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WHO: The Office of the Federal Register.

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2. The relationship between the Federal Register and Code of Federal Regulations.
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4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

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WASHINGTON, DC

WHEN: September 25; at 9:00 a.m.
WHERE: Office of the Federal Register
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1100 L Street NW., Washington, DC
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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

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 682]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 682 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 320,000 cartons during the period September 10 through September 16, 1989. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

EFFECTIVE DATE: Regulation 682 (7 CFR part 910) is effective for the period September 10 through September 16, 1989.

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

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

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

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

There are approximately 85 handlers of lemons grown in California and Arizona subject to regulation under the lemon marketing order and approximately 2,500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona lemons may be classified as small entities.

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

This regulation is consistent with the California-Arizona lemon marketing policy for 1989-90. The Committee met publicly on September 6, 1989, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and unanimously recommended a quantity of lemons deemed advisable to be handled during the specified week. The Committee reports that overall demand for lemons is excellent.

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

List of Subjects in 7 CFR Part 910

Arizona, California, Lemons, Marketing agreements and orders.

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

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

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

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

2. Section 910.982 is added to read as follows:

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

§ 910.982 Lemon Regulation 682.

The quantity of lemons grown in California and Arizona which may be handled during the period September 10, 1989, through September 16, 1989, is established at 320,000 cartons.

Dated: September 7, 1989.

Charles R. Brader,

Director, Fruit and Vegetable Division.

[FR Doc. 89-21420 Filed 9-8-89; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 89-148]

Brucellosis in Cattle; State and Area Classifications

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: We are affirming without change an interim rule that amended the regulations governing the interstate movement of cattle because of brucellosis by changing the classification of Florida from a split status of Class B/Class C to all Class B.

EFFECTIVE DATE: October 11, 1989.

FOR FURTHER INFORMATION CONTACT: Dr. Jan Huber, Senior Staff Veterinarian, Cattle Diseases and Surveillance Staff, VS, APHIS, USDA, Room 731, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–5533.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective June 8, 1989, and published in the **Federal Register** on June 14, 1989 (54 FR 25225–25227, Docket Number 89–097), we amended the brucellosis regulations contained in 9 CFR part 78 by changing the classification of Florida from a split status of Class B/Class C to all Class B.

Comments on the interim rule were required to be received on or before August 14, 1989. We did not receive any comments. The facts in the interim rule still provide a basis for the rule.

Executive Order 12291 and Regulatory Flexibility Act

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

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

Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Changing the status of Florida from Class C/Class B to all Class B reduces certain testing requirements and branding and spaying costs involved in the interstate movement of cattle from Class C areas.

The principal group affected by this change is the owners of herds in the former Class C areas of Florida that are not certified brucellosis-free and are not known to be affected with brucellosis. Buyers and exporters of cattle, stockyards, feedlots, and intermediate handling facilities are affected to a negligible degree.

In accordance with 9 CFR 78.9, all cattle in Class C noncertified-free herds can move interstate only to slaughter, or to a quarantined feedlot if they are "S" branded, unless they are steers, spayed heifers, or bulls under 18 months of age. It is estimated that there are 409,000 cows in such herds in the Class C area of Florida. We anticipate that these cows will produce approximately 174,000 heifers during the next year. We estimate that at least 50,000 of these will be sold interstate. The change to Class B status makes it possible to sell them for purposes other than slaughter or consignment to a quarantined feedlot, without spaying them, in accordance with 9 CFR 78.9(c)(3).

The cost of spaying 50,000 heifers is estimated at $550,000 or $11 per head. Not all the heifers would be spayed if the Class C status remained unchanged; many would be sold for slaughter or "S" branded and moved to quarantined feedlots. However, $550,000 can be considered one upper limit for benefits accrued by the change from Class C to Class B status.

Another cost of moving cattle from Class C areas is the cost associated with "S" branding, required if unspayed animals are moved to quarantined feedlots, or indirectly to slaughter through intermediate handling facilities, nonquarantined feedlots, or stockyards. Based on current prices and demand for light heifers, the net proceeds per animal will be increased by approximately $20 if the heifers from nonquarantined herds are not required to by "S" branded or sold for slaughter, resulting in a maximum $1,000,000 savings to the industry if 50,000 heifers were so moved.

The upper limit to the economic impact of this rule would be $1,550,000 of financial benefit accrued primarily by owners of herds that are not certified brucellosis free and that are located in former Class C areas. This figure assumes that all cattle moved from these herds are not spayed, and are moved to destinations that require "S" branding. Actual savings will be less, since some cattle will be spayed or not "S" branded.

According to National Agricultural Statistics Service estimates, there are 7,144 cattle herds in the Class C area of Florida. Of these herds, 2,269 are certified free. Of the 4,875 noncertified-free herds, 4,606 are not quarantined. These 4,606 herds would be directly and positively affected by the change. The owners of these 4,606 herds could each receive additional profits of up to $20 per calf sold, or an average of $217 per herd owner, assuming equal herd sizes. About 4,556 (99 percent) of the 4,606 herds are owned by small businesses (annual revenues of less than $500,000). Because the owners of the 50 herds that are large businesses have larger herd sizes, and because not all herd owners will sell their cattle in ways that do not require spaying or "S" branding, the actual profit to each small herd owner will be less.

We have therefore determined that changing Florida's brucellosis status will not significantly affect current market patterns, and will have a significant economic impact on small entities.

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

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

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

List of Subjects in 9 CFR Part 78

Animal diseases, Brucellosis, Cattle, Hogs, Quarantine, Transportation.

PART 78—BRUCELLOSIS

Accordingly, we are adopting as a final rule, without change, the interim rule amending 9 CFR 78.41 that was published at 54 FR 25225–25227 on June 14, 1989.

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC this 5th day of September 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89–21289 Filed 9–8–89; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 301, 510, 515, and 602

[T.D. 8262]

RIN 1545-AN43

Treaty-Based Return Positions

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary Regulations.

SUMMARY: This document contains temporary Income Tax Regulations relating to the requirement that any taxpayer who takes a position that a treaty of the United States overrules, or otherwise modifies, an internal revenue law of the United States shall disclose such position. This action is necessary to implement sections 6114 and 6712 of the Internal Revenue Code of 1986 as added by the Technical and Miscellaneous Revenue Act of 1988 (TAMRA). The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the Proposed Rules section of this issue of the **Federal Register**. In addition, regulations under tax conventions with Norway and Honduras have been removed as obsolete.

EFFECTIVE DATE: These temporary regulations are to be effective for taxable years of the taxpayer for which the due date for filing returns (without extensions) occurs after December 31, 1988.

FOR FURTHER INFORMATION CONTACT: David Bergkuist of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention: CC:CORP:T:R) (202-566-3872, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in these regulations has been reviewed, and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under control number 1545-1126. The estimated annual burden per respondent varies from 1/2 hour to 3 hours, depending on the individual circumstances, with an estimated average of 1 hour.

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

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

Background

This document contains temporary Income Tax Regulations (26 CFR part 301) under sections 6114 and 6712 of the Internal Revenue Code of 1986. Section 1012 (aa)(5)(A) of TAMRA added section 6114 to the Code while section 6712 was added by section 1012(aa)(5)(B) of TAMRA.

Need for Temporary Regulations

The proper application of sections 6114 and 6712, which are currently effective, is dependent upon the issuance of regulations as authorized by each of these Code sections. These regulations are necessary to provide taxpayers with immediate guidance in order that they may comply with the requirements of these provisions. Therefore, good cause is found to dispense with the notice and public procedure requirements of 5 U.S.C. 553(b) and the delayed effective date requirement of 5 U.S.C. 553(d).

