5 U.S.C. 552b(c)(10)].

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Pennsylvania Electric Co.*, Docket No. PENN 88-227 (See oral argument listing)
2. *Westwood Energy Properties*, Docket No. PENN 88-42-R, etc. (See oral argument listing)

It was determined by a unanimous vote of Commissioners that these items be considered in closed session.

TIME AND DATE: 2:00 p.m. on same date as above items.

STATUS: Closed [pursuant to 5 U.S.C. 552b(c)(10)].

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Mid-Continent Resources, Inc.*, Docket No. WEST 87-88 (Issues include initial consideration of pending procedural motions).
2. *Birchfield Mining Company*, Docket No. WEVA 87-272. (Issues include initial consideration of pending procedural motions).

It was determined by a unanimous vote of Commissioners that these items be considered in closed session.

CONTACT PERSON FOR MORE INFORMATION: Sandra G. Farrow (202) 653-5629/(202) 566-2673 for TDD Relay.

Sandra G. Farrow,
Acting Agenda Clerk.

[FR Doc. 89-15253 Filed 6-23-89; 11:25 am]
BILLING CODE 6735-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 12:00 Noon, Monday, July 3, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 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.

Dated: June 23, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–15305 Filed 6–23–89; 3:16 pm]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of June 26, July 3, 10, and 17, 1989.

PLACE: Commissioner's Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of June 26

Wednesday, June 28

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Final Rule for Revisions to 10 CFR Part 2 to Improve the Hearing Process (Tentative) (*Postponed* from June 22)
b. Denial of Petitions for Rulemaking in Relation to Emergency Preparedness at Nuclear Power Plants (Tentative)
c. Review of Existing Regulatory Requirements for Extended Interim Storage of Low-Level Radioactive Waste (Tentative)

Week of July 3—Tentative

Thursday, July 6

10:00 a.m.
Briefing on Study of Adequacy of Regulatory Oversight of Materials Under General License (Public Meeting)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)
2:00 p.m.
Briefing on Agency Human Factors Initiatives (Public Meeting)

Week of July 10—Tentative

Monday, July 10

2:00 p.m.
Briefing on Status of Emergency Response Data System (Public Meeting)

Tuesday, July 11

10:00 a.m.
Briefing on Staff Comments on DOE Site Characterization Plan for Yucca Mountain (Public Meeting)
2:00 p.m.
Briefing on Policy Statement on Rules for Exemption from Regulatory Control (Public Meeting)

Friday, July 14

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of July 17—Tentative

Wednesday, July 19

2:30 p.m.
Briefing on Status of Browns Ferry (Public Meeting)
4:00 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

ADDITIONAL INFORMATION: By a vote of 5–0 on June 22, the Commission determined pursuant to 5 U.S.C. 552b(e) and Sec. 9.107(a) of the Commission's rules that Commission business required that "Affirmation of Motion for Protective Order by Joseph J. Macktal" (Public Meeting) scheduled for June 22, be held on less than one week's notice to the public.

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided inaccordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING)—(301) 492–0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492–1661.

William M. Hill, Jr.,

Office of the Secretary.

June 22, 1989.

[FR Doc. 89–15305 Filed 6–23–89; 3:16 pm]

BILLING CODE 7590–01–M

Corrections

Federal Register
Vol. 54, No. 122
Tuesday, June 27, 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

Farmers Home Administration

7 CFR Part 1951

Implementation of Salary Offset

Correction

In rule document 88-25391 beginning on page 44177 in the issue of Wednesday, November 2, 1988, make the following correction:

§ 1951.111 [Corrected]

On page 44178, in the second column, the fourth complete paragraph should be correctly designated as (e).

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[FRL-3535-9]

National Emission Standards for Hazardous Air Pollutants; Colorado; Delegation of Authority

Correction

In rule document 89-6109 beginning on page 10985 in the issue of Thursday, March 16, 1989, make the following correction:

On page 10986, in the table, in the last column, under WY, insert an asterisk in place of the first broken line.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88D-0347]

FDA Access To Results of Quality Assurance Program Audits and Inspections; Compliance Policy Guide; Availability

Correction

In notice document 89-14094 beginning on page 25346 in the issue of Wednesday, June 14, 1989, make the following corrections:

1. On page 25346, in the third column, under **ADDRESSES**, in the second line, the first "to" should read "of".

2. On page 25347, in the first column, in the 31st line, "1085" should read "10.85".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

National Park Service

Mississippi National River and Recreation Area; Boundary Description

Correction

In notice document 89-13798 beginning on page 24960 in the issue of Monday, June 12, 1989, make the following corrections:

1. On page 24960, in the 2nd column, immediately after the 13th paragraph, insert a paragraph reading, "Thence east to the west side of Section 35 (T32N, R25W);"

2. On page 24962, in the 1st column, in the 17th paragraph, in the first line "east" should "south".

BILLING CODE 1505-01-D

federal register

Tuesday
June 27, 1989

Part II

Department of Education

Perkins Loan, College Work-Study, Supplemental Educational Opportunity Grant, Income Contingent Loan, and Stafford Loan (Formerly the Guaranteed Student Loan) Programs; Notice

DEPARTMENT OF EDUCATION

Perkins Loan, College Work-Study, Supplemental Educational Opportunity Grant, Income Contingent Loan, and Stafford Loan (Formerly the Guaranteed Student Loan) Programs

AGENCY: Department of Education.

ACTION: Notice of procedures for certification of need analysis servicers' systems and notice of closing dates for requesting and returning agreements and transmittal of information.

SUMMARY: The Secretary of Education is informing individuals and organizations that operate need analysis systems (need analysis servicers) of the procedures the Secretary will use to certify need analysis systems.

FOR FURTHER INFORMATION CONTACT: Paula M. Husselmann or C. Lorraine Kennedy, Division of Policy and Program Development, Office of Student Financial Assistance, Department of Education, 400 Maryland Avenue, SW., Room 4613, ROB–3, Washington, DC 20202–5346, Telephone (202) 732–5579. For information regarding the specification package contact: Matina Koines, Telephone (202) 732–5579.

SUPPLEMENTARY INFORMATION:

Program Information

The Perkins Loan, College Work-Study, Supplemental Educational Opportunity Grant (known collectively as the campus-based program) and the Stafford Loan programs are "need-based" student financial aid programs. In order to award or approve financial aid under each program, an institution must determine whether a student has financial need. The institution determines a student's financial need by substracting from the student's educational cost his or her expected family contribution, i.e., the amount the student, his or her spouse and, in the case of a dependent student, his or her parents may reasonably be expected to contribute toward his or her educational costs.

Institutions participating in the Income Contingent Loan (ICL) program must make ICLs reasonably available first to all eligible students who demonstrate financial need.

Part F of Title IV of the Higher Education Act of 1965, as amended, (HEA) provides detailed formulas for determining a student's expected family contribution for the campus-based, ICL and Stafford Loan programs. The statutory formulas specify the criteria, data elements and tables used for determining schedules of expected family contributions for these programs.

As authorized by the HEA and as a service to institutions, the Secretary will certify that an individaul's or organization's system has the capability for determining an expected family contribution that is consistent with the calculation prescribed by Part F of Title IV of the HEA. If an institution uses a certified need analysis system in the calculation of an expected family contribution for the 1990–91 award year under the campus-based, ICL and Stafford Loan programs, the institution can be assured that the expected family contribution produced by the system will accurately reflect the expected family contribution described in Title IV, Part F, of the HEA. A need analysis servicer may also agree to incorporate Department of Education (ED) edits, specifications and/or selection criteria for verification as descirbed in § 668.54 of the Student Assistance General Provisions regulations. Need analysis servicers must follow the procedures set forth below to have their systems certified by the Secretary. The Secretary will provide educational institutions with a list of certified systems in May 1990.

Certification Procedural Requirements

In order to have its system certified by the Secretary, a need analysis servicer must enter into an agreement with the Secretary and follow the procedural steps below:

Step 1: The need analysis servicer requests an agreement package from ED by August 4, 1989. The request must be in writing and either hand-delivered or mailed to the Department of Education, Office of Student Financial Assistance, Division of Policy and Program Development, Student Verification Branch, 400 Maryland Avenue, SW., Room 4613, Regional Office Building 3, Washington, DC 20202–5346.

Step 2: After ED receives a request, it provides an agreement package to the need analysis servicer. The agreement package includes the agreement and information that will enable the need analysis servicer to determine whether it wishes its system to become certified and to determine its type of participation.

Step 3: A need analysis servicer selects its participation type by indicating that type on the agreement and returning its signed agreement to ED by September 1, 1989.

Agreements Delivered by Mail

Agreements delivered by mail must be addressed to the Department of Education, Office of Student Financial Assistance, Division of Policy and Program Development, Student Verification Branch, 400 Maryland Avenue, SW., (Room 4613, Regional Office Building 3), Washington DC 20202–5346.

A need analysis servicer must show proof of mailing the agreement. Proof of mailing consists of one of the following: (1) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service, (2) a legibly dated U.S. Postal Service postmark, (3) a dated shipping label, invoice, or receipt from a commercial carrier, or (4) any other proof of mailing acceptable to the U.S. Secretary of Education.

If agreements are forwarded using the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service. A need analysis servicer should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, confirmation should be obtained from the local post office. A need analysis servicer is encouraged to use certified or, at least, first-class mail.

Agreements Delivered by Hand

Agreements that are hand-delivered must be taken to the Department of Education, Office of Student Financial Assistance, Division of Policy and Program Development, Student Verification Branch, 7th & D Streets, SW., (Room 4613, Regional Office Building 3), Washington, DC 20202–5346.

Hand-delivered agreements will be accepted between 8:00 a.m. and 4:30 p.m. daily (Washington, DC time), except Saturdays, Sundays and Federal holidays. Agreements delivered by hand will not be accepted after 4:30 p.m. on the closing date.

Step 4: Following submission of the signed agreement to ED, ED provides the need analysis servicer with the appropriate software development package based on the participation type selected.

Step 5: Test cases and additional information pertaining to the submission of the processed test cases will be transmitted by ED to the need analysis servicer at a date agreed upon between ED and the need analysis servicer. The complexity and number of the test cases depend on the participation type the need analysis servicer has selected. (A test case is a discrete set of hypothetical applicant data which is used to test the accuracy and adequacy of a computer function and the need analysis servicer's implementation of Part F of Title IV of the HEA. A single test case may test one or more specific input, process, or output functions. An aggregate of test cases

may test a particular computer process, computer run, process cycle, subsystem, or total system process.)

Each set of test cases is designed to provide evidence that will indicate the need analysis servicer's ability to perform accurately operational functions of the participation type selected. ED will evaluate two test case submissions at no charge; a fee of $3,000 will be charged for any additional test case submissions. A need analysis servicer will be given a choice of receiving its test cases by floppy disk or magnetic or cartridge tape.

Note: ED expects that a servicer will thoroughly test its system prior to submitting test cases to ED for evaluation.

Step 6: A need analysis servicer processes all the test cases provided and submits to ED the generated results on floppy disk or magnetic or cartridge tape by March 30, 1990. The need analysis servicer must demonstrate to the satisfaction of ED that there were no system deficiences in those test cases submitted by March 30, 1990. Any discrepancies in the test case results must be resolved to the satisfaction of ED by April 13, 1990 in order for the need analysis servicer's system to be certified and included in the list of certified systems to be provided by the Secretary in May 1990.

Test Case Results Delivered by Mail

Test cases delivered by mail must be addressed to Mr. Paul Z. Hill, Jr., Department of Education, Division of Policy and Program Development, 400 Maryland Avenue SW, Room 4004, ROB–3, Washington, DC 20202.

A need analysis servicer must show proof of mailing the test case results. Proof of mailing consists of one of the following: (1) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service, (2) a legibly dated U.S. Postal Service postmark, (3) a dated shipped label, invoice, or receipt from a commercial carrier, or (4) any other proof of mailing acceptable to the U.S. Secretary of Education.

If test case results are forwarded using the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service. A need analysis servicer should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, confirmation should be obtained from the local post office. A need analysis servicer is encouraged to use certified or, at least, first-class mail.

Test Case Results Delivered by Hand

Test case results that are hand-delivered must to taken to Mr. Paul Z. Hill, Jr., Department of Education, Division of Policy and Program Development, 7th and D Streets SW, Room 4004, Regional Office Building 3, Washington, DC 20202–4004.

Hand-delivered test case results will be accepted between 8:00 a.m. and 4:30 p.m. daily (Washington, DC time), except Saturdays, Sundays, and Federal holidays. Test case results delivered by hand will not be accepted after 4:30 p.m. on the closing date.

Closing Dates

1. Deadline date to request agreement package—August 4, 1989.

2. Deadline date to submit agreement to ED—September 1, 1989.

3. Deadline date to submit test case results to ED—March 30, 1990.

4. Deadine date to resolve test case results—April 13, 1990.

(Catalog of Federal Domestic Assistance No. 84.038, Perkins Loan Program (formerly National Direct Student Loan); 84.038, Income Contingent Loan Program; 84.033, College Work-Study Program; 84.007, Supplemental Educational Opportunity Grant Program; and 84.032, Stafford Loan Program (formerly Guaranteed Student Loan))

Dated: June 16, 1989

James B. Williams,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 89–15112 Filed 6–26–89; 8:45 am]

BILLING CODE 4000-01-M

federal register

Tuesday
June 27, 1989

Part III

Department of Transportation

Research and Special Programs Administration

Department of the Navy Application for Inconsistency Ruling Concerning City of Oakland, CA Nuclear Free Zone Act; Notice

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. IRA-47]

Department of the Navy Application for Inconsistency Ruling Concerning City Oakland, CA; of Nuclear Free Zone Act

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Public notice and invitation to comment.

SUMMARY: The United States Department of the Navy (DON) has applied for an administrative ruling determining whether the Nuclear Free Zone Act of the City of Oakland, California Code is inconsistent with the Hazardous Materials Transportation Act (HMTA) and the Hazardous Materials Regulations (HMR) issued thereunder and, therefore, preempted under section 112(a) of the HMTA.

DATES: Comments received on or before August 14, 1989, and rebuttal comments received on or before September 29, 1989, will be considered before an administrative ruling is issued by the Director of the Office of Hazardous Materials Transportation. Rebuttal comments may discuss only those issues raised by comments received during the initial comment period and may not discuss new issues.

ADDRESSES: The application and any comment received may be reviewed in the Dockets Unit, Research and Special Programs Administration, Room 8421, Nassif Building, 400 7th Street SW., Washington, DC 20590. Comments and rebuttal comments on the application may be submitted to the Dockets Unit at the above address, and should include the Docket Number, IRA-47. Three copies are requested. A copy of each comment and rebuttal comment must also be sent to Lawrence L. Lamade, Esq., General Counsel of the Navy, Washington, DC 20350-1000 and to Mr. Henry Gardner, City Manager, City of Oakland, One City Hall Plaza, Oakland, CA 94612, and that fact certified to at the time each comment is submitted to the Dockets Unit. (The following format is suggested: "I hereby certify that copies of this comment have been sent to Mr. Lamade and Mr. Gardner at the addresses specified in the **Federal Register**.")

FOR FURTHER INFORMATION CONTACT: Edward H. Bonekemper, III, Senior Attorney, Office of the Chief Counsel, Research and Special Programs Administration, 400 7th Street SW., Washington, DC 20590, telephone 202-366-4362.

SUPPLEMENTARY INFORMATION:

1. Background

The HMTA (49 App. U.S.C. 1801 et seq.) at section 112(a) (49 App. U.S.C. 1811(a)) expressly preempts "any requirement, of a State or political subdivision thereof, which is inconsistent with any requirement" of the HMTA or the HMR issued thereunder.

Procedural regulations implementing section 112(a) of the HMTA and providing for the issuance of inconsistency rulings are codified at 49 CFR 107.201 through 107.211. An inconsistency ruling is an advisory administrative opinion as to the relationship between a state or political subdivision requirement and a requirement of the HMTA or HMR. Section 107.209(c) sets forth the following factors which are considered in determining whether a state or local requirement is inconsistent:

(1) Whether compliance with both the state or local requirement and the HMTA or HMR is possible (the "dual compliance" test); and

(2) The extent to which the state or local requirement is an obstacle to the accomplishment and execution of the HMTA and the HMR (the "obstacle" test).

Inconsistency rulings do not address issues of preemption under the Commerce Clause of the Constitution or under statutes other than the HMTA.

In issuing its advisory inconsistency rulings concerning preemption under the HMTA, OHMT is guided by the principles enunciated in Executive Order 12612 entitled "Federalism" (52 FR 41685, Oct. 30, 1987). Section 4(a) of that Executive Order authorizes preemption of state laws only when the statute contains an express preemption provision, there is other firm and palpable evidence of Congressional intent to preempt, or the exercise of state authority directly conflicts with the exercise of Federal authority. The HMTA, of course, contains an express preemption provision, which OHMT has implemented through regulations and interpreted in a long series of inconsistency rulings beginning in 1978.

2. The Application for Inconsistency Ruling

On May 17, 1989, the DON, through Lawrence L. Lamade, its General Counsel, applied for an inconsistency ruling concerning the Oakland Nuclear Free Zone Act, which is reproduced in Appendix A to this Notice.

In its application, DON, prior to discussing specific provisions of the Oakland Nuclear Free Zone Act (Ordinance), describes the scope of the Ordinance. DON states that this Ordinance applies to the transport of any nuclear weapon or hazardous radioactive material and that the scope of the Ordinance is evidenced by its stated purpose to "make Oakland a nuclear free zone."

DON stresses that the Ordinance addresses the transportation of nuclear weapons or other hazardous radioactive materials through, or over, Oakland and that it applies to *all* hazardous radioactive materials, regardless of their classification under the HMR. Section 11.g. of the Oakland Ordinance defines "Hazardous Radioactive Materials" as:

> * * * any radioactive isotope(s) resulting from the operation of, or intended for use in, nuclear fission reactors or nuclear weapons; the refined products of spent nuclear fission reactors, or of any device or component of a device that has been used to contain or process radioactive isotopes; or the tailings or similar debris resulting from the mining of uranium or other radioactive elements except as specifically exempted herein.

However, DON points out that Subsections 12.h and i. exempt (1) nuclear medicine research programs, (2) "unclassified" research, study, evaluation or teaching, (3) the operation of particle accelerators, (4) the construction and operation of experimental fusion reactors, and (5) consumer uses of radioactive material, from the provisions of the Ordinance.

Because section 11.a. defines "person" as any "natural person, corporation, college or university, laboratory, institution, governmental agency, or other entity," DON argues that the Ordinance is applicable to the activities and operations of both private entities and the Federal Government. Thus, says DON, the Ordinance applies to any nuclear weapon or radioactive material which is generated, utilized, or transported in, through, or over the City of Oakland.

DON contends that several provisions of the Ordinance are inconsistent with the HMTA and the HMR under both the "obstacle" and "dual compliance" tests described above.

First, citing numerous prior inconsistency rulings and 49 CFR Part 177, Appendix A, DON asserts that a 45-day advance notice provision is inconsistent because of delays and diversions resulting therefrom. It also argues that the requirement for 45 days' advance notice to the City of radioactive materials transportation is inconsistent because it applies to Department of

Defense shipments exempt from the HMR under 49 CFR 173.7(b) and because it may violate the disclosure prohibitions of 10 CFR 73.21, which is incorporated by reference in 49 CFR 173.22(c).

Second, DON contends that routing requirements of the Ordinance are inconsistent. The Ordinance provides that, after a public hearing, the City Council will determine the safest route and means of transportation for radioactive materials transportation. According to DON, this process is inconsistent with the HMR's classification of radioactive materials and the routing requirements of 49 CFR 177.825, particularly the provision for transportation of highway route controlled quantities (HRCQ) of radioactive materials on preferred routes (Interstate highways and state-designated routes).

Other bases argued by DON for the alleged inconsistency of this process are the Ordinance's application to non-HRCQ radioactive materials and shipments excluded from regulation by the HMR, the City Council's unfettered discretion to select routes, and delays that will result from this process—particularly from a requirement that at least 15 days' public notice follow the Council's selection of a route.