Explanation of Provisions

Section 6114 requires each taxpayer who, with respect to any tax imposed by the Code, takes a position that a treaty of the United States overrides, or modifies, an internal revenue law of the United States to disclose such position on a return of tax for such tax or in such form as the Secretary may prescribe. Section 6712 provides penalties for the failure to comply with the disclosure requirement of section 6114.

This document contains temporary regulations describing the treaty-based return position reporting requirement. Section 301.6114-1T(a) describes this reporting requirement in general. Section 301.6114-1T(b) describes specific situations for which reporting is required. Section 301.6114-1T(c) describes specific situations for which reporting is waived pursuant to the grant of authority contained in section 6114(b).

Section 301.6114-1T(d) sets forth the information required to be furnished to comply with section 6114, as well as the form and the manner in which this information is to be submitted. A description of the facts relied upon to support the position taken (§ 301.6114-1T(d)(4)) must be submitted. This description must also specify the provisions (if any) of a limitation on benefits article relied upon.

These regulations do not apply to a withholding agent with respect to the performance of his withholding functions. The Service will continue to study whether this exception is appropriate.

This document also provides temporary regulations under section 6712 that describe the amount of penalties and the manner in which such penalties will be imposed for failure to disclose the information required by section 6114 as well as the procedure to be followed and the grounds upon which such penalties may be waived.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for temporary regulations. Therefore, these rules do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6) and a Regulatory Flexibility Analysis is not required.

Drafting Information

The principal author of these regulations is David Bergkuist of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. Other personnel from the Internal Revenue Service and Treasury Department participated in developing these regulations.

List of Subjects

26 CFR Part 301

Administrative practice and procedure, Bankruptcy, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Penalties, Pensions, Statistics, Taxes, Disclosure of information, Filing requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 2 CFR parts 301 and 602 are amended as follows:

PART 301—[AMENDED]

Paragraph 1. The authority for part 301 continues to read in part:

Authority: 26 U.S.C. 7805. * * * Section 301.6114–1T also issued under 26 U.S.C. 6114. * * *

Par. 2. New § 301.6114–1T is added to read as follows:

§ 301.6114–1T Treaty-based return positions (Temporary).

(a) *Reporting requirement*—(1) *General rule.* (i) Except as provided in paragraph (c) of this section, if a taxpayer takes a return position that any treaty of the United States (including, but not limited to, an income tax treaty, estate and gift tax treaty, or friendship, commerce and navigation treaty) overrides or modifies any provision of the Internal Revenue Code and thereby effects (or potentially effects) a reduction of any tax incurred at any time, the taxpayer shall disclose such return position on a statement (in the form required in paragraph (d) of this section) attached to such return.

(ii) If a return of tax would not otherwise be required to be filed, a return must, nevertheless, be filed for purposes of making the disclosure required by this section. For this purpose, such return need include only the taxpayer's name, address, Taxpayer Identification Number (if any), and a subscription under the penalties of perjury (as well as the subject disclosure); also, the taxpayer's taxable year shall be deemed to be the calendar year (unless the taxpayer has previously established a different taxable year).

(2) *Application.* (i) A taxpayer is considered to adopt a "return position" when the taxpayer determines its tax liability with respect to a particular item of income, deduction or credit. A taxpayer may be considered to adopt a return position whether or not a return is actually filed. To determine whether a return position is a "treaty-based return position" so that reporting is required under this paragraph (a), the taxpayer must compare (A) the tax liability (including credits, carrybacks, carryovers, and other tax consequences or attributes for the current year as well as for any other affected tax years) to be reported on a return of the taxpayer, and (B) the tax liability (including such credits, carrybacks, carryovers, and other tax consequences or attributes) that would be reported if the relevant treaty provision did not exist. If there is a difference in these two amounts, the position taken on a return is a treaty-based return position that must be reported.

(ii) In the event a taxpayer's return position is based on a conclusion that a treaty provision is consistent with a Code provision, but the effect of the treaty position is to alter the scope of the Code provision from the scope that it would have in the absence of the treaty, then the return position is a treaty-based return position that must be reported.

(iii) A return position is a treaty-based return position unless the taxpayer's conclusion that no reporting is required under subdivisions (i) and (ii) of this paragraph has a substantial probability of successful defense if challenged.

(3) *Examples.* The application of section 6114 and paragraph (a)(2) of this section may be illustrated by the following examples:

Example (1). X, a Country A corporation, claims the benefit of a provision of the income tax treaty between the United States and Country A that modifies a provision of the Code. This position does not result in a change of X's U.S. tax liability for the current tax year but does give rise to, or increases, a net operating loss which may be carried back (or forward) such that X's tax liability in the carryback (or forward) year may be affected by the position taken by X in the current year. X must disclose this treaty-based return position with its tax return for the current tax year.

Example (2). Y, a foreign corporation, is engaged in a trade or business in the United States. Section 884(f)(1)(A) of the Code provides that any interest paid by Y's U.S. trade or business shall be treated as paid by a domestic corporation and, thus, as U.S. source income. However, section 1012(aa)(3)(E) of the Technical and Miscellaneous Revenue Act of 1988 provides that, to the extent that a U.S. treaty provision in effect on October 22, 1986, would treat certain interest paid by a branch of a foreign corporation with a U.S. trade or business as non-U.S. source income, the treaty shall prevail. If Y claims the benefit of such a U.S. treaty provision, Y must disclose such position (see also paragraph (b)(4) of this section).

Example (3). Z, a domestic corporation, is engaged in a trade or business in Country B. Country B imposes a tax on the income from certain of Z's petroleum activities at a rate significantly greater than the rate applicable to income from other activities. Z claims a foreign tax credit for this tax on its tax return. The tax imposed on Z is specifically listed as a creditable tax in the income tax treaty between the United States and Country B; however, there is no specific authority that such tax would otherwise be a creditable tax for U.S. purposes under sections 901 or 903 of the Code. Therefore, in the absence of the treaty, the creditability of this petroleum tax would lack a substantial probability of successful defense if challenged, and Z must disclose this treaty-based return position (see also paragraph (b)(7) of this section).

(b) *Reporting specifically required.* Reporting is required under this section except as expressly waived under paragraph (c) of this section. In particular, reporting is specifically required if the taxpayer asserts any of the following positions:

(1) That a nondiscrimination provision of a treaty precludes the application of any otherwise applicable Code provision, other than with respect to the making of or the effect of an election under section 897(i);

(2) That a treaty reduces or modifies the taxation of gain or loss from the disposition of a United States real property interest;

(3) That a treaty exempts a foreign corporation from (or reduces the amount of tax with respect to) the branch profits tax (section 884(a)) or the tax on excess interest (section 884(f)(1)(B));

(4) That, notwithstanding paragraph (c)(1) of this section, (i) a treaty exempts from tax, or reduces the rate of tax on, interest or dividends paid by a foreign corporation that are from sources within the United States by reason of section 861(a)(2)(B) or section 884(f)(1)(A), or (ii) a treaty reduces the rate of tax on fixed or determinable annual or periodical income subject to withholding under sections 1441 or 1442 and received by a foreign person from a U.S. person where either person controls, within the meaning of sections 6038 or 6038A, the other person;

(5) That, under a treaty, (i) income that is effectively connected with a U.S. trade or business of a foreign corporation or a nonresident alien is not attributable to a permanent establishment or a fixed base of operations in the United States and, thus, is not subject to taxation on a net basis, or that (ii) expenses are allowable in determining net business income so attributable, notwithstanding an inconsistent provision of the Code;

(6) That a treaty alters the source of any item of income or deduction; or

(7) That a treaty grants a credit for a specific foreign tax for which a foreign tax credit would not be allowed by the Code.

The foregoing list is not a list of all positions for which reporting is required under this section; reporting is required if not waived under paragraph (c) of this section.

(c) *Reporting requirement waived.* Pursuant to the authority contained in section 6114(b) of the Code, reporting is waived under this section with respect

to any of the following return positions taken by the taxpayer:

(1) Except as provided in paragraph (b)(4) of this section, that a treaty has reduced the rate of withholding tax otherwise applicable to a particular type of fixed or determinable annual or periodical income subject to withholding under section 1441 or 1442, such as dividends, interest, rents, or royalties;

(2) That residency of an individual is determined under a treaty and apart from the Code;

(3) That a treaty reduces or modifies the taxation of income derived from dependent personal services, pensions, annuities, social security and other public pensions, or income derived by artistes, athletes, students, trainees or teachers;

(4) That a nondiscrimination provision of a treaty allows the making of an election under section 897(i); or

(5) That a Social Security Totalization Agreement or a Diplomatic or Consular Agreement reduces or modifies the taxation of income derived by the taxpayer.

In addition, if a partnership, trust, or estate that has the taxpayer as a partner or beneficiary discloses on its information return a position for which reporting is otherwise required by the taxpayer, the taxpayer (partner or beneficiary) is then excused from disclosing that position on a return. Also, this section does not apply to a withholding agent with respect to the performance of its withholding functions.

(d) *Information to be reported.* If reporting is required under this section, the following information must be furnished in accordance with paragraph (a) of this section as an attachment to the return and set forth with the indicated heading and with paragraphs labelled to correspond with the numbers set forth below:

Treaty-Based Return Position Disclosure Under Section 6114

(1) Taxpayer's name, T.I.N. (if any), and address both in the country of residence and in the United States;

(2) Name, T.I.N. (if available to the taxpayer), and address in the United States of the payor of the income (if fixed, determinable, annual, or periodical);

(3) A statement whether the taxpayer (if an individual) is a U.S. citizen or resident or (if a corporation) is incorporated in the United States;

(4) A separate statement of facts relied upon to support each separate position taken, including for each position (i) the nature and amount of each separate payment or separate income item for which the treaty benefit is claimed, (ii) an explanation of the position taken with a brief summary of the facts on which it is based, (iii) the specific treaty provision relied upon, (iv) the Code provision overridden or modified, and (v) the provisions of the limitation on benefits article (if any) in the treaty which the taxpayer relies upon to prevent application of that article. For purposes of subdivision (i), a taxpayer may treat payments or income items of the same type (*e.g.*, interest items) received from the same ultimate payor (*e.g.*, the obligor on a note) as a single separate payment or income item.

(e) *Effective date.* This section shall be effective for taxable years of the taxpayer for which the due date for filing returns (without extensions) occurs after December 31, 1988. (1) If a taxpayer has filed a return for such a taxable year, without complying with the reporting requirement of this section, before November 13, 1989, or (2) if a taxpayer is not otherwise than by paragraph (a) of this section required to file a return for a taxable year before November 13, 1989, such taxpayer must file (apart from any earlier filed return) the statement required by paragraph (d) of this section before January 10, 1990, by mailing the required statement to the Internal Revenue Service, P.O. Box 21086, Philadelphia, PA 19114. Any such statement filed apart from a return must be dated and subscribed and sworn to by the taxpayer under the penalties of perjury. If a taxpayer files or has filed a return on or before November 13, 1989 that provides substantially the same information required by paragraph (d) of this section, no additional submission will be required.

(f) *Cross reference.* For the provisions concerning penalties for failure to disclose a treaty-based return position, see section 6712 and § 301.6712–1T.

Par. 3. New § 301.6712–1T is added to read as follows:

§ 301.6712–1T Failure to disclose treaty-based return positions (Temporary).

(a) *Penalty imposed.* A taxpayer who fails in a material way to disclose one or more positions taken for a taxable year, as required by section 6114 and the regulations thereunder, is subject to a separate penalty for each failure to disclose a position taken with respect to each separate payment or separate income item in the amount of—

(1) For a corporation taxable as such under the Code, $10,000; or

(2) For all other taxpayers, $1,000.

The penalty imposed by this section may be imposed more than once for a single taxable year if a taxpayer has failed to disclose one or more positions taken with respect to more than one separate payment or separate income item and may be imposed in addition to any other penalty imposed by law.

(b) *Penalty waived.* Pursuant to the authority contained in section 6712(b) of the Code, the penalty imposed by paragraph (a) of this section may be waived, in whole or in part, if it is established to the satisfaction of the Assistant Commissioner (International), the district director or the director of the Internal Revenue Service Center that the taxpayer's failure to disclose the required information was not due to willful neglect. An affirmative showing of lack of willful neglect must be made in the form of a written statement that sets forth all the facts alleged to show lack of willful neglect and contains a declaration by such person that the statement is made under the penalties of perjury.

(c) *Manner of payment.* The penalty set forth in paragraph (a) of this section shall be paid in the same manner as tax upon the issuance of a notice and demand thereof.

(d) *Effective date.* This section shall be effective for taxable years of the taxpayer for which the due date for filing returns (without extension) occurs after December 31, 1988.

PARTS 510 and 515—[REMOVED]

Regulations Under Tax Conventions

Par. 4. The following regulations under tax conventions are hereby removed.

1. Part 510—Norway
2. Part 515—Honduras

PART 602—[AMENDED]

OMB Control Numbers Under the Paperwork Reduction Act

Par. 5. The authority for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 6. Section 602.101(c) is amended by inserting in the respective appropriate places in the table:

"§ 301.6114–1T..... 1545–1126."
"§ 301.6712–1T..... 1545–1126."

Michael J. Murphy,

Acting Commissioner of Internal Revenue.

Approved: July 19, 1989.

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

[FR Doc. 89–21201 Filed 9–8–89; 8:45am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 936

Surface Coal Mining and Reclamation Operations Under the Federal Lands Program; State-Federal Cooperative Agreements; Oklahoma

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

ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) is adopting a cooperative agreement between the Department of the Interior and the State of Oklahoma for the regulation of surface coal mining and reclamation operations on Federal lands in Oklahoma. Such a cooperative agreement is provided for under section 523(c) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA). This final rule provides the terms of the cooperative agreement and additional information on other issues.

EFFECTIVE DATE: October 11, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 E. Skelly Drive, Suite 550, Tulsa, Oklahoma 74135; Telephone: (918) 581–6430.

SUPPLEMENTARY INFORMATION:

I. Background

The Oklahoma program was conditionally approved on January 19, 1981 (46 FR 4910). The Oklahoma program received full program approval on January 14, 1986. Information on the general background, revisions, modifications, and amendments to the proposed permanent program submission as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Oklahoma program can be found in the January 19, 1981, Federal Register (46 FR 4910). Subsequent actions in conditions of approval and program amendments are identified at 30 CFR 936.10 and 936.15.

A. The State of Oklahoma's Application

Section 523(c) of SMCRA, 30 U.S.C. 1201 *et seq.*, and the implementing regulations at 30 CFR parts 740 and 745, allow a State and the Secretary of the Interior (Secretary) to enter into a permanent program cooperative agreement if the State has an approved State program for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands.

Permanent program cooperative agreements are authorized by the first sentence of section 523(c) of SMCRA, which provides that, "Any State with an approved State program may elect to enter into a cooperative agreement with the Secretary to provide for State regulation of surface coal mining and reclamation operations on Federal lands within the State, provided the Secretary determines in writing that such State has the necessary personnel and funding to fully implement such a cooperative agreement in accordance with the provision of this Act."

On September 21, 1988, Henry Bellmon, Governor of Oklahoma, requested that a permanent program cooperative agreement be entered into between the Secretary of the Interior and the Governor of Oklahoma.