Third, DON argues that the Ordinance contains an inconsistent placarding requirement, specifically a requirement for a sign reading "Transportation of Hazardous Radioactive Materials" clearly visible at least 150 feet in each direction. DON alleges an inconsistency with the placarding system of 49 CFR 172.500–558, particularly with 49 CFR 172.556 concerning radioactive materials placarding. It cites language in Inconsistency Ruling No. IR–24 (53 FR 19848, May 31, 1988) that "HMR placarding provisions do completely occupy the field and, therefore, preempt all state and local placarding and warning sign requirements for hazardous materials transportation which are not identical to the Federal requirements."

Fourth, DON cites several inconsistency rulings to support its contention that the following transportation ban in the Ordinance is inconsistent: "The present ban by the Port of Oakland on transportation of spent nuclear fuel rods through the Port is hereby confirmed and made permanent." DON states that the authority to ban or prohibit transportation is exclusively Federal and quotes the following language from Inconsistency Ruling No. IR–3 (Decision on Appeal):

A unilateral local ban is a negation, rather than an exercise, of local responsibility, since it isolates the local jurisdiction from the risks associated with the commercial life of the nation.

Finally, DON argues that fee and criminal penalty provisions of the Ordinance are inconsistent insofar as they apply to inconsistent provisions.

3. Public Comment

Comments should be limited to the issue of whether the requirements of the Nuclear Free Zone Act of the City of Oakland, California, are inconsistent with the HMTA or the HMR. They should specifically address the "dual compliance" and "obstacle" tests described above under "Background."

Persons intended to comment on the application should examine the complete application in the RSPA Dockets Branch, Appendix A to this Notice, and the procedures governing the Department's consideration of applications for inconsistency rulings (49 CFR 107.201–107.211).

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

Issued in Washington, DC, on June 20, 1989.

Appendix A—Oakland Nuclear Free Zone Act

Section 1: Name

This Ordinance shall be known as the Oakland Nuclear Free Zone Act.

Section 2: Purpose

The purpose of this Act is to make Oakland a nuclear free zone by:

a. Prohibiting the production of nuclear weapons in Oakland;

b. Regulating the transportation of nuclear weapons and hazardous radioactive materials through Oakland, and informing the citizens of Oakland before such transportation takes place;

c. Banning the storage or reprocessing of hazardous radioactive materials in Oakland;

d. Prohibiting City contracts with or the investment of City funds in any business that knowingly engages in nuclear weapons work; and

e. Prohibiting nuclear reactors in Oakland.

Section 3: Findings

The people of Oakland find that:

a. Nuclear weapons are an intolerable danger to humanity in general and to Oakland in specific. In particular, they endanger the economic well-being of the people of Oakland, the environment in which we live, and our health and safety. The continued escalation of the arms race and threats to initiate the use of nuclear weapons increase the likelihood of nuclear war and diminish our security.

b. Even if nuclear weapons are never used, the transportation and storage of nuclear weapons or other hazardous radioactive materials are a serious threat to the health and safety of the people of Oakland. Exposure to these materials can cause cancer, birth defects and other diseases, while there is no scientific proof that any level of exposure is safe.

c. Nuclear reactors pose similar threats of exposure to radioactivity from transport or storage of nuclear materials, routine operations, and the inherent risk of catastrophic accidents, such as those at Three Mile Island and Chernobyl. Oakland is specifically threatened by Rancho Seco and nuclear reactors aboard Navy ships in Alameda and the San Francisco Bay.

d. The production of nuclear weapons is the major driving force of the nuclear fuel cycle, which includes mining, refining, nuclear reactors, food irradiation plants, waste storage, transportation and reprocessing activities, each stage of which poses serious risks to public health and safety. Because of the security requirements surrounding nuclear weapons and materials, these activities also abridge our civil liberties and limit our ability to make informed decisions affecting our future.

e. Money invested by the City of Oakland in businesses participating in nuclear weapons work helps support the arms race, diverts funds from needed human services, and is not a responsible use of City funds.

f. The people of Oakland have expressed their desire to end the arms race. In 1983 we voted to support a bilateral freeze on "the testing, production and further development of all nuclear weapons." In 1986 the City Council voted unanimously to support a comprehensive nuclear test ban.

Therefore, the people of Oakland join over 130 U.S. communities and thousands of other cities world-wide by declaring Oakland a nuclear free zone. The people of Oakland require that the City of Oakland use its legal and regulatory authority to eliminate threats to the public health and safety due to the presence of nuclear weapons work, nuclear reactors, or hazardous radioactive materials in Oakland, and to stop making investments or contracts that contribute to the nuclear arms race.

The people of Oakland also call upon the Board of the Oakland School District, the Commission of the Port of Oakland, the Alameda County Board of Supervisors, the Board of the Peralta Community College District, the Boards of all special districts serving the City of Oakland, and the managers of any autonomous pension funds or other investment funds of these agencies to examine the provisions of this Act and to implement them within their respective jurisdictions as applicable.

Section 4: Prohibition of Nuclear Weapons Work

No person shall, within the City of Oakland, knowingly engage in nuclear weapons work. (See Section 11 for definitions and exclusions.)

Section 5: Transportation

a. Any transportation of nuclear weapons or other hazardous radioactive materials through or over Oakland shall be subject to the following restrictions:

i. Any person transporting such materials shall notify the City of Oakland at least 45 days prior to such transportation for review under provisions of this section.

ii. The City Council shall convene at least one public hearing with sufficient advance notice by radio, television, and press release, to ensure maximum public participation. After hearing public testimony, the City Council shall determine the safest route and means of transportation for the above-mentioned materials. Following selection and approval of route and means, the City shall give at least 15 days advance public notice of the selected route(s).

iii. The City of Oakland shall independently monitor transport of hazardous radioactive materials through or over Oakland and assess the adequacy of safety and notice provisions relating thereto.

iv. Each vehicle involved in such transport shall have signs warning "Transportation of Hazardous Radioactive Materials" clearly visible for at least 150 feet in each direction.

b. The present ban by the Port of Oakland on transportation of spent nuclear fuel rods through the Port is hereby confirmed and made permanent.

Section 6: Prohibition of Reprocessing, Storage and Use

No person shall reprocess, store, dump, or use hazardous radioactive materials for any purpose within the City of Oakland. (See Section 11 for definitions and exclusions.)

Section 7: Nuclear Weapons Free City Investment and Contracting

a. Contracts and Purchases:

The City of Oakland shall grant no contract, direct or indirect, to any nuclear weapons maker, unless the City Council makes a specific determination, after public hearing, that no reasonable alternative exists, taking into account each of the following factors:

i. The intent, purpose and findings of this Act;

ii. The availability of alternative services, goods, or other supplies substantially meeting the specifications of the proposed contract; and

iii. Unreasonable additional costs resulting from use of available alternatives.

Any such determination is prohibited absent a specific finding by the City Council that a given contract is essential to the continued proper functioning of the City government.

As soon as it appears that any person may be excluded from entering into a contract with the City of Oakland due wholly or partly to that person's designation as a nuclear weapons maker, such person shall be so notified and informed of the right to appeal such designation. The City Council shall establish an appropriate appeal process.

b. Investments:

As of the date of passage of this act, the City of Oakland shall refrain from making any new investments in nuclear weapons makers. Within two years after the date of passage of this Act, the City of Oakland shall divest itself of all such investments held or controlled by it, including pension funds.

The City of Oakland shall ensure that any City funds, or any funds controlled by the City, invested through trustees or other third parties are invested according to the provisions of this subsection, and to this end shall obtain written assurances to this effect from any such trustees or third parties.

This subsection is subject to the following exceptions:

i. Investment in United States Treasury securities may be made by the City of Oakland only when found necessary to avoid substantial financial losses, and only by specific resolution of the City Council for a period of time not to exceed 60 days. More than one resolution may be made so as to apply consecutively, but each such resolution must be made in separate meetings of the City Council, with one and no more than one additional resolution being made during the effective period of the one preceding it, if any. It is intended that such investments will normally not be made, that the City will endeavor to keep them to an absolute minimum, that in no case shall such investments exceed 20% of the total City portfolio, and that any investment made under provision of this exception will be terminated as rapidly as possible.

ii. City funds resulting from any bonded indebtedness entered into prior to the date of passage of this Act may be invested in U.S. Treasury securities only to the minimum extent required by the terms of the resolutions of issuance of such bonds, except as allowed in paragraph (i) of this subsection.

iii. This subsection does not restrict investments in securities that are guaranteed, rather than held by, agencies of the Federal government or other government entity.

iv. No provision of this subsection shall be construed to conflict with any relevant provisions of the Oakland City Charter.

Section 8. Prohibition of Nuclear Reactors

No person shall, within the City of Oakland, operate or cause to be built a nuclear reactor. (See Section11 for definitions and exclusions.)

Section 9: Public Notice of Nuclear Free Zone

a. Every road, including interstate highways, entering the City of Oakland, or any other major transportation facility which, as of the date of passage of this Act, has a sign marking the city limits, or where a new city limit sign is emplaced subsequent to the date of passage of this Act, will also be marked, equally prominently, with a sign reading "Nuclear Free Zone, established by City of Oakland initiative ordinance, 1988", and clearly displaying the standard yellow and black symbol for radiation with a red circle crossout overlay. These signs shall be posted no later than November 1, 1988, shall be at least 2 feet by 3 feet in size, and shall be maintained with at least the same standard of care as city limit signs.

b. Every facility within the City of Oakland engaged in nuclear weapons work shall, within 30 days of determination of applicability under this Act, be required to install and maintain signs, clearly visible to any passing person, identifying the facility with the legend "Nuclear Weapons Work Conducted Here". Such signs shall be placed in locations approved by the City.

Section 10: Enforcement, Sanctions and Citizens Suits

a. Public Hearings and Reports:

i. Within six months after the date of passage of this Act, the City Council shall hold at least three public hearings, at three different locations and at times designed to maximize public participation, to determine means of implementing and to evaluate compliance with all sections of this Act.

ii. Within six weeks after concluding these hearings, the City Council shall issue to the public a full report on City progress towards implementing this Act.

iii. Thereafter the City Council shall hold at least two public hearings a year, and shall present a report to the public six weeks after such hearings, as described in paragraphs (i) and (ii) above and (iv) below.

iv. In addition to evaluating and assuring compliance with the specific provision of this Act, such hearings and reports shall also include recommendations for additional regulatory or public actions to further the purposes of this Act.

b. Annual Reporting: Each nuclear weapons maker or other persons within the City of Oakland engaged in activities covered by the provisions of this Act, whether these activities are inside or outside of Oakland, shall prepare an annual report to the City that includes the following elements:

i. A description of the extent and nature of such activities and the hazardous radioactive materials or nuclear weapons involved; and

ii. A description of the steps being taken to cease such activities within two years of the date of passage of this Act, including any steps to provide alternative jobs for employees enagaged in such activities.

These reports shall be filed with the City at least four weeks prior to the public hearings held pursuant to subsection (a) above and shall be made available for inspection and copying by any member of the public.

c. Fees: The City of Oakland shall assess reasonable fees toward the implementation of this Act from nuclear weapons makers and other persons engaged in activities covered by the provisions of this Act.

d. Information: The City of Oakland shall call upon any nuclear weapons maker or other person within the City engaged in activities covered by the provisions of this Act, whether those activities are inside or outside of Oakland, to provide further information as needed to keep the community adequately informed about such nuclear weapons work and about the health and safety consequences of all such activities. The City shall use the power of subpoena where required to ensure compliance by such persons.

e. Any resident of Oakland has the right to enforce this Act by appropriate civil action for declaratory or injunctive relief. A prevailing plaintiff shall be awarded reasonable costs of suit and attorney's fees.

f. Each violation of this Act shall be punishable with the maximum penalty for a misdemeanor, and each day shall be deemed a separate violation.

g. Where the City of Oakland determines that any nuclear weapons work or other activity covered under this Act is occurring in

Oakland inconsistent with the intentions of this Act, the City shall so notify the nuclear weapons maker or other person with a formal order to cease and desist from such activities. Each person so notified may appeal this decision to the City Council within 30 days of receipt of said notice. The City Council may uphold an appeal only if it finds, after public hearing, that such person is not engaged in nuclear weapons work or other activity inconsistent with this Act within the City of Oakland. Failure of any person to comply with a cease and desist order within 60 days following its receipt or following an unsuccessful appeal shall be prosecuted to the full extent of City police powers. In addition, the City may impose any or all of the following sanctions:

i. Cut-off any or all city services to the person concerned;

ii. Levying of fines; and

iii. Advising citizens to avoid cooperation with the activities of the person concerned.

Section 11: Definitions and Exclusions

a. "Person" is any natural person, corporation, college or university, laboratory, institution, governmental agency, or other entity.

b. "Contract" is any agreement, written, oral or implied, made on behalf of or by the City of Oakland or any of its agencies, or by the City of Oakland on behalf of any other person, to receive or supply any funds, products, services or other consideration. A contract for any product or service orginally produced by a nuclear weapons maker shall be covered by the relevant provisions of this Act, notwithstanding that such product or service may be provided to the City through intermediary vendors who are not themselves engaged in such work.

c. "Nuclear weapon" is any device the intended explosion of which results from the energy released by reactions involving atomic nucleii, either fission or fusion or both. Nuclear weapon includes the means of transporting, guiding, propelling, triggering, or detonating the weapon. Nuclear weapon also includes any component of a nuclear weapon, i.e., any device, radioactive or non-radioactive, the primary intended function of which is to contribute to the operation of a nuclear weapon or be a part of a nuclear weapon.

d. "Nuclear weapons work" is any work that has as its purpose the development, testing, production, possession, maintenance or storage of nuclear weapons, the components of nuclear weapons, or any secret or classified research or evaluation of nuclear weapons.

e. "Nuclear weapons maker" is any person knowingly engaged in nuclear weapons work, or their agent, subsidiary or parent organization.

f. "Nuclear reactor" is any device that has as its purpose the release of energy from non-explosive reactions involving the fission of atomic nucleii.

g. "Hazardous radioactive material" is any radioactive isotope(s) resulting from the operation of, or intended for use in, nuclear fission reactors or nuclear weapons; the refined products of spent nuclear fission reactors, or of any device or component of a device that has been used to contain or process radioactive isotopes; or the tailings or similar debris resulting from the mining of uranium or other radioactive elements except as specifically exempted herein.

h. Nothing in this Act shall be construed to prohibit research on and the application of nuclear medicine or consumer uses of radioactive material for smoke detectors, light-emitting watches and clocks, and other similar applications.

i. Nothing in Section 4 or Section 8 of this Act shall be construed to prohibit the following:

i. Any unclassified research, study, evaluation or teaching;

ii. The operation of particle accelerators and related equipment; or

iii. The construction and operation of experimental fusion reactors.

j. The provisions of Sections 4 and 7 shall not be construed to prohibit contracts with, investments in, or any activities of any agency or branch of government, provided such agency or branch is not itself engaged in nuclear weapons work and is clearly distinguishable administratively from any parent governmental entity that is involved in nuclear weapons work. Any such exception for an agency or branch of a governmental entity may be allowed only upon a specific finding by the City Council, after public hearing, that the proposed activity, contract, or investment in no way supports nuclear weapons work.

Section 12: Effect

Unless otherwise specified, the provisions of this Act are effective immediately.

a. Cessation of Present Activities: The prohibitions contained in Sections 4, 6, and 8 (no nuclear weapons work, reprocessing, storage and use of hazardous radioactive materials, nor nuclear reactors in the City of Oakland) shall, as they apply to any such activity already occurring as of the date of passage of this Act, take effect two years after that date.

b. Prohibition of Commencement of Prohibited Activities: No person shall, within the City of Oakland, commence any such activities after the date of passage of this Act.

Section 13: Severability

This Act shall be enforced to the full extent of the authority of the City of Oakland. If any section, subsection, paragraph, sentence or word of this Act shall be held to be invalid, either on its face or as applied, the invalidity of such provision shall not affect the other sections, subsections, paragraphs, sentences or words of this Act, and the applications thereof; and to that end the sections, subsections, paragraphs, sentences or words of this Act shall be deemed severable.

[FR Doc. 89-15096 Filed 6-26-89; 8:45 am]

BILLING CODE 4910-60-M

federal register

Tuesday
June 27, 1989

Part IV

Department of Defense

Corps of Engineers, Department of the Army

33 CFR Part 282

Water Resources Policies and Authorities; Federal Participation in Shore, Hurricane, Tidal and Lake Flood Protection; Revocation of Final Rule

Federal Register

Tuesday
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Part IV

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Water Resources Policies and Authorities; Federal Participation in Shore Hurricane, Tidal and Lake Flood Protection; Revocation of Final Rule

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 282

[ER 1165-2-130]

Water Resources Policies and Authorities: Federal Participation in Shore, Hurricane, Tidal and Lake Flood Protection

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Final rule; revocation.

SUMMARY: The Corps of Engineers is removing the regulation in 33 CFR Part 282. This regulation, published 22 January 1979, no longer serves its intended purpose.

EFFECTIVE DATE: June 27, 1989.

FOR FURTHER INFORMATION CONTACT: Don Rogers at (202) 272-0123.

SUPPLEMENTARY INFORMATION:

Discussion

The purpose of the regulation was to provide "policies and guidelines for determining the extent of Federal participation in potential Federal projects for shore erosion control, and hurricane, abnormal tidal and lake flood protection." These were for observance by Corps of Engineers planners in study and formulation of project proposals for these purposes, when so directed, and calculation of appropriate Federal and non-Federal cost sharing therefor.

The legislative basis for Corps of Engineers involvement in Civil Works projects to serve these kinds of purposes was significantly changed by the Water Resources Development Act of 1986 (Pub. L. 99-662). Section 103(c)(5) of that Act designates cost sharing for the purpose of hurricane and storm damage reduction (HSDR). This introduces a new way of viewing shore protection projects which, previously, were viewed as either for "beach erosion control" or for hurricane, tidal or lake flood protection. Pursuant to section 103(d) of the Act, the costs of constructing "beach erosion control" measures are now assigned to one of the basic Federal project purposes designated in sections 103 (a), (b), or (c) of the Act—normally this would be either HSDR or recreation—and cost shared accordingly.

This, plus other comparably minor alterations in general policies and procedures that have taken place since 1979, necessitates complete revision of related guidance and restatement of policies in a new regulation. Development of a new regulation is in progress, to be issued to Corps of Engineers headquarters elements and field operating activities (FOAs) for their uniform guidance in considering shore protection proposals. The new regulation will be subject to progressive revisions in the future as experience in application of the new legislative provisions may indicate desirable. It is for the continuing, current guidance of Corps planners in carrying out their functions and responsibilities (one of a large body of similar regulations maintained by the Corps of Engineers), with no direct impact upon the public.

Note 1: This revocation is part of the Corps ongoing review of regulations as required by the semi-annual agenda of Federal regulations. We are of the opinion that notice of proposed rulemaking and public procedures thereto are unnecessary since these rules were administrative in nature and had no impact on the general public.

Note 2: We have determined that it is in the public interest to make this revocation effective upon publication in the **Federal Register.** Since these rules are obsolete and have no effect on the public, nothing would be achieved by delaying the effective date.

Note 3: I hereby certify that this regulation would not have a significant economic impact on a substantial number of entities and thus does not require preparation of a regulatory flexibility analysis.

In consideration of the foregoing, Part 282 of Title 33, Code of Federal Regulations is removed and reserved.

PART 282—[REMOVED]

Dated: June 12, 1989.

Approved

Wilbur T. Gregory, Jr.,

Colonel, Corps of Engineers, Executive Director of Civil Works.