Section 30 CFR 745.11(b) of OSMRE's regulations requires that certain information be submitted with a request for a permanent program cooperative agreement, if the information has not previously been submitted in the State program. Much of the information relating to the budget, staffing, organization, and duties of the State regulatory authority, the Oklahoma Department of Mines (ODM), was described in Oklahoma's proposed permanent program submittal. The State of Oklahoma submitted, with the proposed permanent program cooperative agreement, the remaining supporting documentation required by 30 CFR 745.11(b). As part of that documentation, ODM submitted a written certification from the General Counsel of ODM that no State statutory, regulatory or other legal constraint exists which would preclude ODM from fully carrying out the proposed cooperative agreement.

B. Relation to the Federal Lands Program of SMCRA

The nature and extent of the Secretary's ability to delegate authority for surface coal mining operations on Federal lands to States through cooperative agreements was a subject of a 1988 Court of Appeals decision in *NWF* v. *Hodel*, 839 F.2d 694, 766 (D.C. Cir. 1988). The Oklahoma cooperative agreement is consistent with that opinion and delegates the Secretary's authority under SMCRA which is required to be covered under the Federal lands program and retains the Secretary's non-delegable responsibilities under the Mineral Leasing Act of 1920 (MLA).

If changes to the Federal lands program are adopted which are not covered by this agreement, OSMRE and the Secretary will promptly initiate the steps necessary to revise the agreement.

II. Summary of Cooperative Agreement and Response to Public Comments

The proposed cooperative agreement which was published in the Federal Register on December 14, 1988 (53 FR 50247), announced that the public comment period would close January 13, 1989, and that a public hearing was tentatively scheduled for January 3, 1989. Because no one asked to testify, the public hearing was not held.

During the public review period, OSMRE received 7 responses from Federal and State Agencies, none of which included comments requiring revisions to the proposed cooperative agreement. See the discussion of Article X for the response to concerns raised by the Bureau of Reclamation. As a result of OSMRE's review, some minor organizational and editorial changes in the proposed agreement were made to improve clarity.

A. Article I: Introduction, Purposes, and Responsible Agencies

Paragraph A of Article I sets forth the legal authority for the Oklahoma Cooperative Agreement (Agreement), which is provided by section 523(c) of the SMCRA. This paragraph states that the Agreement provides for State regulation of surface coal mining and reclamation operations in Oklahoma on Federal lands. Paragraph B sets out the purposes of the Agreement.

Paragraph C was modified to clarify that the ODM, acting under the direction of the Oklahoma Mining Commission, is the agency responsible for administering the Agreement on behalf of the Governor of Oklahoma (Governor). Paragraph C also names the OSMRE as the agency responsible for administering the Agreement on behalf of the Secretary.

B. Article II: Effective Date

Article II provides that after the Agreement has been signed by the Secretary and the Governor, it will become effective 30 days after publication as a final rule in the Federal Register. It will remain in effect until terminated as provided in Article XI.

C. Article III: Definitions

Article III provides that any terms and phrases used in the Agreement have the same meanings as set forth in the Federal and State Acts, regulations promulgated pursuant to those Acts, 30 CFR parts 700, 701, and 740, and the approved State program (Program).

Defining terms and phrases in this manner ensures consistency between applicable regulations and the Agreement. Where there are conflicts in definitions, those included in the Program apply.

D. Article IV: Applicability

Paragraph A of Article IV states that the laws, regulations, terms, and conditions of the Program are applicable to Federal lands in Oklahoma except as otherwise stated in the Agreement, SMCRA, 30 CFR 740.4 and 745.13, and other applicable Federal laws, Executive Orders, or regulations. This provision is consistent with the Federal lands program, which adopted the Oklahoma State program as substantive Federal law on all Federal lands in Oklahoma.

The reference to the Oklahoma State program is intended to encompass the approval of that State program on January 19, 1981, and any amendments thereto which are approved in accordance with 30 CFR 732.17. Excluded from the scope of the Agreement are the authorities and responsibilities reserved to the Secretary pursuant to SMCRA, 30 CFR 740.4, 745.13, and other applicable Federal laws, Executive orders, or regulations.

Paragraph B lists four existing Federal permits that will not betransferred to the State by this agreement.

Paragraph C states that appealable orders or decisions would be appealed to ODM or OSMRE as appropriate in accordance with ODM's or OSMRE's established appeal procedures.

E. Article V: General Requirements

Article V mutually binds the Governor and the Secretary to the provisions of the Agreement.

Paragraph A requires that ODM continue to have authority under State law to carry out the Agreement.

Paragraph B provides that upon application for funds the State shall be reimbursed by OSMRE pursuant to section 705(c) of SMCRA if the necessary funds have been appropriated to OSMRE by Congress. Section 705(c) of SMCRA provides that a State with a cooperative agreement may receive an increase in its annual grant for the development, administration and enforcement of a State program on Federal lands by an amount which the Secretary determines is approximately equal to the amount of money the Federal government would otherwise have expended to regulate surface coal mining and reclamation operations on the Federal lands within the State. The regulations implementing section 705(c) appear at 30 CFR 735.16 through 735.28.

If, when requested by the State, adequate funds have not been appropriated, OSMRE and ODM will meet and decide on appropriate measures to ensure that mining operations are regulated in accordance with the Program. Funds provided to ODM under the Agreement will be adjusted in accordance with Office of Management and Budget Circular A–102 Attachment E.

Paragraph C of Article V requires the State to make annual reports to OSMRE with respect to compliance with this Agreement. Paragraph C also provides for a general exchange of information developed under the Agreement, unless such an exchange is prohibited by Federal law or State law. Final evaluation reports prepared by OSMRE on State administration and enforcement of this Agreement will be provided to ODM. The Agreement requires that ODM's comments on the report be appended before being sent to Congress and other interested parties.

Paragraph D requires ODM to maintain the necessary personnel to fully implement this Agreement.

Paragraph E requires that ODM avail itself of the facilities necessary to carry out the requirements of the Agreement. This provision ensures that the State has access to and will utilize any resources necessary to conduct the inspections, investigations, studies, tests, and analyses required to fulfill the requirements of this Agreement.

Paragraph F of Article V concerns permit application fees and civil penalties. Permit fees will be determined according to section 745.1 of the State Act, section 771.25 of the State regulations, and other applicable provisions of the Program and Federal law. Any permit fees collected by the State that are attributable to the Federal lands covered by the Agreement will be considered program income. The State will retain all permit fees from operations on Federal lands and deposit them with the State Treasurer. The State will report the amount of these fees in the financial status report required under 30 CFR 735.26. Civil penalties or fines collected by the State will not be considered program income.

F. Article VI: Review of a Permit Application Package

Paragraphs A through C of Article VI generally describe the procedures that the State and OSMRE will follow in the review and analysis of permit application packages (PAP) for operations on Federal lands.

"Permit application package" is a term adopted by OSMRE in the Federal lands program (48 FR 6912, February 16, 1983). It is the material submitted by an applicant proposing to mine on Federal lands, including applications for permit revisions and renewals. OSMRE adopted the term because there are requirements for mining on Federal lands in addition to those required by a permit application under the approved State program for non-Federal lands. For example, operations on Federal lands may be subject to requirements of the Federal land management agency under Federal laws other than SMCRA. The package concept allows for such information to be included with the permit application required by the approved State program. See the definition of "permit application package" under 30 CFR 740.5.

Under paragraph A, an applicant proposing to conduct surface coal mining and reclamation operations on Federal lands will be required by ODM and the Secretary to submit a PAP in an appropriate number of copies to ODM. ODM will furnish OSMRE and other Federal agencies with the appropriate number of copies of the PAP.

The PAP will be in the form required by ODM and include any supplemental information required by OSMRE, the Federal land management agency and other agencies with jurisdiction or responsibility over Federal lands affected by the operations proposed in the PAP. At a minimum, the PAP will be required to satisfy the requirements of 30 CFR part 740 and must include the information necessary for ODM to make a determination of compliance with the Program and for OSMRE and appropriate Federal agencies to make determinations of compliance with applicable requirements of SMCRA, the Federal lands program, compliance with applicable requirements of SMCRA, the Federal lands program, other Federal laws, Executive orders, and regulations for which they are responsible.

Paragraph B of Article VI discusses review procedures for PAP's where leased Federal coal is involved and consequently, where the Secretary must make a decision on a mining plan. The Agreement does not address Federal lands where leased Federal coal is not involved because no such areas are known to exist in Oklahoma.

Under paragraph B.1., ODM will assume the responsibilities listed in 30 CFR 740.4(c) (1), (2), (3), (4), (6), and (7), to the extent authorized.

Under 30 CFR 740.4(c)(1), ODM will, to the extent authorized, take on the delegable responsibilities for review and approval, disapproval or conditional approval of permit applications, revisions or renewals thereof, and

applications for transfer, sale and assignment of such permits. OSMRE will assist ODM in this review, upon request, to the extent possible. The Secretary retains those responsibilities that cannot be delegated to ODM including those under the Federal lands program, the MLA, the National Environmental Policy Act of 1969 (NEPA), this Agreement, and other applicable Federal laws. The Secretary will consider the information in the PAP and, where appropriate, make decisions required by SMCRA, MLA, NEPA, and other Federal laws. The Secretary will carry out his responsibilities in a timely manner and avoid, to the extent possible, duplication of those responsibilities delegated to the State in this Agreement and the Program, applicable Federal laws may be specified in working agreements between OSMRE and ODM, with concurrence of any Federal agency involved, and without amendment to this Agreement.

Paragraph B.2., designates ODM as the primary contact for applicants in matters regarding review of the PAP. As such, ODM will inform the applicant of all joint State-Federal determinations. On matters concerned exclusively with 43 CFR part 3480, subparts 3480 through 3487, the Bureau of Land Management (BLM) will be the primary contact with the applicant, and will provide ODM with documentation on its decisions. ODM will provide OSMRE with copies of correspondence with the applicant and any information received from the applicant regarding the PAP. OSMRE will provide ODM with copies of all correspondence which may have a bearing on the PAP. OSMRE will not ordinarily contact the applicant regarding the PAP, although OSMRE is not prevented from doing so.

ODM will consult with and obtain the consent of the Federal land management agency concerning post-mining land use and protection of non-coal resources, and will consult with and obtain the consent of BLM with respect to development, production, and recovery of mineral resources where operations involve leased Federal coal.

The Secretary reserves the right to act independently of ODM to carry out Departmental responsibilities under laws other than SMCRA or provisions of SMCRA not covered by the Program, and in instances of disagreement over SMCRA and the Federal lands program.

Under paragraph B.3., ODM will take on the responsibilities under 30 CFR 740.4(c) (2), (3), and (4). These cover consultation with the Federal land management agency and with BLM, and the approval and release of bonds. ODM will prepare documentation to comply with NEPA under 30 CFR 740.4(c)(7), but OSMRE will retain the non-delegable responsibilities under 30 CFR 740.4(c)(7) (i) through (vii).

ODM will also obtain the comments and determinations of other Federal agencies with jurisdiction or responsibility over Federal lands affected by the operations proposed in the PAP. ODM will request that all Federal agencies submit their findings or any requests for additional data to ODM, and, when necessary, to OSMRE within 45 days of receiving the PAP.

Under paragraph B.4., OSMRE will assist the State in carrying out its responsibilities by coordinating resolution of conflicts between ODM and other Federal agencies in a timely manner. OSMRE will further assist by helping to schedule joint meetings, upon request.

OSMRE will exercise its responsibilities in a timely manner and will provide ODM with a work product within 50 days of receiving the State's request for assistance in reviewing the permit application unless a different time is agreed upon by OSMRE and ODM.

OSMRE will be responsible for Federal lessee protection bond requirements under 30 CFR 740.15.

Paragraph B.5. describes the procedures that OSMRE and ODM will follow in reviewing the PAP. OSMRE and ODM will coordinate their activities and exchange information during the review process. The State will review the PAP to ensure compliance with the Program and State law and regulations, while OSMRE will review the PAP to ensure compliance with the non-delegable responsibilities of SMCRA and other Federal laws and regulations. OSMRE and ODM will plan and schedule PAP reviews and each will choose a project leader, who will serve as the primary point of contact during the review process. OSMRE will provide the State with its review comments within 50 days of receiving the PAP.

ODM will prepare a State decision package indicating whether the PAP complies with the Program. The review and finalization of the State's decision package will be conducted in accordance with procedures agreed upon by ODM and OSMRE for processing PAP's.

ODM can issue a SMCRA permit pursuant to the Program on Federal lands before the necessary Secretarial approval of the mining plan. However, ODM must advise the operator that Secretarial approval of the mining plan must be obtained before the operator begins mining operations on the Federal lease. The permit issued by the State will be required to include the terms and conditions required by the lease and those required by other applicable Federal laws and regulations.

After making its decision, ODM will notify the applicant, the Federal land management agency, and any agency with jurisdiction or responsibility over Federal lands affected by operations proposed in the PAP. A copy of the permit and written findings will be submitted to OSMRE.

OSMRE will provide technical assistance to ODM upon request, if available resources allow and will have access to ODM's files concerning operations on Federal lands.

Paragraph C of Article VI addresses review procedures for permit revisions or renewals.

Paragraph C.1. assigns to ODM the authority to review, approve or disapprove permit revisions or renewals not constituting modifications of a mining plan pursuant to 30 CFR 746.18. ODM must consult with OSMRE on whether any permit revision or renewal constitutes a mining plan modification. OSMRE will inform ODM within 30 days of receiving a copy of the permit revision or renewal as to such a decision. Where approval of a mining plan modification is required, OSMRE and ODM will follow the procedures outlined in paragraphs B.1. through B.4. of this Article.

Under paragraph C.2., OSMRE may establish criteria consistent with 30 CFR 746.18 to determine which permit revisions or renewals clearly do not constitute mining plan modifications. Those revisions or renewals meeting the criteria may be approved by ODM prior to contacting OSMRE.

Under paragraph C.3., permit revisions or renewals not constituting mining plan modifications or meeting the criteria outlined in paragraph C.2. will be reviewed and approved or disapproved by ODM.

Under paragraph C.4., ODM will review applications for permit transfers, sales, and assignments of rights in accordance with the Program and 30 CFR 740.13(e). This last provision was added to clarify that an application for a transfer, assignment, or sale of permit rights is not a PAP.

G. Article VII: Inspections

Paragraphs A and B state that ODM will conduct inspections on lands covered by this Agreement and prepare and file State inspection reports in accordance with the Program.

Paragraph C designates ODM as the point of contact and primary inspection authority in dealing with the operator.

However, the Secretary retains the right to conduct inspections of surface coal mining and reclamation operations on Federal lands without prior notice to ODM for the purpose of evaluating the manner in which the Agreement is being carried out and ensuring that performance and reclamation standards are being met.

Paragraph D states that when OSMRE intends to conduct an inspection under 30 CFR 842.11, ODM will ordinarily be given reasonable notice of such an inspection to provide an opportunity for State inspectors to join in the inspection. Citizen complaints not involving an imminent harm to the public or the environment will be referred to ODM for action.