[FR Doc. 89-15129 Filed 6-26-89; 8:45 am]

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federal register

Tuesday
June 27, 1989

Part V

Environmental Protection Agency

40 CFR Part 260

Hazardous Waste Management System: Requirements of Rulemaking Petitions; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 260

[SW-FRL-3532-2]

Hazardous Waste Management System: Requirements of Rulemaking Petitions

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On November 8, 1984, the President signed into law the Hazardous and Solid Waste Amendments (HSWA) of 1984. These amendments changed the hazardous waste management system established by the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6821 *et seq.* One of HSWA's several requirements was to establish additional and more specific criteria for evaluating petitions submitted under 40 CFR 260.20 and 260.22, to exclude ("delist") specific wastes from the lists of hazardous wastes contained in 40 CFR 261.31, 261.32 and 261.33. EPA incorporated these new HSWA criteria into its delisting rules by adding a new paragraph to 40 CFR 260.22 (a), (c), (d), and (e). [See 50 FR 28727–28728, July 15, 1985.] However, at that time, EPA inadvertently failed to alter 40 CFR 260.22(b) when modifying the other portions of § 260.22, to ensure that the entire delisting program is consistent with HSWA. On May 20, 1988, EPA proposed to amend the delisting rules to clarify the potential ambiguity created by that oversight and to fully reflect the HSWA requirements. [See 53 FR 18107.] Today's rule responds to comments on that proposal and makes the changes to § 260.22(b).

EFFECTIVE DATE: June 27, 1989.

ADDRESSES: The public docket for this final rule is located at the U.S. Environmental Protection Agency, 401 M Street SW., Room M2427, Washington, DC 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday excluding Federal holidays. Call (202) 475–9327 for appointments. The reference number for this docket is "F–88–RRPA–FFFFF." The public may copy material from any regulatory docket at a cost of $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424–9346, or at (202) 382–3000. For technical information concerning this rule, contact Linda Cessar, Office of Solid Waste (OS–343), U.S. Environmental Protection Agency, 401 M Street SW., Washington DC 20460, (202) 475–9828.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

These regulations are issued under the authority of Sections 1004, 2002(a), 3001, 3006, and 7004 of the Solid Waste Disposal Act as Amended (42 U.S.C. 6903, 6912, 6921, 6926, and 6974).

B. History of this Rulemaking

On May 20, 1988 [53 FR 18107], EPA proposed to modify 40 CFR 260.22(b) to clarify the potential ambiguity created by EPA's inadvertent failure to alter that regulation when modifying other portions of § 260.22 to ensure that the delisting program is consistent with HSWA.

As currently worded, 40 CFR 260.22(b) can be read to imply that a petitioner requesting exclusion of a waste need only sample and analyze the listed constituents of concern for hazardous wastes in a waste mixture. Co-mingled, non-listed solid wastes, however, may contain the same and/or additional constituents of concern as those found in the listed wastes alone. Under 40 CFR 261.3(a)(2)(iv) and 261.3(b), mixtures of solid wastes and listed hazardous wastes are considered listed hazardous wastes. Making delisting decisions for such mixed waste streams without considering the constituents in co-mingled solid and listed wastes would not fully protect human health and the environment. Further, it would not satisfy the statutory mandate to HSWA to consider additional factors, including constituents other than those for which the waste was listed, if EPA has a reasonable basis to believe that such additional factors could cause the waste to be hazardous (see HSWA Section 3001(f)(1)). In the May 20, 1988 notice, EPA proposed that existing language in § 260.2(b) be deleted and that additional language be added to clarify that additional factors (including additional constitutents) in a mixture of solid waste and hazardous waste may be considered in the delisting evaluation. This rulemaking addresses public comments received on the May 20 proposal and finalizes the proposed rule.

II. Agency Response to Comments

The Agency received public comments on the proposed rule from one interested party. The commenter did not support the Agency's proposed rulemaking. The objections raised by the commenter are discussed below.

1. *Proposed rule allegedly goes beyond the intent of HSWA.*

The commenter opposes the Agency's proposed requirement that the constituents of any co-mingled solid wastes and hazardous wastes be included in the evaluation of delisting petitions. The commenter believes that this proposed requirement goes beyond the language and intent of HSWA. Citing Section 3001(f)(1) of HSWA, the commenter believes that HSWA requires that EPA only consider factors (including additional constituents) for the listed waste, and not for the waste mixture.

Section 3001(f)(1) of HSWA states that:

> [w]hen evaluating a petition to exclude a waste generated at a particular facility from listing under this Section, the Administrator shall consider factors (including additional constituents) other than those for which the wastes was listed if the Administrator has a reasonable basis to believe that such additional factors could cause the waste to be a hazardous waste.

The Agency believes that a situation in which a listed hazardous waste is mixed with a solid waste presents factors, particularly additional constituents originally present in the solid waste, that must be considered in such a delisting evaluation. Further, because EPA defines such co-mingled wastes as listed hazardous wastes and considers the waste codes to "carry through" to the mixture, the mixture must be viewed as a listed hazardous waste and evaluated for additional factors. This is described further below.

The Agency believes that the proposed rule is consistent with the Agency's previously developed position (codified at 40 CFR 261.3 (a) and (b)) that mixtures of solid wastes and listed hazardous wastes are considered hazardous wastes unless specifically exempted. The Agency's classification of such waste mixtures was originally promulgated on May 19, 1980 [45 FR 33073], and clarified in an interim final rule published on November 17, 1981 [46 FR 56582]. As noted in the preamble to the 1980 rule, the Agency intends waste mixtures containing listed hazardous wastes to be considered hazardous and managed accordingly. Without such a rule, generators could evade Subtitle C requirements simply by co-mingling listed wastes with non-hazardous solid wastes.

The Agency recognized, however, that designating all waste mixtures containing wastes listed as hazardous under Subtitle C could create some inequities. Thus, in the November 1981 rule, the Agency excluded from the presumption of hazardousness certain types of mixtures of listed hazardous

wastes and wastewaters, and mixtures of solid wastes and listed hazardous wastes which are listed solely because they exhibit one or more of the hazardous waste characteristics, but which no longer exhibit any hazardous waste characteristic defined in Subpart C. [See 40 CFR 261.3 (a) and (b) of the regulations excluding certain waste mixtures from the presumption of hazardousness. See 40 CFR 261.21, 261.22, 261.23 and 261.24 for the hazardous waste characteristics.]

The November 1981 rule did not, however, exclude from the presumption of hazardousness those waste mixtures of solid wastes and listed hazardous wastes which are listed because they typically contain hazardous constituents (contained in Appendix VIII of 40 CFR Part 261) at levels of regulatory concern. (The rule also did not exclude acutely toxic mixtures from the presumption.) Such waste mixtures were designated as hazardous to minimize any threats to human health and to the environment that may occur when hazardous and solid wastes are mixed. Often hazardous constituents present in the listed waste (whether these constituents were the basis for listing the waste generically) remain present in hazardous concentrations after the listed waste is mixed with non-hazardous solid waste. Similarly, some solid wastes contain constituents which by themselves are not considered hazardous; when these non-hazardous constituents are mixed with listed hazardous wastes, the previously non-hazardous constituents may be rendered hazardous through any number of chemical interactions (such as oxidation or reduction reactions). Thus, if the resultant waste mixture is mismanaged, previously existing or newly formed hazardous constituents may escape into the environment at levels of concern.

The RCRA regulations which establish the lists of hazardous wastes therefore presume that the solid wastes mixed with listed hazardous wastes are generally hazardous. Considering hazardous constituents (that were not the basis for listing the waste as hazardous) present in some mixtures is therefore consistent with the HSWA requirement that delisting evaluations consider additional factors which could cause the petitioned waste to be a hazardous waste. Congress, in passing section 3001(f), was fully aware of how EPA regulated waste mixtures, and chose to eliminate a perceived loophole by which listed wastes (including mixtures) were deregulated although containing hazardous levels of additional (non-listed) constituents. See H.R. Rep. No. 98–198, 98th Cong., 1st Sess., 57–58 (1983).

The hazardous constituents in a solid waste co-mingled with one or more listed hazardous wastes can clearly be considered relevant additional factors, given EPA's regulatory approach described above, and evaluating such constituents is therefore fully within the intent of HSWA. Further, unless the mixed waste petitioned to be delisted were separated into its formative, unmixed waste streams, it would not be possible to know whether an additional constituent was originally present in the listed hazardous waste of the unlisted, non-hazardous solid waste. Finally, even if such consideration of additional constituents in listed waste mixtures was not compelled by section 3001(f), EPA would, through today's rulemaking, adopt the proposed rule to clarify that EPA can consider such additional constituents.

2. *Proposed rule allegedly is an arbitrary and capricious action.*

The commenter believes the Agency's proposed rulemaking is arbitrary and capricious when applied to a mixture of a listed (or derived-from a listed under 40 CFR 261.3(c)(2)(i)) hazardous waste and a solid waste, where the solid waste itself is a delisted (or derived-from a delisted) waste (*i.e.*, a waste which EPA has already excluded).

The Agency has not exempted from the presumption of hazardousness those waste mixtures that consist of listed hazardous wastes and solid wastes, when the solid wastes are delisted or derived-from a delisted waste. The whole waste mixture is presumed hazardous until proven otherwise (*i.e.*, excluded under 40 CFR 260.20 and 260.22). HSWA did not indicate that previously delisted solid wastes, wastes derived-from those wastes, and/or constituents in these delisted or derived-from wastes were not to be considered in the delisting evaluation when these wastes were mixed with listed hazardous wastes. Delisted wastes continue to be solid wastes and are subject to the mixture rule described above. [The Agency has not to date delisted a waste which it believes exhibits any of the hazadous waste characteristics. Once a waste is delisted, generators remain obligated to determine whether or not their waste remains non-hazardous based on the hazardous waste characteristics.]

When evaluating a delisting petition for a waste mixture of a listed hazardous waste and a previously delisted waste (*i.e.*, solid waste), the Agency must consider the potential for the hazardous waste to leach constituents of concern from the solid waste. These waste mixtures are presumptively hazardous just as mixtures of listed wastes with non-delisted, non-hazardous solid wastes; consideration of additional factors (including additional constituents) of mixtures of listed and delisted wastes is appropriate for the reasons described in the previous section.

3. *Proposed rule allegedly is unjustly retroactive to pending delisting petitions.*

The commenter believes the proposed action violates procedural and substantive due process to the extent it is applied retroactively to pending delisting petitions.

The Agency disagrees with the commenter and believes that today's rule merely codifies the intent of HSWA and thus, any application to pending delisting petitions is due to the application of the statute and not to today's rule amendment. Further, any current application of these criteria to pending petitions is prospective, not retroactive. Finally, even if today's rule was not compelled by HSWA, its current application to pending petitions would be permissible under applicable law established by *Securities and Exchange Commission v. Cheney Corp.*, 332 U.S. 155 (1947), and its progeny, and "good cause" exists for any retroactive application that might be construed, see *Citizens to Save Spencer County v. EPA* 600 F. 2nd 844, 880–81 (D.C. Cir. 1979), based upon past legislative and regulatory announcements.

4. *Proposed rule allegedly unjustly incorporates derived-from hazardous wastes.*

The commenter believes the proposed action violates procedural and substantive due process to the extent it incorporates derived-from hazardous wastes.

On May 19, 1980 [45 FR 33073], the Agency promulgated regulations, codified at 40 CFR 261.3(c)(2)(i), listing as hazardous those wastes which are derived from listed wastes. Thus, a derived-from waste is subject to the same Subtitle C regulations as all other types of hazardous wastes. When Congress enacted HSWA, this derived-from rule had been effective for four years. EPA will not respond to the comment to the extent that the commenter is attempting to challenge collaterally EPA's previously promulgated rule. However, given that these derived-from wastes are hazardous wastes of the same waste code as the listed wastes from which they are derived, EPA does not believe that applying the plain terms of Section

3001(f)(1) to these wastes can deny due process.

Although derived-from hazardous wastes or mixtures of listed waste and solid waste are not explicitly mentioned in the statute, the legislative history to new Section 3001(f) of RCRA shows that Congress was concerned that EPA's delisting evaluation was, in general, too narrow in scope. Congress believed that limiting the analysis to listed constituents could allow the Agency to "de-regulate" a waste that contained other harmful constituents. See H.R. Rep. No. 98–198, 98th Cong., 1st Sess., 57–58 (1983). Consequently, Congress amended RCRA to direct the Agency to consider factors (including additional constituents) other than those for which the waste was listed if the Administrator has a reasonable basis to believe that such additional factors could cause the waste to be a hazardous waste. Congress did not provide specific examples of "additional factors". Further, Congress did not specify, and the Agency does not believe that Congress intended, that application of this analysis be limited, excluding application to derived-from wastes and mixtures of listed hazardous wastes and solid wastes.

5. *Proposed rule allegedly is a major action.*

The commenter believes the proposed amendment goes "far beyond HSWA" and does not merely incorporate or codify a statutory requirement, but is "major" and is subject to regulatory impact analysis under Executive Order 12291.

Under the Executive Order, a major rule is any regulation that is likely to result in:

1. An annual effect on the economy of $100 million or more;

2. A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or

3. Significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Agency believes that today's rule does not meet these criteria for a major regulation. This rule will not approach any of the criteria listed above, because only a small number of facilities petitioning for delisting will be affected by this rule. Further, as explained above, this rule merely codifies existing statutory requirements and has no independent effect.

6. *Proposed rule allegedly requires a regulatory flexibility analysis.*

The commenter believes that the proposed amendment "may require a significant change in the amount of information required for RCRA delisting petitions, since HSWA does not require information on factors beyond those of the listed hazardous waste." As such, the commenter believes that the proposed amendment may have an adverse economic impact on small entities and that a regulatory flexibility analysis is required by the Regulatory Flexibility Act, 5 U.S.C. 601–612.

Section 3001(f) of HSWA clearly states that the Administrator shall consider factors (including additional constituents) other than those for which the waste was listed if the Administrator has a reasonable basis to believe that such additional factors could cause the waste to be a hazardous waste. As noted earlier, the Agency believes that a hazardous waste co-mingled with a solid waste is a hazardous waste, and the mixture is subject to the Section 3001(f) requirements for a delisting demonstration, including evaluation of additional constituents. Thus, a Regulatory Flexibility Analysis is not necessary, because the Agency is merely codifying existing statutory requirements, and this rule has no independent effect. Even if a Regulatory Flexibility Analysis were applicable, only a small number of facilities will be affected by this rule, and it will not require a significant increase in the amount of information required for delisting petitions.

III. Effective Date

This rule is effective immediately. The Hazardous and Solid Waste Amendments of 1984 amended Section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here because this rule merely incorporates and codifies a statutory requirement. This reason provides a basis for making this rule effective immediately, upon promulgation, under the Administrative Procedures Act, pursuant to 5 U.S.C. 553(d).

IV. State Authority

Because this rule merely eliminates potential confusion as to existing regulatory requirements that were established on July 15, 1985 (50 FR 28702), this rule does not affect authorization status in regard to delisting. States currently authorized for delisting have already been required to provide the minimum Federal statutory level of protection to be authorized.

V. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. As discussed in Section II.5 above, this rule is not major since it merely incorporates and codifies a statutory requirement. Furthermore, it does not meet any of the criteria for a major regulation. Therefore, no Regulatory Impact Analysis is required.

VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on small entities.

As discussed in Section II.6 above, this rule merely codifies existing statutory requirements. Furthermore, only a small number of facilities will be affected by this rule, and it will not require a significant increase in the amount of information required. Accordingly, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VII. List of Subjects in 40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling

Authority: 42 U.S.C. 6903, 6912, 6921, 6926, 6974.

Date: June 20, 1989.

William K. Reilly,

Administrator.

For the reasons set out in the preamble, Part 260 of Chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 26 continues to read as follows:

Authority: 42 U.S.C. 6903, 6912, 6921, 6926, 6974.

2. Section 260.22 is amended by revising paragraph (b) to read as follows:

§ 260.22 Petitions to amend Part 261 to exclude a waste produced at a particular facility.

* * * * *

(b) The procedures in this Section and § 260.20 may also be used to petition the Administrator for a regulatory amendment to exclude from § 261.3(a)(2)(ii) or (c), a waste which is described in these Sections and is either a waste listed in Subpart D, or is derived from a waste listed in Subpart D. This exclusion may only be issued for a particular generating, storage, treatment, or disposal facility. The petitioner must make the same demonstration as required by paragraph (a) of this section. Where the waste is a mixture of solid waste and one or more listed hazardous wastes or is derived from one or more hazardous wastes, his demonstration must be made with respect to the waste mixture as a whole; analyses must be conducted for not only those constituents for which the listed waste contained in the mixture was listed as hazardous, but also for factors (including additional constituents) that could cause the waste mixture to be a hazardous waste. A waste which is so excluded may still be a hazardous waste by operation of Subpart C of Part 261.

* * * * *

[FR Doc. 89-15168 Filed 6-26-89; 8:45 am]
BILLING CODE 6560-50-M

federal register

Tuesday
June 27, 1989

Part VI

Department of Justice

Immigration and Naturalization Service

Department of State

Bureau of Consular Affairs

8 CFR Part 217

Visa Waiver Pilot Program; Final Rule

22 CFR Part 41

Passports and Visas Not Required For Certain Nonimmigrants; Final Rule

DEPARTMENT OF JUSTICE

Immigation and Naturalization Service

8 CFR Part 217

[INS No. 1109R-89]

RIN 1115-AA75

Visa Waiver Pilot Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule amends the regulations at 8 CFR 217.5 to waive nonimmigrant visas for certain visitors who are nationals of France and Switzerland (effective July 1, 1989); the Federal Republic of Germany and Sweden (effective July 15, 1989); and Italy and the Netherlands (effective July 29, 1989). Under the Visa Waiver Pilot Program, as provided by section 313 of the Immigration Reform and Control Act of 1986 (Pub. L. 99-603), certain nonimmigrants may apply for admission into the United States for up to ninety days without first obtaining nonimmigrant visitors visas. The United Kingdom was the first country designated to benefit from the program, effective July 1, 1988. Japan was designated next, effective December 15, 1988. This rule adds six additional countries to the program, for a total of eight as provided by statute.

DATES: This rule is effective July 1, 1989 for France and Switzerland; effective July 15, 1989 for the Federal Republic of Germany and Sweden; and effective July 29, 1989 for Italy and the Netherlands.

FOR FURTHER INFORMATION CONTACT: Yanghe Peggy Wong, Assistant Chief Inspector, Immigration and Naturalization Service, 425 I Street, NW., Room 7123, Washington, DC 20536, Telephone: (202) 633-4033.

SUPPLEMENTARY INFORMATION: The Visa Waiver Pilot Program was established by Congress to determine if a visa waiver provision could facilitate international travel and promote the more effective use of resources of affected government agencies while not posing a threat to the welfare, health, safety, or security of the United States. Implemented on July 1, 1988 for the United Kingdom (53 FR 24898) and on December 15, 1988 for Japan (53 FR 50160), over 800,000 visitors have entered the United States under the program for ninety days or less by arriving in the United States on one of the one hundred participating carriers.

The designation of the six additional countries, the Federal Republic of Germany, France, Italy, the Netherlands, Sweden, and Switzerland was accomplished by the Secretary of State and the Attorney General, acting jointly through their designees. (See the Department of State rule published elsewhere in this issue of the **Federal Register**). As set by statute, the designation of the countries was based upon reciprocity and the low visa refusal rate during two previous full fiscal years. In addition, consistent with the intent of the measure to promote and facilitate international travel, the volume of travel to the United States was used in the designation process. Together, the eight countries accounted for over 50% of the 12.4 million nonimmigrants who entered the United States in fiscal year 1987 and of the 14.6 million in fiscal year 1988. Section 217.5(a) is amended to add the additional six countries and effective dates of implementation for each.

The Service has continued to make extensive efforts to permit interested parties to provide comments on the progress of the program. Senior immigration officers were sent to the United Kingdom and Japan to provide assistance to carriers and to travel agencies prior to and subsequent to implementation. Similar assistance will be provided in the additional six countries. Much public attention has been focused on the expansion of the waiver program.

This rule grants or recognizes an exemption or relieves a restriction and therefore is being made effective less than thirty days after publication in the **Federal Register**, 5 U.S.C. 553(d)(1).

In accordance with 5 U.S.C. 605(b), the Commissioner certifies that this rule will not have a significant economic impact on a substantial number of small entities.

This is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget in accordance with the provisions of the Paperwork Reduction Act and are cited under § 299.5 of this chapter.