Article VII preserves OSMRE's obligation and authority to conduct inspections pursuant to 30 CFR parts 842 and 843. The right of Federal and State agencies to conduct inspections for purposes outside the scope of the proposed cooperative agreement will not be affected.

H. Article VIII: Enforcement

Article VIII sets forth the enforcement obligations and authorities of OSMRE and ODM.

Under paragraph A, ODM will have primary enforcement authority on Federal lands in accordance with the requirements of the Agreement and the Program. Enforcement authority given to the Secretary under other Federal laws and Executive Orders will be reserved by the Secretary.

Under paragraph B, ODM will have primary responsibility for enforcement during joint inspections with OSMRE. Paragraph B also includes a requirement that ODM notify OSMRE prior to suspending or revoking a permit.

Paragraph C preserves OSMRE's authority to take enforcement action to comply with 30 CFR parts 843, 845, and 846, where OSMRE conducted an inspection or where, during a joint inspection with ODM, the two cannot agree on the appropriateness of a particular enforcement action. Such action will be based upon SMCRA or the substantive provisions contained in the Program, or both, but will use the Federal procedures and penalty system.

Paragraph D provides that OSMRE and ODM will notify each other of all violations of applicable regulations and all actions taken on the violations.

Paragraph E provides that personnel of ODM and the Department of the Interior, including OSMRE, will be mutually available to serve as witnesses in enforcement actions taken by either party.

Paragraph F specifies that this Agreement will not limit the Secretary's authority to enforce Federal laws other than SMCRA.

I. Article IX: Bonds

Under paragraph A, ODM and the Secretary will require each operator conducting operations on Federal lands to submit a performance bond payable to both the State and the United States. All applicable State and Federal requirements must be fulfilled prior to releasing an operator from any obligation covered by the performance bond. If the Agreement is terminated, paragraph A requires that the portion of the bond covering Federal lands reverts to being payable solely to the United States. ODM will advise OSMRE of any adjustments to the performance bond pursuant to the Program.

Paragraph B states that a performance bond shall be released by the State after OSMRE concurs with the release.

Paragraph C states that forfeiture of performance bonds will be in accordance with the Program and subject to OSMRE concurrence.

Paragraph D clarifies that the performance bond does not meet the requirement for a Federal lease bond under 43 CFR part 3474, or for the lessee protection bond required in certain circumstances by section 715 of SMCRA.

J. Article X: Designating Land Areas Unsuitable for All or Certain Types of Surface Coal Mining and Reclamation Operations and Activities and Valid Existing Rights and Compatibility Determinations

Paragraph A.1. of Article X reserves to the Secretary authority to designate Federal lands as unsuitable for surface coal mining operations.

Paragraph A.2. states that ODM and OSMRE will notify each other of any petition to designate lands as unsuitable that could impact adjacent Federal and non-Federal lands, and solicit and consider each other's views on a petition. OSMRE will coordinate with the Federal land management agency with jurisdiction over the area covered by the petition, and will solicit comments.

The Bureau of Reclamation (BOR) stated that paragraphs A.1. and A.2. are difficult to understand and posed questions regarding the filing of petitions, decisions on petitions, and appeals of decisions. The Secretary notes that section 522 of SMCRA contains the requirements for designating areas unsuitable for surface coal mining. The detailed procedures for filing petitions for non-Federal lands for processing by ODM are outlined in part 764 of the Program, and those for Federal lands for processing by OSMRE are outlined in 30 CFR subchapter F, part 769. Therefore, reiteration of these detailed procedures in the Agreement is not deemed to be necessary.

BOR also stated that it should be responsible for designating areas as unsuitable for mining and should be considered the "decision maker" rather than a "commenter" in protecting BOR project resources.

The Secretary notes that the State and OSMRE processes for designating lands unsuitable for coal mining are separate from the Bureau of Land Management's unsuitability process (43 CFR part 3460) for designating no surface occupancy areas on Federal leases, for which BOR has input on protecting BOR interests. Therefore, in this respect, the cooperative agreement does not change BOR's authority or responsibility on Federal lands.

The Director of OSMRE is the decisionmaker on any Federal lands unsuitable petitions for coal mining under 30 CFR part 769.

For Federal lands petitions, the Director of OSMRE is required by 30 CFR 769.18(a) to consider information provided by governmental agencies such as BOR. If OSMRE and BOR as sister agencies within the Department could not reach an agreement on issues relating to a Federal lands petition, under 30 CFR 769.18(c), the matter would be referred to the Secretary of the Interior for resolution.

For the reasons stated above, the Secretary finds that it is not necessary to revise the cooperative agreement in response to BOR's comments.

Paragraph B discusses valid existing rights (VER) determinations. OSMRE's definition of VER, which was published on September 14, 1983 (48 FR 41314), relied on a general "takings" standard. In its March 22, 1985, decision, the District Court remanded this definition because the promulgation process violated the Administrative Procedure Act. On November 20, 1986, OSMRE published a suspension notice for the definition of VER pending further rulemaking (51 FR 41952). On December 27, 1988, OSMRE published a notice seeking comments on a proposed definition of VER (53 FR 52374), but OSMRE has not yet adopted a new definition. When the Federal rules are finalized, the Agreement will be amended as necessary to conform to the new rules.

The Secretary has decided, for areas covered by sections 522(e) (1) and (2) of SMCRA, to make VER determinations in

Oklahoma using the VER definition contained in the State regulatory program in accordance with 30 CFR 740.11(a) and the suspension notice at 51 FR 41954. Section 522(e) (1) and (2) of SMCRA address areas where, subject to VER, no surface coal mining operations shall be permitted except those which existed on the date of enactment of SMCRA.

Paragraph B.1. states that OSMRE has responsibility for processing requests for VER determinations on Federal lands within the boundaries of areas where mining is prohibited by section 522(e)(1) of SMCRA. For private inholdings within section 522(e)(1) areas, ODM, with the consultation and concurrence of OSMRE, will determine whether operations on such lands would or would not affect the Federal interest (Federal lands as defined in section 701(4) of SMCRA). OSMRE will have the responsibility for processing requests for VER determinations on private inholdings within the boundaries of section 522(e)(1) areas where mining affects the Federal interest.

Under Paragraph B.2., OSMRE will be responsible for processing requests for determinations of VER for proposed operations on Federal lands within the boundaries of any national forest, as identified in section 522(e)(2) of SMCRA. OSMRE will process compatibility determinations on Federal lands pursuant to section 522(e)(2) of SMCRA.

Under paragraph B.3., ODM will determine, for Federal lands, whether the prohibitions or limitations of section 522(e)(3) of SMCRA are applicable to proposed mining operations which would adversely affect any units of the National Park System, and any other public park, or any historic property listed in the National Register of Historic Places in consultation with the State Historic Preservation Officer. ODM will make the VER determination for such lands. When VER is determined to exist on a unit of the National Park System, ODM will work with the NPS before any proposed operation is permitted. When VER is determined not to exist, no surface coal mining operations will be permitted unless jointly approved by ODM and any Agency with jurisdiction over the lands in question.

Under paragraph B.4., ODM will process and make VER determinations on Federal lands, using the State program, for all areas limited or prohibited by sections 522(e) (4) and (5) of SMCRA as unsuitable for mining. For such operations on Federal lands, ODM will coordinate with the affected agency and any agency with jurisdiction over the proposed operations.

K. Article XI: Termination of Cooperative Agreement

Article XI specifies that the Agreement may be terminated as specified under 30 CFR 745.15.

L. Article XII: Reinstatement of Cooperative Agreement

Article XII provides that, if terminated, the Agreement may be reinstated under 30 CFR 745.16. That provision allows for reinstatement of a cooperative agreement upon application by the State after remedying the defects for which the agreement was terminated and the submission of evidence to the Secretary that the State can and will comply with all of the provisions of the Agreement.

M. Article XIII: Amendment of Cooperative Agreement

Article XIII provides that the Agreement may be amended by mutual agreement of the Governor and Secretary in accordance with 30 CFR 745.14.

N. Article XIV: Changes in State or Federal Standards

Paragraph A of Article XIV recognizes that the Secretary or the Governor may, from time to time, promulgate new or revised performance or reclamation requirements, or enforcement and administration procedures. If it is determined to be necessary to keep the Agreement in force, the State will request necessary legislative action and either the State or OSMRE will change or revise its regulations or promulgate new regulations, as applicable. Such changes will be made in accordance with 30 CFR part 732 for changes to the approved State program and section 501 of SMCRA for changes to the Federal lands program.

Paragraph B requires the State and OSMRE to provide each other with copies of changes in their respective laws and regulations.

O. Article XV: Changes in Personnel and Organization

Article XV requires ODM and OSMRE to advise each other of substantial changes in organization, funding, staff, or other changes which could affect the implementation of the Agreement.

P. Article XVI: Reservation of Rights

Article XVI recognizes that SMCRA, 30 CFR 745.13, and other legal authorities prohibit the Secretary from delegating certain authorities to the State. Article XVI states that this Agreement will not be construed as waiving or preventing the assertion of any right in this Agreement that the State or the Secretary may have under laws other than SMCRA, or their regulations, including those listed in Appendix A of the Agreement.

III. Procedural Matters

A. Executive Order 12291 and Regulatory Flexibility Act

On October 21, 1982, the Department of the Interior received from the Office of Management and Budget (OMB) an exemption for Federal/State cooperative agreements from the requirements of sections 3 and 7 of Executive Order 12291.

The Department has reviewed this proposed agreement in light of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Having conducted this review, the Department has determined that this document will not have a significant economic effect on a substantial number of small entities because no significant departure from either the State or Federal requirements already in effect will occur and no new or additional information will be required by the proposed agreement.

B. Paperwork Reduction Act of 1980

There are recordkeeping and reporting requirements in the proposed Oklahoma Cooperative Agreement which are the same as those required by the permanent program regulations. Those recordkeeping and reporting requirements needed clearance from OMB under 44 U.S.C. 3501 *et seq.* and were assigned the following clearance numbers:

Location of requirements	OMB clearance No.
Article V.C. (Required by 30 CFR part 745)	1029-0028
Article VI.A. (Required by 30 CFR part 773)	1029-0041
Article VII.A. (Required by 30 CFR part 840)	1029-0051
Article IX.A. (Required by 30 CFR part 800)	1029-0043

C. National Environmental Policy Act

Proceedings relating to adoption of a permanent program cooperative agreement are part of the Secretary's implementation of the Federal lands program pursuant to section 523 of SMCRA. Such proceedings are exempt under section 702(d) of that Act from the requirements to prepare a detailed statement pursuant to section 102(2)(C) of NEPA (42 U.S.C. 4332(2)(C)).

D. Author

The author of this regulation is Mr. David R. Alleman, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 E. Skelly Drive, Suite 550, Tulsa, Oklahoma 74135; Telephone (918) 581–6430.

List of Subjects in 30 CFR Part 936

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

Dated: August 15, 1989.

James M. Hughes,

Deputy Assistant Secretary, Land and Minerals Management.

Accordingly, 30 CFR part 936 is amended as follows:

PART 936—[AMENDED]

1. The authority citation for part 936 is revised to read as follows:

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

2. Section 936.30 is added to read as follows:

§ 936.30 State-Federal Cooperative Agreement.

The Governor of the State of Oklahoma and the Secretary of the Department of the Interior (Secretary) enter into a Cooperative Agreement (Agreement) to read as follows:

Article I: Introduction, Purpose, and Responsible Agencies

A. This Agreement is authorized by section 523(c) of the Surface Mining Control and Reclamation Act (Act), 30 U.S.C. 1273(c), which allows a State with a permanent regulatory program approved by the Secretary under 30 U.S.C. 1253, to elect to enter into an Agreement for the regulation and control of surface coal mining operations on Federal lands. This Agreement provides for State regulation consistent with the Act, the Federal lands program (30 CFR, chapter VII, subchapter D) and the Oklahoma State program (Program) for surface coal mining and reclamation operations on Federal lands.

B. The purposes of this Agreement are to (a) foster Federal-State cooperation on the regulation of surface coal mining (b) minimize intergovernmental overlap and duplication and (c) provide uniform and effective application of the Program on all non-Indian lands in Oklahoma in accordance with the Act and the Program.

C. The Oklahoma Department of Mines (ODM), under the direction of the Oklahoma Mining Commission, shall be responsible for administering this Agreement on behalf of the Governor. The Office of Surface Mining Reclamation and Enforcement (OSMRE) shall administer this Agreement on behalf of the Secretary.

Article II: Effective Date

After being signed by the Secretary and the Governor, this Agreement shall be effective 30 days after publication in the Federal Register as a final rule. This Agreement shall remain in effect until terminated as provided in Article XI.

Article III: Definitions

The terms and phrases used in this Agreement which are defined in the Act, 30 CFR parts 700, 701, and 740, the Program, the Oklahoma Coal Reclamation Act of 1979, and in the rules and regulations promulgated pursuant to those Acts, shall be given the meanings set forth in said definitions. Where there is conflict between the above-referenced State and Federal definitions, the definitions used in the approved State program will apply except in the case of a term which defines the Secretary's continuing responsibilities under the Act and other laws.

Article IV: Applicability

A. In accordance with the Federal lands program, the laws, regulations, terms and conditions of the Oklahoma Program are applicable to Federal lands in Oklahoma except as otherwise stated in this Agreement, the Act, 30 CFR 740.4 and 745.13, or other applicable Federal laws, Executive Orders, or regulations.

B. The following permits will not be transferred to the State by this Agreement and will remain under the jurisdiction of OSMRE: 1. CFI-Bokoshe (Federal Permit OK–0002), 2. Stigler No. 9 (Federal Permit OK–0009), 3. Bokoshe No. 10 (Federal Permit OK–0001), and 4. McCurtain No. 2 (Federal Permit OK–0002).

C. Orders and decisions issued by ODM in accordance with the Program that are appealable shall be appealed to the reviewing authority in accordance with the Program. Orders and decisions issued by the Department that are appealable shall be appealed to the Department of the Interior's Office of Hearings and Appeals.

Article V: General Requirements

The Governor and the Secretary affirm that they will comply with all the provisions of this Agreement.

A. Authority of State Agency

ODM has and shall continue to have the authority under State law to carry out this Agreement.

B. Funds

Upon Application by ODM and subject to appropriations, OSMRE will provide the State with the funds to defray the cost associated with carrying out its responsibilities under this Agreement as provided in section 705(c) of the Federal Act, the grant agreement, and 30 CFR 735.16. Such funds will cover the full cost incurred by ODM in carrying out those responsibilities, provided that such cost does not exceed the estimated cost the Federal government would have expended to carry out such responsibilities in the absence of this Agreement; and provided that such State incurred cost per permitted acre of Federal land does not exceed the per permitted acre cost for similar administration and enforcement activities of the Program on non-Federal and non-Indian lands during the same time period.

The ratio or cost split of Federal to non-Federal dollars allocated under this Agreement will be determined by OSMRE and ODM based on the projected cost for regulation of mines within Federal lands that are under the jurisdiction of the State, in consideration of the relative amounts of Federal and non-Federal lands involved. The designation of mines based on Federal land will be prepared by ODM and submitted to OSMRE's Tulsa Field Office. OSMRE will work with ODM to estimate the amount the Federal government would have expended for regulation of surface coal mining operations on Federal lands in Oklahoma in the absence of this Agreement.