List of Subjects in 8 CFR Part 217

Administrative practice and procedures, Aliens, Reporting and recordkeeping requirements, Passports and visas.

Accordingly, Part 217 of Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 217—VISA WAIVER PILOT PROGRAM

1. The authority citation for Part 217 continues to read as follows:

Authority: 8 U.S.C. 1103, 1187, 8 CFR 2.

2. In § 217.5, paragraph (a) is revised to read as follows:

§ 217.5 Designated countries.

(a) *Countries.* United Kingdom (effective July 1, 1988); Japan (effective December 15, 1988); France and Switzerland (effective July 1, 1989); the Federal Republic of Germany and Sweden (effective July 15, 1989); and Italy and the Netherlands (effective July 29, 1989) have been designated as Visa Waiver Pilot Program countries based on the criteria set forth at sections 217(a)(2)(A) and 217(c) of the Act.

* * * * *

Dated: June 20, 1989.

Richard E. Norton,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

FR Doc. 89-15170 Filed 6-26-89; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Part 41

[108.887]

Visas: Passports and Visas Not Required for Certain Nonimmigrants

AGENCY: Bureau of Consular Affairs, Department of State.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations at 22 CFR 41.2(l) to bestow a benefit upon certain classes of aliens. Paragraph (l) waives the visa requirement for certain nonimmigrants applying for admission to the United States as visitors for a period not to exceed ninety days. Under established procedures, a nonimmigrant alien who wishes to enter the United States as a visitor must obtain a nonimmigrant B-1/B-2 visa. Only the United Kingdom was a designated country to receive this benefit as of July 1, 1988. Japan was added as a designated country, effective on December 15, 1988. France, The Federal Republic of Germany, Italy, The Netherlands, Sweden, and Switzerland are added as designated countries, effective on the followng dates: France and Switzerland on July 1, 1989; The Federal Republic of Germany and Sweden on July 15, 1989; Italy and The Netherlands on July 29, 1989. On and

after those dates citizens of France, The Federal Republic of Germany, Italy, The Netherlands, Sweden and Switzerland, respectively, may avail themselves of this benefit.

DATES: This regulation is effective July 1, 1989 for France and Switzerland; effective July 15, 1989 for The Federal Republic of Germany and Sweden; and effective July 29, 1989 for Italy and The Netherlands.

FOR FURTHER INFORMATION CONTACT: A. Roy Mackay, Deputy Chief, Legislation and Regulations Division, Visa Office, Washington, DC 20522-0113 (202) 663-1205.

SUPPLEMENTARY INFORMATION: On pages 24903-24904 of the **Federal Register** of June 30, 1988 the Department of State published a final rule amending 22 CFR 41.2. The final rule contained provisions designed to facilitate the admission of nonimmigrant alien visitors through the use of the United States Visa Waiver Pilot Program established by section 313 of the Immigration Reform and Control Act of 1986 (IRCA), Pub. L. 99-603 (section 217 of the Immigration and Nationality Act (8 U.S.C. 1187)). The Pilot Program waives the nonimmigrant visa requirement for admission of certain aliens into the United States for a period not to exceed ninety days. Under that final rule the United Kingdom was the only country designated to receive these benefits for its nationals. Japan, having agreed to reciprocal treatment for United States citizens entering Japan under similar circumstances, was added as a designated country under the Pilot Program effective on December 15, 1988 in a Final Rule published on pages 50161-50162 of the **Federal Register** of December 13, 1988. France, The Federal Republic of Germany, Italy, The Netherlands, Sweden, and Switzerland, having met all of the requirements for participants in the Nonimmigrant Visa Waiver Pilot Program, are added on their respective effective dates as designated countries participating in the Pilot Program by the Secretary of State and the Attorney General, acting jointly through their designees. (See the Immigration and Naturalization Service Rule published elsewhere in this issue of the **Federal Register**.) The last sentence of § 41.21(l) is amended by adding at the end thereof the names of the new designated countries, France, The Federal Republic of Germany, Italy, The Netherlands, Sweden and Switzerland, effective as of the dates applicable to each as noted therein. Therefore, effective on those noted dates, citizens of France, The Federal Republic of Germany, Italy, The Netherlands, Sweden and Switzerland shall be eligible for participation in the Nonimmigrant Visa Waiver Pilot Program.

This Rule grants or recognizes an exemption or relieves a restriction and therefore is being made effective less than thirty days after publication in the **Federal Register**. 5 U.S.C. 553(d)(1). This final rule is not considered to be a major rule for purposes of E.O. 12291 nor is it expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 22 CFR Part 41

Aliens, Nonimmigrants, Visas, Passports, Temporary Visitors, Waivers.

In view of the foregoing, Part 41 is amended as follows:

PART 41—NONIMMIGRANT CLASSES—WAIVER OF PASSPORT AND/OR VISA REQUIREMENTS

1. The authority citation for Part 41 continues to read as follows:

Authority: Sec. 104, 66 Stat. 174, 8 U.S.C. 1104; Sec. 109(b)(1), 91 Stat. 847; Sec. 313, 100 Stat. 3435, 8 U.S.C. 1187 and 1182.

2. In § 41.2 the last sentence of paragraph (l) is amended by removing "and" before Japan and the period at the end of the sentence and adding the following text:

§ 41.2 Waiver by the Secretary of State and Attorney General of passport and/or visa requirements for certain categories of nonimmigrants.

* * * * *

(l) *Visa Waiver Pilot Program.* * * *; France and Switzerland (effective July 1, 1989); The Federal Republic of Germany and Sweden (effective July 15, 1989); and Italy and The Netherlands (effective July 29, 1989).

Date: June 20, 1989.

Joan M. Clark,

Assistant Secretary for Consular Affairs.

FR Doc. 89-15166 Filed 6-26-89; 8:45 am]

BILLING CODE 4710-06-M

federal register

Tuesday
June 27, 1989

Part VII

Department of Transportation

Research and Special Programs Administration

National Tank Truck Carriers, Inc., and American Trucking Associations, Inc.; Application for Inconsistency Ruling Concerning New York City Personal and Training Requirements for Transporters of Hazardous Materials; Public Notice and Invitation to Comment

DEPARTMENT OF TRANSPORTATION

[Docket No. IRA-40C]

National Tank Truck Carriers, Inc. and American Trucking Associations, Inc.; Application for Inconsistency Ruling Concerning New York City Personal and Training Requirements for Transporters of Hazardous Materials

AGENCY: Research and Special Pograms Administration, DOT.

ACTION: Public notice and invitation to comment.

SUMMARY: The National Tank Truck Carriers, Inc. (NTTC) and the American Trucking Associations, Inc. (ATA) have applied for an administrative ruling concerning whether certain City of New York personal and training requirements for transporters of hazardous materials are inconsistent with the Hazardous Materials Transportation Act (HMTA) and the Hazardous Materials Regulations (HMR) issued thereunder and, therefore, preempted under section 112(a) of the HMTA.

DATES: Comments received on or before August 14, 1989, and rebuttal comments received on or before September 29, 1989, will be considered before an administrative ruling is issued by the Director of the Office of Hazardous Materials Transportation. Rebuttal comments may discuss only those issues raised by comments received during the initial comment period and may not discuss new issues.

ADDRESSES: The application and any comment received may be reviewed in the Dockets Unit, Research and Special Programs Administration, Room 8421, Nassif Building, 400 7th Street, SW., Washington, DC 20590. Comments and rebuttal comments on the application may be submitted to the Dockets Unit at the above address, and should include the Docket Number, IRA-40C. Three copies are requested. A copy of each comment and rebuttal comment must also be sent to Clifford J. Harvison, President, NTTC, 2200 Mill Road, Alexandria, Virginia 22314; Daniel R. Barney, Director, ATA Litigation Center, 2200 Mill Road, Alexandria, VA 22314; and Doron Gopstein, Esq., Corporation Counsel, City of New York, 100 Church Street, Room 6C-37, New York, NY, 10017 [Attn: Grace Goodman, Esq., Assistant Corporation Counsel], and that fact certified to at the time the comment is submitted to the Dockets Branch. (The following format is suggested: "I hereby certify that copies of this comment have been sent to Messrs. Harvison, Barney, and Gopstein at the addresses specified in the Federal Register.")

FOR FURTHER INFORMATION CONTACT: Edward H. Bonekemper III, Senior Attorney, Office of the Chief Counsel, Research and Special Programs Administration, 400 7th Street, SW., Washington, DC 20590, telephone 202-366-4362.

SUPPLEMENTARY INFORMATION:

1. Background

The HMTA (49 App. U.S.C. 1801 et seq.) at section 112(a) (49 App. U.S.C. 1811(a)) expressly preempts "any requirement, of a State or political subdivision thereof, which is inconsistent with any requirement" of the HMTA or the HMR issued thereunder.

Procedural regulations implementing section 112(a) of the HMTA and providing for the issuance of inconsistency rulings are codified at 49 CFR 107.201 through 107.211. An inconsistency ruling is an advisory administrative opinion as to the relationship between a state or political subdivision requirement and a requirement of the HMTA or HMR. Section 107.209(c) sets forth the following factors which are considered in determining whether a state or local requirement is inconsistent:

(1) Whether compliance with both the state or local requirement and the HMTA or HMR is possible (the "dual compliance" test); and

(2) The extent to which the state or local requirement is an obstacle to the accomplishment and execution of the HMTA and the HMR (the "obstacle" test).

Inconsistency rulings do not address issues of preemption under the Commerce Clause of the Constitution or under statutes other than the HMTA.

In issuing its advisory inconsistency rulings concerning preemption under the HMTA, OHMT is guided by the principles enunciated in Executive Order 12612 entitled "Federalism" (52 F.R. 41685, Oct. 30, 1987). Section 4(a) of that Executive Order authorizes preemption of state laws only when the statute contains an express preemption provision, there is other firm and palpable evidence of Congressional intent to preempt, or the exercise of state authority directly conflicts with the exercise of Federal authority. The HMTA, of course, contains an express preemption provision, which OHMT has implemented through regulations and interpreted in a long series of inconsistency rulings beginning in 1978.

2. The Application for Inconsistency Ruling

In 1987 the American Trucking Associations, Inc. (ATA) and the National Tank Truck Carriers, Inc. (NTTC) filed an application for an administrative ruling seeking a determination that, *inter alia*, directives 3-76, 5-63, 6-76, and 7-74 of the New York City Fire Department's Bureau of Fire Prevention (BFP) are inconsistent with the HMTA and the HMR. BFP Directives 6-76 and 7-74 create permit systems that govern the use of tank trucks which transport combustible or flammable mixtures within New York City. BFP Directive 3-76 establishes a City permit system for transporting flammable and combustible liquids through the use of open and closed body platform trucks, while Directive 5-63 creates a permit system for the transportation of compressed gases within the City.

In Inconsistency Ruling No. IR-22 (IR-22), 52 FR 46574 (Dec. 8, 1987), *correction* 52 FR 49107 (Dec. 29, 1987), the Director of the Office Hazardous Materials Transportation found that most portions of those directives are inconsistent with the HMTA and the HMR. The basis for that ruling was that most provisions of those directives result in serious delays of transporation of Hazardous materials, regulate areas which RSPA has defined as exclusively Federal (particularly cargo containment system, equipment and related requirements), and undermine the likelihood of compliance with the HMR. The City of New York appealed IR-22 to the Administrator of RSPA, whose recent final decision has been published in the Federal Register.

In IR-22 the Director of OHMT deferred a decision on the consistency of subsections 2-2 and 2-3 of BFP Directive 7-74 concerning certificates of fitness requirements for persons in charge of tank trucks transporting flammable liquids or mixtures. 52 FR 46582-3. The deferral was due to the inadequacy of the record before the Director and the pendency of similar issues in Docket No. IRA-42, California Department of Motor Vehicles (DMV) Application for Inconsistency Ruling, 52 FR 43830 (Nov. 16, 1987).

The California DMV issues now have been addressed in IR-26, 54 FR 16314 (Apr. 21, 1989), *correction* 54 FR 21526 (May 18, 1989). There the Director of OHMT determined that state regulations requiring training for operators of motor vehicles carrying hazardous materials are consistent with respect to domiciliaries of that state but inconsistent with respect to non-

domiciliaries. He also found that after April 1, 1992, such state requirements would be consistent with respect to non-domiciliaries not having a hazardous materials endorsement on their commercial drivers' licsenses. No interested party appealed IR–26.

This Notice invites public comment on the consistency of subsections 2–2 and 2–3 of BFP Directive 7–74. Section 2, in its entirety, provides:

Section 2 CERTIFICATE OF FITNESS

2–1. Each tank truck for which a permit is required shall be in charge of a person holding a certificate of fitness issued by the Fire Commissioner, whose duty it will be to see that all safety devices are in place and in proper working order; that truck is properly grounded when filling or discharging and that all pipe connections and fill cap covers are oil tight, and shall produce on the demand of any representative of the Fire or Police Department his certificate of fitness, the Fire Department permit and the inspection card for that particular tank truck he is in charge of. (Administrative Code, Section C19–53.0). A person with a certificate of fitness shall also be required for those vehicles exempted from permit requirements under C19–53.0.c.6 and those under temporary emergency permission of the Fire Commissioner.

2–2. Applicants for a Certificate of Fitness must:

(a) Be at least 18 years old;

(b) Have a reasonable understanding of the English language and be able to answer satisfactorily such questions as may be asked upon his examination;

(c) Produce such evidence of his character, habits and past employment as may be satisfactory to the Fire Commissioner;

(d) Pass an examination by a person or body designated by the Fire Commissioner upon the law and ordinance regulations governing the transportation, storage and use of the article related to or connected with the services to be performed by him; upon the risks incident to his employment and upon his knowledge of the precautions necessary to be taken in connection therewith.

(e) Examination for renewals of certificates of fitness may be waived in the discretion of the Fire Commissioner. (Administrative Code, Section C19–14.0).

(f) Comply with applicable Fire Prevention Directives.

2–3. Unless otherwise provided, every certificate of fitness and the renewal thereof shall be for a period determined by the Fire Commissioner, but in no case to exceed three years, and is revocable and not transferable. The fee for such certificate shall be as provided in C19–24.0.

In IR–22, subsection 2–1 was determined to be inconsistent because of its interrelationship with the permitting system and equipment requirements found inconsistent in that ruling. Thus, the major issue requiring resolution and comment is whether the City may, consistent with the HMTA and the HMR, require a person in charge of a tank truck transporting flammable liquids and mixtures to hold a certificate of fitness and to qualify for such a certificate by meeting the personal and training requirements of subsection 2–2. Also at issue is whether the administrative and fee provisions of subsection 2–3 are consistent with the HMTA and the HMR.

3. Public Comment

Comments should be limited to the issue of whether the requirements of subsections 2–2 and 2–3 of City of New York BFP Directive 7–74 are inconsistent with the HMTA or the HMR. They should specifically address the "dual compliance" and "obstacle" tests described above under "Background."

Persons intending to comment on the application should examine the complete application in the RSPA Dockets Unit, Appendix A to this Notice, and the procedures governing the Department's consideration of applications for inconsistency rulings (49 CFR 107.201–107.211).

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

Issued in Washington, DC on June 21, 1989.

[FR Doc. 89–15191 Filed 6–26–89; 8:45 am]

BILLING CODE 4910–60–M

federal register

Tuesday
June 27, 1989

Part VIII

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 570

Community Development Work Study Program; Final Rule and Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 570

[Docket No. R-89-1406; FR-2475]

RIN 2506-AA81

Community Development Work Study Program

AGENCY: Office of Assistant Secretary for Community Planning and Development, HUD.

ACTION: Final rule.

SUMMARY: Section 501(b)(2) of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988), amended section 107 of the Housing and Community Development Act of 1974 to authorize the Community Development Work Study Program (CDWSP). This final rule adopts new regulations stating the requirements that will govern CDWSP and implements the CDWSP to provide assistance to economically disadvantaged students.

EFFECTIVE DATE: September 11, 1989.

FOR FURTHER INFORMATION CONTACT: James H. Turk, Technical Assistance Division, Office of Program Policy Development, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 755-6876. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

Information Collection Requirements

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 and have been approved under OMB control number 2506-0104. Public reporting burden for each of these collections of information is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the Preamble heading.

Other Matters

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street SW., Room 10276, Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Background

Section 501(b)(2) of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988), amended the Housing and Community Development Act of 1974 (the Act) to add a new section 107(c). This section authorizes a new Community Development Work Study Program (CDWSP). Under CDWSP, HUD will provide grants to institutions of higher education, either directly or through areawide planning organizations or States, for the purpose of providing assistance to economically disadvantaged and minority students who participate in community development work study programs and are enrolled in full-time graduate or undergraduate programs in community and economic development, community planning, and community management.

On August 17, 1988 (53 FR 31226), HUD published a notice of funding availability announcing the requirements that HUD will use to govern the provision of available funding for CDWSP under the Department of Housing and Urban Development—Independent Agencies Appropriations Act, 1988 (Pub. L. 100-202, approved December 22, 1987). Simultaneously, HUD published a proposed rule (53 FR 31224). The proposed rule announced that HUD intended to use the requirements contained in the NOFA as the basis for a final rule amending 24 CFR Part 570, and invited public comment on the announced requirements. HUD received five comments on the proposed rule. These comments are addressed below.

Student Eligibility and Selection

The purpose of CDWSP, as stated in proposed rule, is to provide assistance to economically disadvantaged and minority students. One commenter asked whether a non-minority economically disadvantaged student is eligible for the program. If so, the commenter argued that the rule should be clarified on this point.

The primary eligibility requirement for student participation in CDWSP is that the student (whether non-minority or minority) must be economically disadvantaged under the applicable financial need guidelines at the participating institution of higher education. HUD will encourage the participation of minority students in several ways. First, recipients are required to establish recruitment procedures that identify eligible minority economically disadvantaged students pursuing a career in community and economic development and to make such students aware of the availability of assistance opportunities. Additionally, one of the ranking criteria that HUD will use in the selection of recipients is the recipient's commitment to meeting the needs of minority economically disadvantaged students. However, HUD will not limit student participation in the program to minorities. To preclude any possible confusion on this point, HUD has changed the definition of "economically disadvantaged student" to a definition of the statutory term, "economically disadvantaged and minority students", and has removed the separate definition of the term "minority student", which is not used by itself in the new regulatory provisions.

Another commenter asked how potential student participants (particularly individuals not currently enrolled in college) will be informed about program funding. Under the final rule, it is the responsibility of the recipient to recruit and select interested and eligible students. As noted above, recipients are required to establish their own recruitment procedures that will identify eligible economically disadvantaged students pursuing a career in community and economic development and make such students aware of the availability of assistance. While HUD anticipates that most of the recipient's recruitment efforts will be aimed at existing university students, nothing in the rules forbids recipients from making efforts to recruit nonstudents from the community.

Assistance Provided to Students

Assistance provided to students may include a student stipend. The amount of the stipend is based on the prevailing hourly rate for initial entry positions in the community and economic development field and the number of hours worked by the student at the work placement assignment, subject to stated maximum annual amounts. A participating student may receive stipend payment only during the period that the student is placed with the work placement agency.

A university noted that most of its work assignment agencies are located beyond the immediate geographic area of its campus. For this reason, most of its students are unable to work during the school year. Such students participate in intensive work study

assignments full-time during the summer. This commenter opposed the provision which permits the payment of the stipend only during the period that the student is placed with the work placement agency and argued that its students would not be able to afford to attend classes during other terms without a steady stream of support.

The final rule is unchanged on this point. Under CDWSP, the stipend is intended to compensate the student for work performed rather than to serve as general financial aid. HUD will not expend funds intended as an incentive for such performance until the work is completed. Thus, if the student performs this work during the course of the regular academic year, the student will be paid the stipend during the academic year. If the work is performed during the summer, the stipend is paid during the summer. HUD notes that other financial support in the form of tuition, books, and travel is available to assist the student without regard to the ongoing work placement activity.

Repayment Responsibilities

Under the proposed rule, the student's participation in the program will be terminated for failure to meet certain responsibilities and standards. These responsibilities include: full-time enrollment in an approved academic progam; maintenance of a satisfactory level of performance in the community development academic program and in work placement assignments; and compliance with the professional conduct standards set by the recipient and the work placement agency. If a student's participation is terminated before the completion of the two-year term of the program:

—The student must repay to the recipient any tuition support and additional support received; and

—The recipient must repay to the Federal government the amount of the tuition support and additional support provided to the student. Recipients are required to make this repayment even though the student fails to fulfill his or her repayment obligation to the recipient. Stipends are not required to be repayed.

The proposed rule provides that HUD may, on a case-by-case basis and for good cause, make exceptions to this repayment requirement.

One commenter opposed provisions that would require student repayment where the student is terminated for academic reasons, unless the student has been clearly negligent or irresponsible. This commenter noted that the student target group will often include students who deserve a chance to pursue a professional degree, but who may be marginally prepared. The commenter felt that repayment is contrary to the spirit of the program in cases where the student, despite best efforts, cannot sustain satisfactory academic performance.

The objective of CDWSP is to attract economically disadvantaged and minority students to community development careers and to provide a cadre of well-qualified professionals to plan, implement, and administer community development programs. To this end, CDWSP recipients are expected to sponsor rigorous academic programs that demand a great deal of the student participants. Grantees are expected to recruit and select students who can fulfill the academic requirements of the program, not to provide educational opportunities to students that are marginally prepared. To emphasize this point, the program: limits student eligibility to students who demonstrate an ability to maintain a satisfactory level of performance in the academic program and work placement assignments; makes selections among eligible students based, in part, upon their relative abilities to complete academic and work placement responsibilities; and provides for the selection of recipients based, in part, upon the rates of graduation from CDWSP-funded academic programs. The proposed revision has not been made.

Another commenter requested clarification of the "good cause exception" to student and recipient repayment. This commenter felt that the good cause standard was too vague, and subject to individual interpretations by the recipient, the student, and HUD. To clarify this provision, HUD has redrafted the exception provision to reflect more closely the waiver provisions that govern Part 570 regulations. (See § 570.5, which permits the Secretary to waive any requirement whenever it is determined that undue hardship will result from the application of the requirement and where the application of the requirement will not adversely affect the purpose of the Act.) In addition, the final rule cites specific factual circumstances under which exceptions will be granted. These include situations where the student is unable to work or to complete the two-year program because of a documented serious illness or death, or is unable to fulfill his or her financial obligations under the program because of bankruptcy.

As noted above, recipients are required to make the repayment even though the student fails to fulfill the repayment obligation to the recipient. One commenter argued that the proposed regulations do not specify what efforts the recipient must go through to collect from the students. The commenter observed that few recipients will be able to undertake expensive collection action required to enforce this provision. The commenter suggested that HUD impose specific procedures for collections from students, which, if followed, would relieve the recipient of its repayment obligations to HUD. This commenter also argued that the method and timetable for recipient repayment to HUD in the event of student default needs to be more clearly defined. The commenter noted that if a student agrees to repay, repayment will probably be made by installments. Under such circumstances, the commenter felt that the recipient should be required to repay funds in accordance with the repayment agreement developed by the recipient and the student.

Under CDWSP it is the responsibility of the recipient to develop its own debt collection procedures. HUD will not prescribe collection procedures, nor will it provide relief to recipients whose debt collection activities are unsuccessful. Repayment must be made by the grantee from its own funds regardless of the success of the recipient's efforts to recover the money from the students. Overdue payments will be assessed interest at the rate set by the Department of the Treasury. All repayments due to HUD shall be made by the date specified in a demand letter, but in no case later than the close-out of the grant. Since the grants are funded over a five-year funding cycle, there should be sufficient time for the recipient to collect money owed by the student.

Participation by Neighborhood Associations

One commenter was concerned about the absence of a provision allowing neighborhood associations to participate in the program to provide input into the program content, to assist in the preparation of realistic grant applications, and to encourage students participating in the program to focus on the areas in which they live.

To the extent that neighborhood associations are private nonprofit organizations involved in comprehensive planning, land use, community development, or housing activities, such organizations may participate directly in CDWSP and influence program direction as work placement agencies. The participation of

such organizations as recipients, however, is not permitted under section 107(c) of the Act. This section provides that recipients of grants are limited to institutions of higher education, areawide planning organizations and States.

Applicability of CDWSP Requirements to Existing Work Study Program

Before the addition of section 107(c) to the Act, HUD funded a work-study program under authority of the Secretary's discretionary fund to provide grants to qualified entities for the provision of assistance to governmental units in carrying out programs under Title I of the Housing and Community Development Act of 1974 (the Act). (See section 107(b)(4) of the Act.) This program was governed by HUD's technical assistance program regulations (24 CFR 570.402).

Students currently receiving assistance under the technical assistance work study program argued that the current proposal creates inequity, since there will be two sets of guidelines within the same program. These commenters requested that their current contracts be amended to reflect CDWSP requirements (e.g., commenters wanted to receive the increased amounts of assistance available under CDWSP and be relieved of their two-year obligation to work after graduation in a governmental agency that is using Title I funds).

The technical assistance work study program and the new CDWSP operate under different statutory authority, which makes it impossible to apply some of the CDWSP requirements to the existing student. For example, the two-year postgraduation employment requirement was imposed under the technical assistance work study program in order to ensure that a governmental unit received assistance in carrying out its Title I program, as required by section 107(b)(4) of the Act. New section 107(c) does not require that the governmental unit receive assistance. This change has permitted HUD to eliminate the employment obligation from CDWSP.

Other Matters

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 58, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Room 10276, at the address listed above.

This rule does not constitute a "major rule" as that term is defined in section 1(d) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this rule does not involve the preemption of State law by Federal statute or regulation, and will not have substantial direct effects on States or their political subdivisions, or on the relationship or distribution of power among various levels of government.

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule does not have a potential significant impact on family formation, maintenance, and general well-being. The rule implements the Community Development Work Study Program to provide assistance to economically disadvantaged students, and, therefore is not subject to review under the Order.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. Both small and large entities are eligible for funding under the program. Since the total number of entities that will be funded under the program will be few and will include both small and large recipients, HUD does not believe that a significant number of small entities will be affected by this program.

This rule was listed as item 991 in the Department's Semiannual Agenda of Regulations published April 24, 1989 (54 FR 16708) under Executive Order 12291 and the Regulatory Flexibility Act.

The collection of information requirements contained in this rule have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1980. This final rule has been determined by the Department to contain collection of information requirements, as follows:

Description of information collection	Section of 24 CFR affected	Number of respondents	Number of responses per respondent	Total annual responses	Hours per response	Total hours
Application	570.415(h)	100	1	100	20	2,000
Reports:						
Semester	570.415(d)	30	3	90	4	360
Final	& (f)	30	1	30	8	240
Total burden						2,600

(The Catalog of Federal Domestic Assistance program number is 14.234)

List of Subjects in 24 CFR Part 570

Community development block grants, Grant programs: Housing and community development, Loan programs: Housing and community development, Low- and moderate-income housing, New communities, Pockets of poverty, Small cities.

Accordingly, Title 24 of the Code of Federal Regulations is amended as follows:

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

1. The authority citation for Part 570 continues to read as follows:

Authority: Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301–20);

and sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. Section 570.415 is added to read as follows:

§ 570.415 Community Development Work Study Program.

(a) *Applicability and objectives.* HUD makes grants under CDWSP to institutions of higher education, either directly or through areawide planning organizations or States, for the purpose of providing assistance to economically disadvantaged and minority students who participate in a work study program while enrolled in full-time graduate or undergraduate programs in community and economic development, community planning or community management. The primary objectives of the program are to attract economically disadvantaged and minority students to careers in community and economic development, community planning, and community management, and to provide a cadre of well-qualified professionals to plan, implement and administer local community development programs.

(b) *Definitions.* The following definitions apply to CDWSP:

"Applicant" means an institution of higher education, a State, or an areawide planning organization that submits an application for assistance under CDWSP.

"Areawide planning organization (APO)" means an organization authorized by law or by interlocal agreement to undertake planning and other activities for a metropolitan or nonmetropolitan area.

"CDWSP" means the Community Development Work Study Program.

"Community development academic program" or "academic program" means an undergraduate or graduate degree program in community and economic development, community planning, community management, or other related fields of study. Related fields include public administration, public policy, urban economics, urban management, or urban planning, and exclude social and humanistic fields such as law, economics (except for urban economics), education, and history. Community development academic program or academic program does not include academic programs that offer joint fields of study in related and unrelated fields.

"Economically disadvantaged and minority students" means students who satisfy all applicable guidelines established at the participating institution of higher education to measure financial need for academic scholarship or loan assistance, including, but not limited to, students who are Black, American Indian/Alaskan Native, Hispanic, or Asian/Pacific Island.

"Institution of higher educaiton" means a public or private educational institution that offers graduate or undergraduate degrees in a community development academic program and that is accredited by an accrediting agency or association recognized by the Secretary of Education under 34 CFR Part 603.

"Recipient" means an approved applicant that executes a grant agreement with HUD.

"Student" means a student enrolled in an eligible full-time academic program. He/she must be a first-year student in a two-year graduate program (or a junior in an undergraduate program). Students enrolled in Ph.D. programs are ineligible.

(c) *Assistance provided*—(1) *Types of assistance available.* HUD provides funding in the form of grants to recipients who make assistance available to eligible students. Grants are provided to cover the costs of student assistance and for an administrative allowance.

(i) *Student assistance.* Grants are made to recipients to cover the costs of assistance provided to eligible students in the form of student stipends, tuition support, and additional support.

(A) *Student stipend.* The amount of the student stipend is based upon the prevailing hourly rate for initial entry positions in the community and economic development field and the number of hours worked by the student at the work placement assignment. The amount of the student stipend may not exceed the actual cost incurred, up to a maximum of $6,000 per year (undergraduate student) and $9,000 per year (graduate student).

(B) *Tuition support.* The amount of the tuition support may not exceed the tuition charged at the participating institution of higher education up to a maximum of $3,000 per year (undergraduate student) and $3,500 per year (graduate student).

(C) *Additional support.* The recipient may provide additional support for books, and support for travel related to the academic program, work placement assignment, or attendance at conferences sponsored by professional organizations in the field of community and economic development. The amount of additional support may not exceed the actual costs incurred, up to a maximum of $1,000 per year (undergraduate student) and $1,500 per year (graduate student).

(ii) *Administrative allowance.* HUD provides an allowance to recipients to cover the administrative costs of the program. The administrative allowance is $1,000 per year for each student participating in the program.

(2) *Number of students assisted.* The minimum number of students that may be assisted is three students per participating institution of higher education. If an areawide planning organization or State receives assistance for a program that is conducted by two or more institutions of higher education, each participating institution must have a minimum of three students in the program. The maximum number of students that may be assisted under CDWSP is ten students per participating institution of higher education.

(d) *Recipient eligibility and responsibilities.*—(1) *Recipient eligibility.* (i) The following organizations are eligible to apply for assistance under the program:

(A) *Institutions of higher education.* Institutions of higher education offering graduate degrees in a community development academic program are eligible for assistance under CDWSP. Institutions of higher education that offer undergraduate degrees in a community development academic program are eligible if the institution is located in a metropolitan statistical area (MSA) and no institution of higher education located in that metropolitan area offers graduate degrees in a community development academic program, or if the institution is located in one of the nonmetropolitan areas (non-MSA) of a State and no institution of higher education located in that nonmetropolitan area offers graduate degrees in a community development academic program.

(B) *Areawide planning organizations and states.* An areawide planning organization or a State may apply for assistance for a program to be conducted by two or more institutions of higher education.

(*1*) Institutions of higher education participating in an APO program must be located within the metropolitan or nonmetropolitan area served by the APO. Institutions of higher education participating in a State program must be located within the State.

(*2*) Except as provided below, participating institutions must offer graduate degrees in a community development academic program. Programs involving a participating institution that offers only undergraduate degrees in a community development academic program are eligible under the following circumstances: In the case of institutions participating in an APO program, no institution of higher education located

within the metropolitan or nonmetropolitan area served by the APO offers graduate degrees in a community development academic program; or in the case of institutions participating in a State program, no institution of higher education located within the metropolitan or nonmetropolitan area in which the institution offering undergraduate degrees is located offers graduate degrees in a community development academic program.

(ii) If a State is approved for funding, institutions of higher education located in the State are not eligible recipients. If an APO is approved for funding, institutions of higher education located in the metropolitan area or nonmetropolitan area served by the APO are not eligible recipients. (Such institutions, however, may receive assistance through participation in an APO or State program.)

(iii) To be eligible in future funding competitions for CDWSP, recipients are required to maintain a 50 percent rate of graduation from a CDWSP-funded academic program.

(2) *Recipient responsibilities.* (i) The recipient is responsible for the administration of the program, for compliance with all program requirements, and for the coordination of program activities carried out by the work placement agencies and (if the recipient is an APO or State), by the participating institutions of higher education. The recipient must:

(A) Recruit and select students for participation in CDWSP. The recipient shall establish recruitment procedures that identify eligible minority economically disadvantaged students pursuing career in community and economic development, and make such students aware of the availability of assistance opportunities. Students must be selected before the beginning of the semester for which funding has been provided.

(B) Recruit and select work placement agencies, and negotiate and execute agreements covering each work placement assignment.

(C) Refer participating students to work placement agencies and assist students in the selection of work placement assignments.

(D) Provide regularly scheduled seminars designed to relate the work experience provided under CDWSP to the educational experience in the participating students' academic program and to address career planning and permanent job placement. At least one seminar each semester or quarter must address student obligations under CDWSP.

(E) Assign sufficient staff to administer and supervise the program on a day-to-day basis, and, where the recipient is an APO or State, to monitor the activities of the work study coordinating committee.

(F) Encourage participating students to obtain employment for a minimum of two years after graduation with a unit of State or local government, Indian tribe or nonprofit private organization that receives community development funds.

(G) Maintain records by racial and ethnic categories for each economically disadvantaged student enrolled in the CDWSP.

(H) Keep records and make such reports as HUD may require.

(I) Comply with all other applicable Federal requirements.

(ii) If the recipient is an APO or State, the recipient must also:

(A) Establish a committee to coordinate activities between program participants, to advise the recipient on policy matters, to assist the recipient in ranking and selection of participating students, and to review disputes concerning compliance with program agreements and performance. The committee shall be chaired by a representative of the recipient, and shall include representatives of the participating institutions of higher education, work placement agencies, students, and HUD.

(B) Allocate the assistance awarded under the program to the participating institutions of higher education. APOs and States may not make fractional awards to institutions. (E.g., awards to institutions must assist a fixed number of students and not, for example, 6.5 students.)

(e) *Institutions of higher education.* Institutions of higher education participating in a program are responsible for providing its educational component. Where the recipient is an APO or State, the institution of higher education shall assist the APO or State in the administration and operation of the program. Responsibilities include assisting the recipient in the selection of students by determining the eligibility of students for the academic program, and by making the analysis of students under the financial need guidelines established by the institution. All institutions of higher education must comply with other applicable Federal requirements.

(f) *Work placement agencies eligibility and responsibilities.*—(1) *Eligibility.* To be eligible to participate in the CDWSP, the work placement agencies must be an agency of a State or unit of general local government, an areawide planning organization, an Indian tribe, or a private nonprofit organization involved in comprehensive planning, land use, community development or housing activities.

(2) *Responsibilities.* Work placement agencies must:

(i) Provide practical experience and training in the community and economic development, community planning, or community management field to participating students through work placement assignments. Work placement assignments must offer students experience in planning, developing, and administering a local community or economic development program.

(ii) Consult with the institution of higher education (and the APO or State, where an APO or State is the recipient) to ensure that the student's work placement assignment provides the requisite experience and training to meet the required number of work hours specified in the student work placement agreement.

(iii) Provide a sufficient number of work placement assignments to provide participating students with a wide choice of work experience.

(iv) Require each student to devote 12–20 hours per week during the regular school year, or 35–40 hours a week during the summer, to the work placement assignment. Work placement agencies may provide flexibility in the work period, if such a schedule is consistent with the requirements of the student's academic program. However, a participating student may receive stipend payment only during the period that the student is placed with the work placement agency.

(v) Comply with all other applicable Federal requirements.

(vi) Maintain such records as HUD may require.

(g) *Student eligibility and responsibilities.* Students apply directly to recipients receiving grants under CDWSP. Students shall be selected in accordance with the following eligibility requirements and selection procedures.

(1) *Eligibility.* To be eligible for CDWSP, the student:

(i) Must satisfy all applicable guidelines established at the participating institution of higher education to measure financial need for academic scholarship or loan assistance.

(ii) Must be a full-time student enrolled in the first year of graduate study in a community development academic program at the participating institution of higher education. If an institution of higher education participating in CDWSP offers only

undergraduate degrees in a community development academic program, the individual must be a junior enrolled full-time in an undergraduate degree program. Individuals enrolled in doctoral programs are ineligible.

(iii) Must demonstrate an ability to maintain a satisfactory level of performance in the community development academic program and in work placement assignments, and to comply with the professional standards set by the recipient and the work placement agencies.

(iv) May not have previously participated in CDWSP.

(v) Must provide appropriate written evidence that he or she is lawfully admitted for permanent residence in the United States, if the individual is not a citizen.

(2) *Selection.* In selecting among eligible students, the recipient must consider the extent to which each student has demonstrated:

(i) Financial need under the applicable financial need guidelines established at the institution of higher education;

(ii) An interest in, and commitment to, a professional career in community and economic development, community planning or community management;

(iii) The ability satisfactorily to complete academic and work placement responsibilities under CDWSP.

(3) *Student responsibilities.* Participating students must:

(i) Enroll in a two-year program. A student's academic and work placement responsibilities include: Full-time enrollment in an approved academic program; maintenance of a satisfactory level of performance in the community development academic program and in work placement assignments; and compliance with the professional conduct standards set by the recipient and the work placement agency. A satisfactory level of academic performance consists of maintaining a B average on the graduate level, and on the undergraduate level maintaining a grade-point average that would enable the student to graduate within the approval period of the grant. A student's participation in CDWSP shall be terminated for failure to meet these responsibilities and standards. If a student's participation is terminated, the student is ineligible for further CDWSP assistance and must repay to the recipient any tuition support and additional support received. (The student is not required to repay the stipend.)

(ii) Agree to make a good-faith effort to obtain employment with a unit of State or local government or Indian tribe administering community development programs, or a non-profit private organization that receives community development funds. The term of employment should be for at least two consecutive years following graduation from the academic program. If the student does not obtain such employment, the student is not required to repay the assistance received.

(h) *Notice of fund availability.* HUD will solicit grant applications from institutions of higher education, APO's and States by publishing a notice of fund availability in the Federal Register. The notice will:

(1) Explain how application packages (requests for grant applications) providing specific application requirements and guidance may be obtained;

(2) Specify the place for filing completed applications, and the date by which the applications must be physically received at that location;

(3) State the amount of funding available under the notice;

(4) Provide other appropriate program information and guidance.

(i) *Recipient selection process.* The selection process for applications under CDWSP consists of a threshold review, ranking of eligible applications and final selection.

(1) *Threshold.* To be eligible for ranking, applicants must meet each of the following threshold requirements:

(i) The application must be filed in the application form prescribed by HUD, and within the required time periods;

(ii) The applicant must demonstrate that it is eligible to participate;

(iii) The applicant must demonstrate that each institution of higher education participating in the program as a recipient has the required academic programs and faculty to carry out its activities under CDWSP. Each work placement agency must have the required staff and community development work study program to carry out its activities under CDWSP.

(2) *Ranking.* All applications that meet the threshold requirements will be placed in priority funding order. In ranking applications, HUD will consider:

(i) The relative quality of the academic program offered by the institution of higher education; quality of the academic supervision and amount of resources to be committed by the institution of higher education to the academic program; and the rate of graduation from previous CDWSP academic programs funded under these regulations.

(ii) The extent to which the participating students will receive a sufficient number and variety of work placement assignments, the assignments will provide practical and useful experience to students participating in the program, and the assignments will further the participating students' preparation for professional careers in community or economic development, community planning, or community management.

(iii) The degree to which proposed seminars will relate the experience provided under the work placement assignments with the educational experience provided under the academic program, and will address career planning and permanent job placement.

(iv) The extent to which the proposed program will lead participating students directly and immediately to permanent employment in community or economic development, community planning, or community management upon completion of the program.

(v) The degree to which an applicant will be able effectively to coordinate and administer the program.

(vi) The recipient's relative commitment to meeting the needs of minority economically disadvantaged students. If the applicant is an APO or State, HUD will also consider the extent of the APO's (or State's) commitment to meeting the needs of minority economically disadvantaged students.

(3) *Final selection.* Eligible applications will be considered for selection in their rank order. HUD may make awards out of rank order to achieve geographic diversity, and may provide assistance to support a number of students that is less than the number requested under applications in order to provide assistance to as many highly ranked applications as possible.

(j) *Agreements*—(1) *Grant agreement.* The responsibilities of the recipient under CDWSP will be incorporated in a grant agreement executed by HUD and the recipient.

(2) *Student agreement.* The recipient and each participating student must execute a written agreement incorporating their mutual responsibilities under CDWSP. The agreement must be executed before the student can be enrolled in the program. A student's participation in CDWSP shall be terminated for failure to meet the responsibilities and standards in the agreement.

(3) *Work placement assignment agreement.* The institution of higher education, the APO or state (if an APO or State is the grant recipient), the participating student, and the work placement agency must execute a written agreement covering each work placement assignment. The agreement must address the responsibilities of each

of the parties, the educational objectives, the nature of supervision, the standards of evaluation, and the student's time commitments under the work placement assignment.

(4) *APO (or state) and institution of higher education.* Where the recipient is an APO (or a State), the recipient and each participating institution of higher education must execute a written agreement incorporating their mutual responsibilities under CDWSP.

(k) *Grant administration*—(1) *Initial obligation of funds.* When HUD selects an application for funding, and notifies the recipient, HUD will obligate funds to cover the amount of the approved grant. The initial obligation of funds will provide for student grants for two years.

(2) *Disbursement.* Recipients will receive grant payments by direct deposit on a reimbursement basis. If that is not possible, grant payments will be made by U.S. Treasury checks.

(3) *Deobligation and recipient repayment.* (i) HUD may deobligate amounts for grants if proposed activities are not begun or completed within a reasonable time after selection.

(ii) If a student's participation in CDWSP is terminated before the completion of the two-year term of the student's program, the recipient must repay to the Federal Government the amount of the tuition support and additional support provided to the student under CDWSP. Recipients are required to make this repayment even though the student fails to fulfill his or her repayment obligation to the recipient. The recipient is eligible to receive payment for the cost of the student stipend paid before the date of the student's termination, and for an administrative allowance that is based on the proportion of the two-year term completed by the student. The recipient may substitute a student to complete the two-year term of a student whose participation has been terminated. The substituted student must be otherwise eligible for participation in CDWSP and must have a sufficient number of academic credits to complete the degree program within the remaining portion of the terminated student's two-year term.

(iii) Where an undue hardship would result from the application of the repayment requirement and where the application of the requirement would not adversely affect the purposes of CDWSP, HUD may, on a case-by-case basis, exempt the student or the recipient from repayment requirements under CDWSP. Such exemptions will be granted where a student is unable to work or to complete the program because of serious illness or death, or is unable to fulfill his or her financial obligations due to bankruptcy.

(iv) Consistent with OMB Circulars No. A–101 and A–110, HUD, in the grant agreement, will set forth in detail other circumstances under which funds may be deobligated, recipients may be liable for repayment, or other sanctions may be imposed.

(*l*) *Other Federal requirements*—(1) *Handicap provision.* Recipients must provide a statement certifying that no otherwise qualified handicapped person shall, solely by reason of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under the CDWSP.

(2) *Nondiscrimination.* The recipient must adhere to the following nondiscrimination provisions: The requirements of Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3600–20 (Fair Housing Act) and implementing regulations issued at Subchapter A of Title 24 of the Code of Federal Regulations; Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–4) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR Part 1; section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR Part 8; Executive Order 11063 and implementing regulations at 24 CFR Part 107; and the Age Discrimination Act of 1975, and implementing regulations at 24 CFR Part 146.

Date: June 21, 1989.

Audrey E. Scott,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 89–15181 Filed 6–26–89; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-89-1991; FR-2628]

Community Development Work Study Program

AGENCY: Office of Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of fund availability.

SUMMARY: Section 107(c) of the Housing and Community Development Act of 1974 authorizes the Community Development Work Study Program (CDWSP) under the Secretary's Discretionary fund. This notice announces the availability of $3 million for CDWSP from amounts that were appropriated in the Department of Housing and Urban Development—Independent Agencies Appropriations Act, 1989 (Pub. L. 100-404, approved August 19, 1988) and solicits applications for programs that begin in Fall 1989 or Fall 1990.

HUD is combining FY 1989 and FY 1990 appropriations (if authorized) to hold one competition. The FY 1989 appropriation of $3 million will be used to fund applicants for programs that begin in the Fall of 1989. This funding would support programs from September, 1989 to September 1991. If FY 1990 funds are appropriated as authorized, another $3 million will be made available to fund programs from September, 1990 to September, 1992. Applicants submitting proposals under this competition may apply for students to cover both grant periods (September, 1989 to September, 1991 and September, 1990 to September 1992); however, a separate budget breakdown of requested student participations must be submitted for each of the two funding cycles. HUD may award grants to cover two funding cycles but is not obligated to do so.

If an applicant wants to apply for one, but not both, of the funding cycles, the applicant must do so under this announcement. Applicants will not have an opportunity to apply for either of the funding cycles at a later date.

Elsewhere in today's issue of the **Federal Register**, HUD has published a final rule establishing the requirements for CDWSP.

EFFECTIVE DATE: June 27, 1989.

FOR FURTHER INFORMATION CONTACT: James H. Turk, Technical Assistance Division, Office of Program Policy Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755-6876. This is not a toll-free number. Application packages (requests for grant application) may be obtained immediately at the following address: Department of Housing and Urban Development, Office of Procurement and Contracts, Program Support Division, 451 Seventh Street, SW., Room 5252, Washington, DC 20410.

SUPPLEMENTARY INFORMATION:

A. Background

Section 107(c) of the Housing and Community Development Act of 1974 (the Act) authorizes the Community Development Work Study Program (CDWSP). Under this section, HUD is authorized to provide grants to institutions of higher education, either directly or through areawide planning organizations or States, for the purpose of providing assistance to economically disadvantaged and minority students who participate in community development work study programs and are enrolled in full-time graduate or undergraduate programs in community and economic development, community planning, and community management.

Under section 107(b) of the Act, the Department is authorized to set aside $60 million of the total amount provided in appropriations acts for the community development block grants program for a Secretary's Discretionary Fund. Section 107(c) of the Act provides that of the amounts set aside for use under the Secretary's Discretionary Fund, the Secretary shall, to the extent approved in appropriations acts, make available not less than $3 million under CDWSP. This notice announces the availability of $3 million of funds under the CDWSP and solicits applications for the use of these funds. The application procedures and filing deadlines are set forth in paragraph B below. Applicants may apply for funds for programs that begin in the Fall 1989 or Fall 1990 semester.

B. Application procedures

HUD has developed an application package (request for grant application) describing the information that applicants for CDWSP assistance must submit. The application package will be provided upon the written request of any party made to: Department of Housing and Urban Development, Office of Procurement and Contracts, Program Support Division, 451 Seventh Street, SW., Room 5252, Washington, DC 20410. Applications must be submitted on the forms prescribed by HUD and must be hand delivered and received, or postmarked, no later than September 25, 1989.

Following the expiration of the September 25, 1989 deadline, HUD headquarters will review, rate and rank applications consistent with the procedures announced in the final rule. Applicants awarded a CDWSP grant for programs that begin in either the Fall 1989 or Fall 1990 semester will be notified of their selection as soon as practicable following the completion of the selection process.

C. Other Information

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520) and has been approved under OMB control number 2506-0104.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 58, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Room 10276, at the address listed above.

(The Catalog of Federal Domestic Assistance program number is 14.234)

D. Other Federal Requirements

a. *Handicap Provisions.* The recipient must provide a statement certifying that no otherwise qualified handicapped person shall, solely by reason of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subject to discrimination under the CDWSP.

b. *Nondiscrimination.* The requirements of Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. 3600-20 (Fair Housing Act) and implementing regulations issued at Subchapter A of Title 24 of the Code of Federal Regulations, as amended by 54 FR 3232 (published January 23, 1989); Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-4) Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR Part 1; Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations issued at 24 CFR Part 8; Executive Order 11063 and implementing regulations at 24 CFR Part 107 and the Age Discrimination Act of 1975, and implementing regulations at 24 CFR Part 146.

Authority: Sec. 107(c) Housing and Community Development Act of 1974 (42 U.S.C. 5307); sec. 7(d) Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Date: June 21, 1989.

Audrey E. Scott,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 89-15182 Filed 6-26-89; 8:45 am]

BILLING CODE 4210-29-M

federal register

Tuesday
June 27, 1989

Part IX

Department of Transportation

Research and Special Programs Administration

49 CFR Part 171 et al.

Emergency Response Communication Standards; Final Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, 173 and 176

[Docket No. HM-126C; Amdt. Nos. 171-102, 172-116, 173-213, 176-28]

RIN 2137-AA88

Emergency Response Communication Standards

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends the Hazardous Materials Regulations (HMR; 49 CFR Parts 171 through 179) to impose new requirements for emergency response information on shipping papers, and placement of emergency response information on vehicles and at transportation facilities. This action is necessary to improve the emergency response information requirements in the HMR in order to enhance communication pertaining to the safe handling and identification of hazardous materials involved in transportation incidents.

FOR FURTHER INFORMATION CONTACT: Helen L. Engrum, Standards Division, Office of Hazardous Materials Transportation, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. Telephone: (202) 366-4488.

EFFECTIVE DATE: These amendments are effective on April 2, 1990. However, compliance with the regulations amended herein is authorized as of July 31, 1989.

SUPPLEMENTARY INFORMATION:

I. Background and Summary of Comments

As a result of the investigation of an accident which occurred near Odessa, Delaware in October 1982, the National Transportation Safety Board (NTSB) recommended that the DOT ". . . Determine by mode of transportation, the feasibility of requiring comprehensive product-specific emergency response information, such as Material Safety Data Sheets, to be appended to shipping documents for hazardous materials transported in bulk quantities, giving particular attention to the early emergency response problems posed by n.o.s. commodities in transit." In October 1983, RSPA received a petition from the American Trucking Associations (ATA) which requested DOT "require, by rule, motor carriers involved in the transportation of hazardous materials to maintain a copy of the Emergency Response (Guidebook), DOT P 5800.2, at each motor carrier facility where hazardous materials shipments are loaded or unloaded from vehicles."

In response to concerns expressed in the NTSB recommendation (I-83-2) and the ATA petition (P-922), on March 16, 1984, RSPA published an advance notice of proposed rulemaking (ANPRM) under Docket HM-126C in the **Federal Register** (49 FR 10048). The ANPRM, entitled "Required Use of Emergency Response Guidebooks and Material Safety Data Sheets", quoted the NTSB recommendation and the ATA petition in their entirety, and solicited comments on the benefits and consequences of requiring the use of the Emergency Response Guidebook (ERG) or Material Safety Data Sheets (MDSD) to communicate information on the hazards of materials moving in commerce.

Evaluation of the comments to the ANPRM indicated a need for requiring additional emergency response information on hazardous materials transported in commerce. The majority of commenters supported RSPA requiring additional emergency response information. However, only two commenters supported the NTSB recommendation that an MSDS accompany every bulk shipment of hazardous materials. Several commenters stated that although some of the information on an MSDS might be useful, they believed that use of the ERG would be a more effective method of communicating fundamental hazard information to emergency response personnel, and that the ERG should be maintained as the primary reference.

Based on RSPA's evaluation of the merits of the comments to the ANPRM, on August 30, 1987, a notice of proposed rulemaking (NPRM) was published entitled "Emergency Response Communication Standards" under Docket No. HM-126C (53 FR 31486). The NPRM solicited comments on requiring improved emergency response information on shipping papers and packages, and placement of emergency response information on vehicles and at facilities involved in hazardous materials transportation. The NPRM addressed both bulk and non-bulk packages.

In the NPRM, it was noted that widespread support was expressed by commenters to the ANPRM for requiring use of the ERG. Many commenters believe that to better inform emergency response personnel about the hazards of a material, the use of the ERG would satisfy the emergency response information requirements. The NPRM included a proposal to require that persons offering hazardous materials for transportation provide on the shipping paper a twenty-four hour emergency response telephone number of a person knowledgeable about the hazardous materials being shipped. In addition, the NPRM contained a proposal to require that technical names be shown on shipping papers and packages for materials which are described under "n.o.s." or generic descriptions. A detailed discussion of these proposals, as well as the comments to these proposals follows.

II. Discussion of Comments Made to the NPRM

RSPA received more than seventy comments to the NPRM under Docket HM-126C. Comments were received from associations, chemical companies, emergency response organizations, and Federal and State agencies. Most commenters supported the intent of the proposed rule to improve emergency response communication during transportation incidents involving hazardous materials. However, many commenters expressed concern over certain aspects of the proposal and requested clarification on the use of certain technical names (i.e., proprietary or trade names) for "n.o.s." entries, maintenance of a twenty-four hour emergency response telephone number to obtain product-specific information on the hazardous material being transported, and the feasibility of requiring placement of the ERG, MSDS or other emergency response information on vehicles and at facilities.

Major Issues

A. Emergency Response Information

ATA strongly supported requiring additional emergency response information on shipping papers and packages, and placement of the ERG at facilities. However, ATA expressed concern about requiring the placement of the ERG on transport vehicles. ATA stated:

> (t)he cost of providing the ERG and insuring that it is on all transport vehicles will result in the expenditure of millions of dollars which would not be cost effective to safety in the trucking industry.

ATA did not provide quantitative or qualitative data in their comments to support this contention. It should be noted that the NPRM did not propose imposing mandatory use of the ERG on vehicles or at facilities to satisfy the emergency response information

requirements, but rather the ERG could be used as one of several alternatives to satisfy those requirements. Although businesses may incur additional paperwork burdens, due to the requirement for placement of emergency response information on transport vehicles, RSPA believes that those burdens are justified because the requirement will improve the availability of information at the scene of an incident involving hazardous materials and thereby enhance emergency response efforts during such incidents.

RSPA did not propose that drivers of motor vehicles or crews aboard aircraft or trains attempt themselves to take emergency response measures. Instead, RSPA believes that during the initial stages of an emergency, having this information immediately available aboard a transport vehicle is important to convey information concerning the risks of materials, the basic precautions to be taken by transportation workers, and to improve the effectiveness of the first on the scene emergency responders.

The Association of American Railroads (AAR) commented that the notice as written would require that emergency response information be maintained on each rail car or "transport vehicle." They stated that there is no place on a rail car for this information to be placed and that there is no reason for this information to be placed on each individual rail car.

To clarify our intent in regard to maintenance of and accessibility to emergency response information on "transport vehicles", the requirement addressing carriers' responsibility for maintenance of written emergency response information on transport vehicles, such as trucks, rail cars or vessels and barges, has been restated to require that emergency response information be carried in the same manner as prescribed for shipping papers.

The AAR stated that additional written emergency response information (e.g., ERG) is unnecessary for rail shipments because they have the "Hazardous or Dangerous Commodity Reports" for each hazardous material in a train, which they feel satisfies the emergency response information requirements. Although having the ERG available would satisfy the emergency response information requirements, other documents, for shipments by aircraft, vessel and rail, such as the ICAO "Emergency Response Guidance for Aircraft Incidents Involving Dangerous Goods", the IMO "Emergency Procedures for Ships Carrying Dangerous Goods", and the "Hazardous or Dangerous Commodity Reports", respectively, may be used to satisfy the requirements for emergency response information, as long as they contain the required emergency response information and are present on the transport vehicle for each commodity.

Representative of commenters supportive of carrying the ERG on-board vehicles was the National Private Trucking Association (NPTA). NPTA stated:

> There are several sound reasons for carrying a copy of the ERG on-board transit vehicles. First, even though a significant number of ERGs have been distributed to emergency response organizations and personnel throughout the country, it is extremely unlikely that every emergency responder has one, or that one would always be on-scene. The presence of an ERG on each transport vehicle should effectively remedy this. Second, and perhaps more important, currently when most incidents involving hazardous materials occur, there is a period of time between the occurrence and the arrival of trained first responders with, presumably, copies of an ERG and/or other essential information to enable them to initiate an effective response. Consequently, as a rule for the majority of shipments currently taking place, during that critical period of time, the truck driver, as well as any other passers-by who may happen on the scene, are without essential information concerning the risk(s) which the materials being transported may pose to them and the public generally, or how to provide immediate and effective first aid should contact with a material have occurred.

RSPA agrees with NPTA that having a copy of the ERG immediately available during a hazardous material emergency would be useful. However, compliance with a requirement that emergency response information be immediately available for responders' use may also be accomplished in a number of other ways, such as by having emergency response information printed on the shipping paper or use of an MSDS (if it contains all of the required information).

Several commenters suggested that DOT require the ERG to be carried on all emergency response vehicles. DOT does not have statutory authority to require carriage of the ERG on emergency response vehicles operated by public entities. However, it has been the goal of RSPA, since the early 1980's, that all emergency response vehicles carry a copy of the ERG. To this end, approximately 2.5 million copies of the ERG have been distributed, without charge, to emergency response organizations by RSPA.

Widespread support was expressed in the comments to the NPRM for requiring additional emergency response information to accompany hazardous materials in transportation. Most commenters stated the ERG was the preferred source for obtaining emergency response information. In this final rule, RSPA adopts a requirement essentially as proposed in the NPRM, that emergency response information be maintained on transport vehicles, in the same manner as prescribed for shipping papers, and at facilities involved in the transportation of hazardous materials. While use of the ERG would be one method of compliance, flexibility is provided to afford use of other means to satisfy this requirement.

B. N.O.S. Descriptions/Generic Descriptions

The Chemical Waste Transportation Council (CWTC) supported showing the technical name for n.o.s. descriptions. However, CWTC stated that the requirement poses special administrative problems for non-bulk shipments of wastes. The CWTC stated:

> Keep in mind that non-bulk shipments of hazardous waste, as opposed to hazardous pure product, are normally comprised of a variety of waste stream packages. The extent of this variety becomes most complex with regard to the shipment of waste material packaged in accordance with 49 CFR 173.12(b). Yet, the risk presented by these divergent but compatible waste streams is no greater, and for the most part is less hazardous, than its source material. Waste, after all, is often the dilute by-product or residue of a pure hazardous material product. This is especially true of wastes with an n.o.s. status.

The CWTC requested that DOT allow shippers of hazardous wastes to show waste stream numbers in place of technical names for n.o.s. entries as provided under the requirement in § 172.203(c) for hazardous substances. CWTC petitioned RSPA (petition number P–1033) to amend the HMR at 49 CFR 172.203(c)(1) and 172.324(a) to exclude materials packaged in accordance with the lab pack provisions in § 173.12 from the requirement of showing technical names for n.o.s. entries.

RSPA did not intend to make the additional description and marking requirements for emergency response information for hazardous waste materials, packaged in accordance with the lab pack provisions, more burdensome to the hazardous waste industry. On the contrary, RSPA agrees with CWTC comments that for hazardous waste materials, packaged in accordance with the lab pack provisions, inclusion of waste stream numbers rather than technical names for n.o.s. descriptions would meet the additional emergency response

information requirements. Consequently, in § 173.12, a new paragraph (f) has been added to allow the use of waste stream numbers, instead of the required technical name description, for hazardous waste packaged in lab packs. It should be noted, however, that there is no exception in § 173.12, or elsewhere, from identifying the names of constituents contained in lab packs, if the constituent is a hazardous substance or a poison.

Most commenters supported including the technical name for n.o.s. or generic descriptions on shipping papers. However, because many technical names are quite lengthy or complicated, and commenters are concerned about the disclosure of proprietary information or trade secrets, they recommended including chemical family or generic names, common names, registered trade names, or other names in the NIOSH registry in place of technical names for n.o.s. entries. Trade secrets include chemical formulations, and the commenters believe that this information would not be protected if they were required to include the technical names of these constituents on shipping papers. RSPA believes that in emergency response situations, the addition of technical names for n.o.s. entries is the best way to identify the primary and subsidiary hazards associated with a material. RSPA also realizes that some chemical technical names are extremely complex. In order to accommodate the use of chemical names that are more readily recognizable and usable to emergency responders, the definition in § 171.8 for "technical name" includes chemical names designated or recognized by the International Union of Pure and Applied Chemistry (IUPAC), the Chemical Abstracts Service, or in the Registry of Toxic Effects of Chemical Substances (RTECS). However, trade names may not be used as technical names.

Further, RSPA believes there is sound reasoning to require improved identification of chemical constituents. Commenters' concerns that "trade secret" information may be disclosed by showing these constituents on shipping papers for "n.o.s." descriptions have not been substantiated. As required by this final rule, if a hazardous material is a mixture or solution of two or more hazardous materials, only the technical names of at least two components most predominantely contributing to the hazards of the mixture or solution are required to be entered on the shipping paper. Furthermore, this final rule does not impose mandatory revelation of an exact formulation, only disclosure of valuable safety related information to be used in the transportation network. Additionally, it is our belief that identifying the two major constituents which contribute to the hazards of a material will result in only limited, if any, instances where proprietary information would be revealed. Current provisions of the HMR for identifying constituents in poisons, hazardous substance mixtures and solutions, and any n.o.s. description for water shipments have not revealed a problem regarding the release of proprietary information.

Recently, RSPA has been made aware of a potential problem concerning the identification of constituents of materials that are subject to the provisions of 21 CFR 1301.74, as administered by the Drug Enforcement Administration (DEA). Paragraph (e) of that section states: "* * * In addition, the registrant shall employ precautions (e.g., assuring that shipping containers do not indicate that contents are controlled substances) to guard against storage or in-transit losses." RSPA is not aware that the current constituent identification requirements of the HMR have resulted in violations of the DEA requirements by persons shipping hazardous materials that are also controlled substances. The requirements of this final rule should not cause any significant compliance difficulties. Of the controlled substances reviewed by RSPA, each has a general or other technical name which may be used to identify the controlled substance in accordance with the requirements of this final rule, but which do not use terminology which readily identifies the hazardous material as a controlled substance.

C. Telephone Contact for Emergency Response Information

Comments to the notice generally supported RSPA's proposal to require that shipping papers contain the twenty-four hour telephone number of a person with detailed knowledge of the hazardous characteristics of the materials being shipped. The Chemical Manufacturers's Association (CMA) indicated support for the provision that allows shippers to list CHEMTREC, or other organizations, with similar capabilities, as the initial contact point for emergency response information. CMA pointed out that it would be impractical for an individual or small company to provide a phone number in the absence of this provision.

CHEMTREC is a public service of the CMA. CHEMTREC has the capability to provide immediate advice by telephone for the on-scene commander at a chemical emergency, and can then promptly contact the shipper of the hazardous material for detailed assistance and an appropriate response follow-up. CHEMTREC operates 24-hours a day, seven days a week to receive toll-free calls. CHEMTREC notifies the National Response Center (NRC) of significant incidents. If requested, they will connect a caller directly to the NRC, as required by Federal law and regulation. Other industry or government organizations may exist or be established which may provide similar services for specified categories of materials. RSPA recognizes the difficulty experienced by small companies, who may not always have a 24-hour telephone number or have an individual available to respond to inquiries on a 24-hour basis. This final rule allows for the use of an emergency response telephone number other than the shipper's, provided the shipper has furnished an agency or organization with detailed information concerning the hazardous material, and that the agency or organization is capable of, and has accepted responsibility for, providing such information. This option will provide a shipper the flexibility of selecting a name and number which will ensure a 24-hour availability of knowledgeable assistance.

Although most commenters supported the proposal to require a 24-hour emergency response telephone number on shipping papers, several expressed concern about the requirement in § 172.604(a)(2) for the telephone number to appear on the shipping paper "in association with the basic description". These commenters requested that the phone number be allowed anywhere on the shipping paper, as long as it is noted that the number is shown for the purpose of emergency response. In this final rule, the requirements in § 172.604(a)(2) (i) and (ii) have been modified to require shippers to: (1) enter the emergency response telephone number on shipping papers "following the description of the hazardous material", or (2) entered once on the shipping paper when the number applies to each material entered on the shipping paper, it is clearly highlighted for easy identification, and it is indicated that the telephone number is to be used to obtain emergency response information.

In the NPRM, RSPA proposed, as an option for a package having a gross weight of 30 kilograms or less, that the 24-hour emergency response telephone number may be displayed on the outside of the package in association with the proper shipping name rather than on the shipping paper. The United Parcel

Service (UPS) and the Air Transportation Association of America supported the requirement that shipping papers contain a 24-hour emergency response telephone number to obtain emergency response information concerning hazardous materials, but suggested that the 24-hour emergency response telephone number should not be placed on packages instead of being placed on shipping papers for packages of 30 kilograms or less. This suggestion was based on their concern that, if a package is found to be damaged or leaking, emergency response personnel should not jeopardize their safety by coming into contact with a leaking or damaged package to obtain the emergency response telephone number.

Upon further consideration, RSPA agrees with the commenters. Consequently, the exception, as proposed in the NPRM, to allow shippers to place the emergency response telephone number on packages instead of being placed on shipping papers for packages of 30 kilograms or less has not been adopted.

D. Additional Considerations

Applicability of emergency response information requirements to international shippers. The NPRM did not propose to except persons importing or exporting hazardous materials from compliance with requirements for written emergency response information. To clarify the applicability of emergency response information requirements to import/export shipments of hazardous materials, § 171.11, applicable to shipments of hazardous materials conforming to the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions), is revised in this final rule to require compliance with emergency response information requirements in Subpart G of Part 172 of this subchapter. It should be noted that no change in the requirements of § 171.12 have been adopted in this final rule, therein, shipments of hazardous materials made in accordance with the provisions of this section are not excepted from the shipping paper or emergency response information requirements. RSPA notes that both ICAO and the International Maritime Organization (IMO) publish documents containing emergency response information which could be used to satisfy the written emergency response information requirements specified in this final rule, when used in conjunction with a properly prepared shipping paper.

With regard to providing a 24-hour emergency response telephone number, the Hazardous Materials Advisory Council (HMAC) strongly urged RSPA to require foreign shippers that ship hazardous materials into the United States to designate a representative in the U.S., and to ensure that the contact is supplied with sufficient emergency response information to adequately assist emergency responders. Other commenters, such as the Air Transport Association of America and the International Air Transport Association (IATA) were concerned that overseas telephone numbers would be of little use in an emergency in the U.S., and that there could be some difficulty in obtaining emergency response information for import shipments of hazardous materials. RSPA has similar concerns regarding the effectiveness of an overseas 24-hour emergency response telephone number contact for foreign shippers. Although HMAC's proposal to require that foreign shippers designate a representative in the U.S. appears to have merit, it is beyond the scope of this rulemaking. RSPA anticipates addressing this issue in future rulemaking. Until that time, the emergency response information requirements of this final rule apply to all shippers of hazardous materials. Accordingly, the appropriate sections of the HMR, §§ 171.11, and 171.12a, have been revised to require that import shipments of hazardous materials, subject to the provisions of these sections, must conform to the requirements for emergency response information as prescribed in Subpart G of Part 172 of this subchapter.

Applicability of the emergency response information requirements to Canadian shipments of hazardous materials. The requirements under § 171.12a allow hazardous materials shipments from Canada to be transported in the United States, which are transported in accordance with the Canadian "Transport of Dangerous Goods Regulations" (TDG). The TDG regulations contain requirements for the use of certain emergency response information for shipments of hazardous materials. The requirements for completion of the "Emergency Response Form" are set out in the Canadian "Regulations for the Transportation of Dangerous Commodities by Rail." However, the Canadian "Emergency Response Form" only applies to carload, trailerload, truckload or containerload quantities of hazardous materials transported by rail. These Canadian requirements do not, in all instances, fulfill the requirements specified in this final rule. Therefore, § 171.12a has been revised by the addition of paragraph (a)(7) which requires compliance with the emergency response information provisions of Subpart G of Part 172.

Applicability of emergency response information requirements to empty packagings. The requirements under 49 CFR 173.29, for empty packagings that contain any residue of a hazardous material, specify that unless a packaging is cleaned and purged of all residue, or filled with materials not regulated under 49 CFR, it must be transported in the same manner as required when it previously contained a greater quantity of hazardous materials. This provision also applies to conformance with emergency response information requirements.

Requests for public hearing. Three commenters, the ATA, the Regular Common Carrier Conference (RCCC), and the International Association of Fire Fighters (IAFF) requested that RSPA conduct a public hearing on the merits of the proposals contained in the NPRM. ATA and RCCC requested a joint hearing with DOT and OSHA to address the nature and extent of hazardous materials incidents in the trucking industry and the information necessary to protect employees and others in the event of such incidents. ATA stated:

> (t)his hearing will allow both agencies to hear from the affected industries and to better understand the conflict which will arise as a result of the lack of delineation of regulatory authority of the two agencies. It would also provide DOT and OSHA with the opportunity to hear suggestions which could help to promote national uniformity and increased safety through practical and a realistic communication standard.

RSPA conducted a public hearing on certain aspects of this rulemaking action after issuance of the ANPRM. Comments received during the hearing and the comment period on the ANPRM generally supported the proposal to require that additional emergency response information be included on the shipping paper, such as a 24-hour emergency response information telephone number, and additional shipping descriptions. A majority of the commenters supported the use of the ERG as the document for providing emergency response information in the event of an incident involving hazardous materials. RSPA received over seventy responses to the ANPRM. Based on the responses received to the ANPRM, RSPA issued an NPRM proposing specific regulatory requirements dealing with emergency response communications. In response to the NPRM, more than seventy comments

were received and evaluated. Furthermore, comments to other pending rulemaking actions, such as Docket HM-181, dealing with similar topics addressed in this rulemaking (ie., additional requirements for technical names for n.o.s. descriptions), were evaluated. RSPA does not believe that a public hearing on the proposals contained in the NPRM would have provided substantive additional information beyond the comments already received, evaluated, and discussed in responses to the ANPRM and NPRM.

In specific response to the ATA and RCCC request, RSPA fully appreciates the necessity for uniform and non-conflicting requirements, to the maximum extent possible, between various agencies of the Government. In order to provide compliance flexibility, thereby limiting the potential for duplicative or conflicting requirements, RSPA has not required a specific form or document which would be necessary in order to comply with the requirements of this final rule. Emergency response information must be in a form or document that permits reference to the hazardous materials being shipped and provide guidance relative to the hazards, risks, precautions and mitgation methods necessary. This information can be transmitted using an MSDS, the ERG, or any other document that provides the information prescribed.

ATA also expressed concern about the potential overlap of DOT and OSHA regulations and suggested a memorandum of understanding (MOU) to delineate respective authorities. RSPAaagrees that it should coordinate with OSHA officials on a continuing basis, but a formal MOU only could constitute an agreement to coordinate interagency activities. Matters related to resolution of jurisdictional issues (e.g., the meaning of the "exercise" provision of the Occupational Safety and Health Act; 29 U.S.C. 653(b)(1)) must be handled in the manner specified by law (e.g., review and decision by the Occupational Safety and Health Review Commission). In order to facilitate interagency coordination, RSPA solicits information on hazardous materials issues that should be discussed with OSHA officials on an ongoing basis.

The IAFF also requested that a public hearing be held regarding the proposals contained in the NPRM and, in addition, stated the following:

> The IAFF strongly disagrees with the position of the DOT that material safety data sheets (MSDSs) not be provided and maintained in those locations as required in 172.600(a). We believe that the MSDS, the primary vehicle for transmitting chemical information, should be required and available for use by fire fighting and other emergency response personnel during a hazardous materials emergency. We believe that the reasons provided by the DOT in the Notice of Proposed Rulemaking are not only based on special interest (industry and/or those being regulated) but are significantly rhetorical and unsubstantiated. While we agree that MSDS were not *originally* developed for the purpose of providing information for emergency response, they are now in fact the most utilized vehicle for providing such information. As you are well aware, the Federal Hazard Communication Standard, most State Right-to-Know standards, SARA and many other federal, state and local regulations require the utilization of the MSDS. Fire fighters and emergency response personnel utilize this information at fixed facilities and would obviously be able to utilize this information equally as well when responding to transportation incidents.
>
> We also strongly disagree with the proposal that the DOT Emergency Response Guidebook be used to satisfy the proposed requirements. The DOT ERG has never had public review other than through an "unofficial" and very unbalanced advisory committee. If the ERG is to be utilized, we propose that it receive full review in accordance with the Administrative Procedures Act. Accordingly, we also do not agree with the allowance of the use of the CHEMTREC telephone to satisfy the requirements of 172.604, especially without further definition of what "accepting responsibility for" would mean and without public review of the CHEMTREC operation and their legal responsibilities. If a telephone number is to be included, aside from the responsible shipper, we propose the telephone number of the National Response Center be utilized. As you are aware, the NRC telephone number is a toll-free number that is staffed seven days a week, 24 hours a day. While the NRC has the capability to immediately patch the caller into CHEMTREC's information and referral service as well as into governmental agencies, utilizing the NRC has other valuable functions not performed by CHEMTREC. Notification of the NRC serves many vital functions, including permitting federal involvement to proceed in a timely and effective manner. We believe this would greatly assist fire fighters in handling hazardous materials incidents.

RSPA has not required nor prohibited the use of the MSDS as a means of providing information to workers covered by the Right-to-Know legislation and Superfund Amendment and Reauthorization Act of 1986 (SARA). We recognize the importance and use of the MSDS in providing information to employees and in planning functions. However, as has been made evident in the course of this rulemaking action, no single standard exists for the preparation of MSDS to provide emergency response information for transportation incidents. While an MSDS may provide information during an incident involving hazardous materials, the MSDS may not, in all instances, provide specific information relative to response actions to be taken during transportation related incidents. Conceivably, for "less-than-truckload" and "less-than-carload" shipments, a carrier would possess numerous MSDS for the different materials being transported. In the event of a hazardous materials emergency, they may not be the most appropriate means to ascertain the appropriate emergency response action to be taken. Additionally, a number of different MSDS may exist for the same material when shipped by different individuals. Information on these multiple MSDS may in fact vary, thus potentially leading to confusion during initial emergency response actions.

The requirements issued in this final rule are intended to provide specific information relative to the hazards of the materials being transported and provide immediate initial emergency response guidance until further specific information can be obtained from the shipper or others relative to long term mitigation actions. To date, only the ERG and similar documents such as those published by ICAO and IMO have consolidated this initial response information into a single, multimodal, easily understood, and recognizable document directly correlated with identification numbers and emergency response guidance. However, RSPA has not imposed a requirement that the ERG be carried on each transport vehicle and be maintained at facilities involved with the transportation of hazardous materials. Rather, this final rule requires that specific emergency response information accompany shipments of hazardous materials and be present at transportation facilities. This information may be in any format, including an MSDS, the ERG, or other similar document, so long as that document provides information, which at a minimum, provides the description of the hazardous material, immediate health hazard information, risks of fire and explosion, immediate precautions to be taken in the event of an accident or incident, immediate methods of handling large and small fires, initial methods for handling of spills or leaks, and preliminary first aid measures.

The IAFF asserts that the ERG has never had a public review other than through an "unofficial" and very "unbalanced" advisory committee. The ERG is not a regulatory document. There is no requirement currently in the HMR nor in this final rule which mandates the use of the ERG. The ERG was developed

in an effort to fulfill RSPA's responsibilities to provide for a safe transportation environment for hazardous materials, and in an effort to provide better information to emergency responders in the event of an incident involving hazardous materials in transportation.

The ERG, first published in 1980 and republished in 1984 and 1987, was developed in cooperation with respresentatives from a number of diverse groups. Representatives include members of the DOT, firefighters, the International Association of Fire Chiefs, the International Association of Chiefs of Police, The Fire Marshal Association of North America, the National Fire Protection Association, a cross-section of major manufacturers of hazardous materials, including representatives from Dow Chemical, DuPont de Nemours, and Union Carbide, CHEMTREC and the International Association of Fire Fighters. Each participant in the development of the ERG was invited to present suggestions, recommendations and other information relative to the guidance presented in the ERG. A number of participants, including the IAFF, presented issues relative to the development of information and recommendations contained in the ERG. All issues were discussed and decisions made by RSPA relative to the final content of the ERG.

Since the issuance of the 1980 and subsequent editions of the ERG, more than 2.5 million copies have been distributed, without charge, to emergency response organizations. Thousands of other copies of the ERG have been purchased by others from commercial sources. Such wide distribution has provided extensive review by a large audience and constructive comments have been solicited, especially comments concerning its use in handling incidents involving hazardous materials. For example, the current edition of the ERG specifically requests such comments and provides an address to which such comments should be forwarded. RSPA maintains an open log on comments relative to the ERG, each comment is evaluated and an attempt is made to address each issue during development of subsequent editions.

The IAFF also objected to the allowance of the use of the CHEMTREC telephone number to satisfy the requirements of § 172.604 and recommended use of the National Response Center's telephone number. RSPA has not mandated the use of the CHEMTREC number, nor the specific use of any organization's number. Therefore, the CHEMTREC telephone number, or any other agency's or organization's telephone number may only be used if the shipper has supplied the required information, and the agency has accepted the responsibility for providing information relative to the shipper's hazardous material.

The NRC has generally not been provided with information relative to a specific shipper's hazardous materials shipments, and usually cannot identify a specific shipper contact, nor has it "accepted responsibility for" providing information relative to a specific shipper's hazardous materials shipments. A requirement that an emergency response telephone number be provided for each shipment of hazardous materials is an attempt to provide emergency responders with more product-specific information relative to the hazards of the materials being transported. Nothing in the current regulations or this final rule prohibits or limits an emergency responder's efforts in obtaining information from all available sources. This position is in fact borne out by a statement in the ERG which states, "As a first responder at the scene of a hazardous materials incident, you must seek additional and more specific information about any material in question as soon as you are able." RSPA certainly encourages those involved in responding to hazardous materials incidents to use all available sources of information in order to make better informed judgments on how to handle them.

III. Relationship to Requirements Under Other Federal Statutes

On August 24, 1987, OSHA published a final rule (52 FR 31852) which amended their Hazard Communication Standard (HCS). The amended HCS requires virtually all employers to establish hazard communication programs to provide information to employees on the hazards of chemicals in the workplace. The amended HCS recognizes a variety of work situations, including those where employees only handle chemicals in sealed containers that are not opened under normal conditions of use (e.g., trucking terminals, warehousing, marine cargo handling and retail sales). Under the HCS, such employees must be provided information and training to protect them in the event of a spill or leak. The emergency response communication requirements of this final rule complement those of the HCS.

In addition, RSPA believes that the use of the emergency response information required under this rule, in association with the shipping paper information, will also assist carriers in complying with portions of the emergency notification requirements of section 304 of Title III of the Superfund Amendments and Reauthorization Act (SARA). The emergency notification requirements of SARA, Title III, apply to transportation, and storage incident to transportation, as well as fixed or stationary facilities that are not transportation facilities.

IV. Review by Sections

Section 171.8. In § 171.8, the definition for "technical name" is revised to include chemical names recognized in scientific and technical journals and handbooks.

Section 171.11. In § 171.11, paragraph (d) is revised to require compliance with the emergency response information requirements for international shippers who import hazardous materials into the United States aboard aircraft.

Section 171.12a. In § 171.12a, a new paragraph (a)(7) is addd to require shipments of hazardous materials being imported into the United States from Canada to be in compliance with the requirements for emergency response information specified in the new Subpart G of Part 172.

Section 172.202. This section is revised by adding a new paragraph (d) to require that shipping papers must contain an emergency response telephone number for the description of the hazardous material being shipped as specified in the new Subpart G of Part 172.

Section 172.203. This section is revised by moving paragraph (i)(2) and redesignating paragraph (i)(3) as paragraph (i)(2). Paragraph (i)(3) is removed. The requirements from paragraph (i)(2) are incorporated into a revised paragraph (k) to require that the "technical name" must be shown on shipping papers than contain "n.o.s. and generic" descriptions for hazardous materials. A new paragraph (m) is added to this section incorporating some of the requirements for poisonous materials which previously appeared in paragraph (k) of this section.

Section 172.301. In § 172.301, paragraph (c) is redesignated as paragraph (d), and a new paragraph (c) is added to require marking of the technical name of the hazardous material on non-bulk packages which contain hazardous materials described under n.o.s. descriptions, and on non-bulk packages of certain poisonous materials described under generic descriptions. In both instances, the technical name must be shown in

parentheses, immediately following the proper shipping name.

Section 172.302. This section on marking requirements for export shipment of hazardous materials by water is rendered obsolete by the changes in § 172.301. Therefore, this section is removed.

Subpart G to Part 172. A new Subpart G is added to Part 172 containing requirements for emergency response information.

Section 173.12. This section is revised to add a new paragraph (f) which provides an exception from showing the technical name for n.o.s. descriptions in shipping papers and package markings for hazardous waste materials packaged in accordance with the lab pack provisions, unless the hazardous material is a hazardous substance or meets the definition of a poison.

Section 176.30. This section is revised to require that a dangerous cargo manifest contain a 24-hour emergency response telephone number.

V. Administrative Notices

A. Paperwork Reduction Act

The changes and new requirements for information collection in §§ 172.201, 172.203, 172.602, and 172.604 have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) under OMB control numbers 2137-0034 and 2137-0580 (expiration dates: June 30, 1992).

B. Executive Order 12291

The RSPA has determined that this final rule (1) does not meet the criteria specified in section 1(b) of Executive Order 12291 and is, therefore, not a major rule; (2) is not considered to be a "significant" rule under DOT Regulatory Policies and Procedures (44 FR 11034); (3) will not affect not-for-profit enterprises or small governmental jurisdictions; and (4) does not require a Regulatory Impact Analysis or an Environmental Impact Statement under the National Environmental Policy Act (49 U.S.C. 4321 et seq.) A regulatory evaluation is available for review in the Docket.

C. Executive Order 12612

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

D. Impact on Small Entities

Based on limited information concerning size and nature of entities likely affected by this final rule, I certify this regulation will not have a significant economic impact on a substantial number of small entities. A regulatory evaluation is available for review in the Docket.

E. Regulatory Information Number (RIN)

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 171

Hazardous materials transportation, Definitions.

49 CFR Part 172

Hazardous materials transportation, Shipping papers, Markings and Emergency response information.

49 CFR Part 173

Hazardous materials transportation, Packagings.

49 CFR Part 176

Hazardous materials transportation, Maritime carriers.

In consideration of the foregoing, 49 CFR Parts 171, 172, 173 and 176 are amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for Part 171 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, 1808; 49 CFR Part 1.

§ 171.8 [Amended]

2. In § 171.8, the definition of "technical name" is revised to read as follows:

§ 171.8 Definitions and abbreviations.

* * * * *

"Technical name" means the scientific designation of a chemical in accordance with the nomenclature system developed by the International Union of Pure and Applied Chemistry (IUPAC) or the Chemical Abstracts Service (CAS) rules of nomenclature, or a name currently recognized in the Registry of Toxic Effects of Chemical Substances (RTECS). The term does not include trade names.

* * * * *

3. In § 171.11, a new paragraph (d)(10) is added to read as follows:

§ 171.11 Use of ICAO Technical Instructions.

(d) * * *

(10) Shipments of hazardous materials under this section must conform to the requirements for emergency response information as prescribed in Subpart G of Part 172 of this subchapter.

4. In § 171.12a, a new paragraph (a)(7) is added to read as follows:

§ 171.12a Canadian shipments and packagings.

(a) * * *

(7) Shipments of hazardous materials subject to the requirements of this section must conform to the requirements for emergency response information as prescribed in Subpart G of Part 172 of this subchapter.

* * * * *

5. The heading of Part 172 is revised to read as follows:

PART 172—HAZARDOUS MATERIALS TABLES, HAZARDOUS MATERIALS COMMUNICATIONS REQUIREMENTS AND EMERGENCY RESPONSE INFORMATION REQUIREMENTS

6. The authority citation for Part 172 is revised to read as follows:

Authority: 49 U.S.C. App. 1803, 1804, 1808; 49 CFR Part 1.

7. In § 172.201, a new paragraph (d) is added to read as follows:

§ 172.201 General entries.

* * * * *

(d) *Emergency response telephone number.* A shipping paper must contain an emergency response telephone number, as prescribed in Subpart G of Part 172 of this subchapter.

8. In § 172.203, paragraph (i)(2) is removed, paragraph (i)(3) is redesignated as paragraph (i)(2), paragraph (k) is revised and paragraph (m) is added to read as follows:

§ 172.203 Additional descriptions requirements.

* * * * *

(k) *Technical names for "n.o.s." and other generic descriptions.* Unless otherwise excepted, if a material is described on a shipping paper by one of the proper shipping names listed in paragraph (R)(3) of this section, the technical name of the hazardous material must be entered in parentheses in association with the basic

description. For example "Corrosive liquid, n.o.s. (Caprylyl chloride), UN1760" or "Corrosive liquid, n.o.s., UN1760 (contains caprylyl chloride)". The word contains may be used in association with the technical name, if appropriate.

(1) In addition to the n.o.s. descriptions listed herein, the requirements of this section apply to all shipping descriptions for poisonous materials which are subject to the requirements of paragraph (m) of this section, and for which the proper shipping name does not specifically identify the poisonous constituent by technical name. For example, "Motor fuel antiknock compound (Tetraethyl lead), Poison B, UN1649" or "Motor fuel antiknock compound, Poison B, UN1649, (Tetraethyl lead)".

(2) If a hazardous material is a mixture or solution of two or more hazardous materials, the technical names of at least two components most predominately contributing to the hazards of the mixture or solution must be entered on the shipping paper as required by this paragraph. For example, "Flammable liquid, corrosive, n.o.s. (contains Methanol, Potassium hydroxide), UN2924".

(3) Proper shipping names for which the provisions of this paragraph apply are as follows:

Acid, liquid, n.o.s.
Alcohol, n.o.s.
Alkaline liquid, n.o.s.
Cement, adhesive, n.o.s.
Combustible liquid, n.o.s.
Compressed gas, n.o.s.
Corrosive liquid, n.o.s.
Corrosive liquid, poisonous, n.o.s.
Corrosive solid, n.o.s.
Dispersant gas, n.o.s.
Etching acid, liquid, n.o.s.
Etiologic agent, n.o.s.
Flammable gas, n.o.s.
Flammable liquid, corrosive, n.o.s.
Flammable liquid, n.o.s.
Flammable liquid, poisonous, n.o.s.
Flammable solid, corrosive, n.o.s.
Flammable solid, n.o.s.
Flammable solid, poisonous, n.o.s.
Hazardous substance, liquid or solid, n.o.s.
Hazardous waste, liquid or solid, n.o.s.
Infectious substance, human, n.o.s.
Insecticide, dry, n.o.s.
Insecticide, liquid, n.o.s.
Irritating agent, n.o.s.
Nonflammable gas, n.o.s.
Organic peroxide, solid, n.o.s.
Organic peroxide, liquid or solution, n.o.s.
ORM–A, n.o.s.
ORM–B, n.o.s.
ORM–E, n.o.s.
Oxidizer, corrosive, liquid, n.o.s.
Oxidizer, corrosive, solid, n.o.s.
Oxidizer, n.o.s.
Oxidizer, poisonous, liquid, n.o.s.
Oxidizer, poisonous, solid, n.o.s.
Poisonous liquid or gas, flammable, n.o.s.
Poisonous liquid or gas, n.o.s.
Poisonous liquid, n.o.s.
Poison B liquid, n.o.s.
Poisonous solid, corrosive, n.o.s.
Poisonous solid, n.o.s.
Poison B, solid, n.o.s.
Pyrophoric liquid, n.o.s.
Pyroforic liquid, n.o.s.
Refrigerant gas, n.o.s.
Water reactive solid, n.o.s.

(4) The provisions of this paragraph do not apply—

(i) To a material that is described using the proper shipping name "Hazardous Substance, liquid or solid, n.o.s." provided the material is described in accordance with the provisions of § 172.203(c) of this part; or

(ii) To a material that is described using the proper shipping name "Hazardous Waste, liquid or solid, n.o.s." that is also a hazardous substance and which is described in accordance with the provisions of § 172.203(c) of this part.

* * * * *

(m) *Poisonous materials.* Notwithstanding the hazard class to which a material is assigned—

(1) If a liquid or solid material in a package meets the definition of a poison according to this subchapter, and the fact that it is a poison is not disclosed in the shipping name or class entry, the word "Poison" shall be entered on the shipping paper in association with the shipping description.

(2) If the technical name of the compound or principal constituent that causes a material to meet the definition of a poison (according to this subchapter) is not included in the proper shipping name for the material, the technical name shall be entered on the shipping paper in the manner prescribed in paragraph (k) of this section.

(3) If the inhalation toxicity of any material falls within the criteria specified in § 173.3a(b)(2) of this subchapter (subject to definitions and implementation conditions of paragraphs (c) and (d) of the same section), the words "Poison-Inhalation Hazard" shall be entered on the shipping paper in association with the shipping description. However, the word "Poison" need not be repeated if it is entered as part of the basic description or in conformance with paragraph (m)(1) of this section. This paragraph does not apply to packagings containing inner receptacles of one liter capacity or less.

* * * * *

9. In § 172.301, paragraph (c) is redesignated as paragraph (d) and paragraph (c) is added to this section to read as follows:

§ 172.301 General marking requirements.

* * * * *

(c) *Technical names.* Each non-bulk packaging containing hazardous materials subject to the provisions of § 172.203(k) of this part must be marked with the technical name of the hazardous material in parentheses immediately following the proper shipping name, in accordance with the requirements and exceptions specified for the display of technical descriptions on shipping papers in § 172.203(k) of this part.

* * * * *

§ 172.302 [Removed]

10. Section 172.302 is removed.

11. A new Subpart G is added to Part 172 to read as follows:

Subpart G—Emergency Response Information

Sec.

172.600 Applicability and general requirements.
172.602 Emergency response information.
172.604 Emergency response telephone number.

Subpart G—Emergency Response Information

§ 172.600 Applicability and general requirements.

(a) *Scope.* Except as provided in paragraph (d) of this section, this subpart prescribes requirements for providing and maintaining emergency response information during transportation and at facilities where hazardous materials are loaded for transportation, stored incidental to transportation or otherwise handled during any phase of transportation.

(b) *Applicability.* This subpart applies to persons who offer for transportation, accept for transportation, transfer or otherwise handle hazardous materials during transportation.

(c) *General requirements.* No person to whom this subpart applies may offer for transportation, accept for transportation, transfer, store or otherwise handle during transportation a hazardous material unless:

(1) Emergency response information conforming to this subpart is immediately available for use at all times and hazardous material is present; and

(2) Emergency response information required by this subpart is immediately available to any person who, as a representative of a Federal, state or local government agency, responds to an incident involving a hazardous material, or is conducting an investigation which involves a hazardous material.

(d) *Exception.* The requirements of this subpart do not apply to hazardous materials which are excepted from the shipping paper requirements of this subchapter.

§ 172.602 Emergency response information.

(a) *Information required.* For purposes of this subpart, the term "emergency response information" means information that can be used in the mitigation of an incident involving hazardous materials and, as a minimum, must contain the following information:

(1) The description of the hazardous material required by §§ 172.202 and 172.203;

(2) Immediate hazards to health;

(3) Risks of fire or explosion;

(4) Immediate precautions to be taken in the event of an accident or incident;

(5) Immediate methods for handling small or large fires;

(6) Initial methods for handling spills or leaks in the absence of fire; and

(7) Preliminary first aid measures.

(b) *Form of information.* The information required for a hazardous material by paragraph (a) of this section must be:

(1) Printed legibly in English;

(2) Available for use away from the package containing the hazardous material; and

(3) Presented—

(i) On a shipping paper;

(ii) In a document, other than a shipping paper, that includes both the basic description of the hazardous material as specified in § 172.101, and the emergency response information required by this subpart, (e.g., a material safety data sheet); or

(iii) In conjunction with a shipping paper, in a separate document, such as an emergency response guidance manual, in a manner that cross-references the basic description for the hazardous material on the shipping paper with the emergency response information contained in the document. For example, the ICAO "Emergency Response Guidance for Aircraft Incidents Involving Dangerous Goods" and the IMO "Emergency Procedures for Ships Carrying Dangerous Goods", for shipments by air and water respectively, could be used in association with a shipping paper to satisfy the requirements of this paragraph, if the document contains the information specified in paragraph (a) of this section.

(c) *Maintenance of information.* Emergency response information shall be maintained as follows:

(1) *Carriers.* Each carrier who transports a hazardous material shall maintain the information specified in paragraph (a) of this section in the same manner as prescribed for shipping papers (including dangerous cargo manifests). This information must be immediately accessible to a transport vehicle operator or crew in the event of an incident involving a hazardous material.

(2) *Facility operators.* Each operator of a facility where a hazardous material is received, stored or handled during transportation, shall maintain the information required by paragraph (a) of this section whenever the hazardous material is present. This information must be in a location that is immediately accessible to facility personnel in the event of an incident involving the hazadrous material.

§ 172.604 Emergency response telephone number.

(a) A person who offers a hazardous material for transportation must provide a 24-hour emergency response telephone number (including the area code or international access code) for use in the event of an emergency involving the hazardous material. The telephone number must be—

(1) Monitored at all times;

(2) The number of a person who is knowledgeable of the hazards and characteristics of the hazardous material being shipped, has comprehensive emergency response and accident mitigation information for that material, or has immediate access to a person who possesses such knowledge and information; and

(3) Entered on a shipping paper, as follows:

(i) Immediately following the description of the hazardous material required by Subpart C of this Part 172; or

(ii) Entered once on the shipping paper in a clearly visible location. This provision may be used only if the telephone number applies to each hazardous material entered on the shipping paper, and if it is indicated that the telephone number is for emergency response information (for example: "EMERGENCY CONTACT: ***).

(b) The telephone number required by paragraph (a) of this section must be the number of the person offering the hazardous material for transportation or the number of an agency or organization capable of, and accepting responsibility for, providing the detailed information concerning the hazardous material. A person offering a hazardous material for transportation who lists the telephone number of an agency or organization shall ensure that agency or organization has received current information on the material, as required by paragraph (a)(2) of this section before it is offered for transportation.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

12. The authority citation for Part 173 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, 1808; 49 CFR Part 1.

13. In § 173.12, a new paragraph (f) is added to read as follows:

§ 173.12 Exceptions for shipment of waste material.

* * * * *

(f) *Technical names for n.o.s. descriptions.* The requirements for the inclusion of technical names for n.o.s. descriptions on shipping papers and package markings, §§ 172.203 and 172.301 of this subchapter, respectively, do not apply to packagings prepared in accordance with the requirements of this section, except as follows:

(1) Packages containing materials meeting the definition of a hazardous substance must be described as required in § 172.203(c) and marked as required in § 172.324 of this subchapter; and

(2) Packages containing hazardous materials subject to the provisions of § 172.203(m) of this subchapter must be described in accordance with § 172.203(m) of this subchapter.

PART 176—CARRIAGE BY VESSEL

14. The authority citation for Part 176 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1808; 49 CFR Part 1.

15. In § 176.30, a new paragraph (a)(3)(i) is added to read as follows:

§ 176.30 Dangerous cargo manifest.

(a) * * *

(3) * * *

(i) An emergency response telephone number as prescribed in Subpart G of Part 172 of this subchapter.

* * * * *

Issued in Washington, DC on June 22, 1989, under authority delegated in 49 CFR Part 1.

Travis P. Dungan,

Administrator, Research and Special Programs Administration.

[FR Doc. 89-15190 Filed 6-26-89; 8:45 am]

BILLING CODE 4910-60-M

federal register

Tuesday
June 27, 1989

Part X

The President

Executive Order 12679—Level IV of the Executive Schedule

Part X

The President

Federal Register
Vol. 54, No. 122
Tuesday, June 27, 1989

Presidential Documents

Title 3—

The President

Executive Order 12679 of June 23, 1989

Level IV of the Executive Schedule

By the authority vested in me as President by the Constitution and laws of the United States of America, including section 5317 of title 5 of the United States Code, and in order to place an additional position in level IV of the Executive Schedule, section 1–101 of Executive Order No. 12154, as amended, is hereby further amended by adding at the end the following new subsection:

"(g) Assistant Secretary of the Air Force (1)."

THE WHITE HOUSE,
June 23, 1989.

[FR Doc. 89–15351
Filed 6–26–89; 10:17 am]
Billing code 3195–01–M

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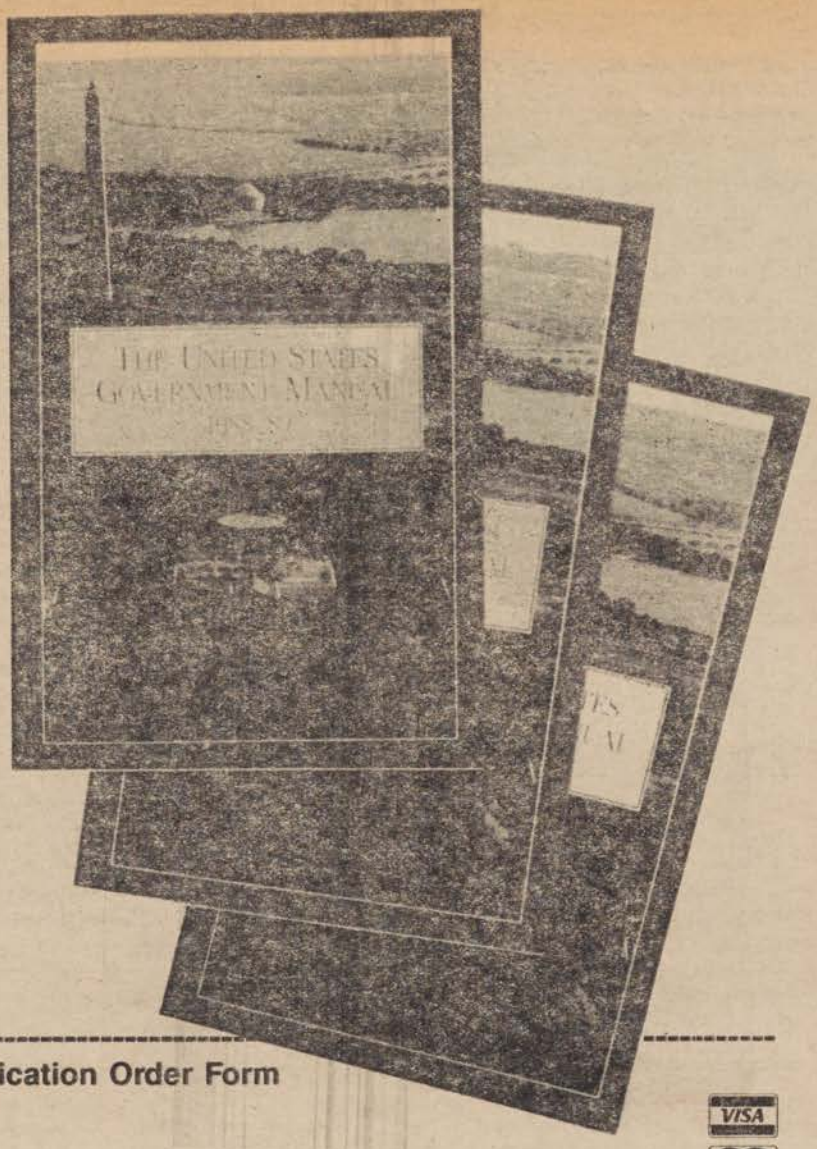
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