OSMRE and the State will discuss the OSMRE Federal land cost estimate, the ODM prepared list of acres by mine, and the State's overall cost estimate. After resolution of any issues, ODM will submit its grant application to OSMRE's Tulsa Field Office. The Federal lands/non-Federal lands ratio will be applied to the final eligible total State expenditures to arrive at the total Federal reimbursement due the State. This ratio or cost split will be agreed upon by July of the year preceding the applicable fiscal year in order to enable the State to budget funds for the Program.

The State may use the existing year's budget totals, adjusted for inflation and workload considerations, in estimating the regulatory cost for the following grant year. OSMRE will notify ODM as soon as possible if such projections are unrealistic.

If ODM applies for a grant but sufficient funds have not been appropriated to OSMRE, OSMRE and ODM will promptly meet to decide on appropriate measures that will insure that mining operations on Federal lands in Oklahoma are regulated in accordance with the Program.

Funds provided to ODM under this Agreement will be adjusted in accordance with Office of Management and Budget Circular A–102 Attachment E.

C. Reports and Records

ODM will make annual reports to OSMRE containing information with respect to compliance with terms of this Agreement pursuant to 30 CFR 745.12(d). ODM and OSMRE will exchange, upon request, except where prohibited by Federal or State law, information developed under this Agreement.

OSMRE will provide ODM with a copy of any final evaluation report prepared concerning State administration and enforcement of this Agreement. ODM comments on the report will be appended before transmission to the Congress or other interested parties.

D. Personnel

ODM shall have the necessary personnel to fully implement this Agreement in accordance with the provisions of the Act, Federal lands program and the Program.

E. Equipment and Laboratories

ODM will assure itself access to equipment, laboratories, and facilities to perform all inspections, investigations, studies, tests, and analyses that are necessary to carry out the requirements of the Agreement.

F. Permit Application Fees and Civil Penalties

The amount of the fee accompanying an application for a permit for operations on Federal lands in Oklahoma shall be determined in accordance with section 745.1 of the Oklahoma Coal Reclamation Act of 1979, section 771.25 of the State regulations and the applicable provisions of the Program and Federal law. All permit fees and civil penalties collected from operations on Federal lands will be retained by the State and shall be deposited with the State Treasurer in the Oklahoma Department of Mines Revolving Fund. Permit fees will be considered Program income. The financial status report submitted pursuant to 30 CFR 735.26 shall include the amount of fees collected and attributable to Federal lands during the prior State fiscal year.

Article VI: Review of Permit Application Package

A. Submission of Permit Application Package

ODM and the Secretary will require an applicant proposing to conduct surface coal mining and reclamation operations and activities on Federal lands to submit a permit application package (PAP) with an appropriate number of copies to ODM. ODM will furnish OSMRE and other Federal agencies with an appropriate number of copies of the PAP. The PAP will be in the form required by ODM and will include any supplemental information required by OSMRE and the Federal land management agency. Where section 522(e)(3) of the Act applies, ODM will work with the agency with jurisdiction over the publicly owned park, including units of the National Park System, or place included in the National Register of Historic Places (NRHP) to determine what supplemental information will be required.

At a minimum, the PAP will satisfy the requirements of 30 CFR Part 740 and include the information necessary for ODM to make a determination of compliance with the Program and for OSMRE and the appropriate Federal agencies to make determinations of compliance with applicable requirements of the Act, the Federal lands program, and other Federal laws, Executive Orders, and the regulations for which they are responsible.

B. Review Procedures Where Leased Federal Coal is Involved

1. ODM will assume the responsibilities listed in 30 CFR 740.4(c) (1), (2), (3), (4), (6), and (7) to the extent authorized.

In accordance with 30 CFR 740.4(c)(1), ODM will assume primary responsibility for the analysis, review, and approval or disapproval of the permit application component of the PAP for surface coal mining and reclamation operations and activities in Oklahoma where a mining plan is required. OSMRE will, at the request of the State, assist to the extent possible in this analysis and review.

The Secretary will concurrently carry out his responsibilities that cannot be delegated to ODM under the Federal lands program, the Mineral Leasing Act (MLA), the National Environmental Policy Act (NEPA), this Agreement, and other applicable Federal laws. The Secretary will carry out these responsibilities in a timely manner and will avoid, to the extent possible, duplication of the responsibilities of the State as set forth in this Agreement and the Program. The Secretary will consider the information in the PAP and where appropriate, make decisions required by the Act, MLA, NEPA, and other Federal laws.

Responsibilities and decisions which can be delegated to the State under other applicable Federal laws may be specified in working Agreements between OSMRE and ODM with concurrence of any Federal agency involved, and without amendment to this Agreement.

2. ODM will be the primary point of contact for applicants regarding the review of the PAP for compliance with the Program and State laws and regulations. On matters concerned exclusively with regulations under 43 CFR part 3480, subparts 3480 through 3487, the Bureau of Land Management (BLM) will be the primary point of contact with the applicant. ODM will send to OSMRE copies of any correspondence with the applicant and any information received from the applicant regarding the PAP. OSMRE will send to ODM copies of all OSMRE correspondence which may have a bearing on the PAP. OSMRE will request additional information from the applicant through ODM. Copies of OSMRE's request will be sent directly to the operator by OSMRE to help expedite the permit review process. The requested information will be submitted to OSMRE through ODM.

BLM will inform ODM of its actions and provide ODM with a copy of documentation on all decisions. ODM will be responsible for informing the applicant of all joint State-Federal determinations. Where necessary to make the determination to recommend that the Secretary approve the mining plan, OSMRE will consult with and obtain the concurrences of BLM, the Federal land management agency, and other Federal agencies as required.

The Secretary reserves the right to act independently of ODM to carry out his responsibilities under laws other than the Act or provisions of the Act not covered by the Program, and in instances of disagreement over the Act and the Federal lands program.

3. ODM will, to the extent authorized, consult with the Federal land management agency and BLM pursuant to 30 CFR 740.4(c)(2) and (3), respectively. ODM will also be responsible for obtaining the comments and determinations of other Federal agencies with jurisdiction or responsibility over the Federal lands affected by the operations proposed in the PAP. ODM will request all Federal agencies to furnish their findings on any request for additional information to ODM within 45 days of the date of receipt of the PAP. OSMRE will assist ODM in obtaining this information upon request of ODM.

ODM will be responsible for approval and release of performance bonds and liability insurance under 30 CFR 740.4(c)(4).

ODM will prepare documentation to comply with the requirements of NEPA under 30 CFR 740.4(c)(7); however, OSMRE will retain the responsibility for the exceptions in 30 CFR 740.4(c)(7)(i)–(vii).

4. OSMRE will assist ODM in carrying out ODM's responsibilities by:

(a) Coordinating resolution of conflicts and difficulties between ODM and other Federal agencies in a timely manner;

(b) Assisting in scheduling joint meetings, upon request, between State and Federal agencies;

(c) Where OSMRE is assisting ODM in reviewing the PAP, furnishing to ODM the work product within 50 calendar days of receipt of the State's request for such assistance, unless a different time is agreed upon by OSMRE and ODM;

(d) Exercising its responsibilities in a timely manner, governed to the extent possible by the deadlines established in the Program; and

(e) Assuming all responsibility for ensuring compliance with any Federal lessee protection bond requirement.

5. Review of the PAP:

(a) OSMRE and ODM will coordinate with each other during the review process as needed. ODM will keep OSMRE informed of findings made during the review process which bear on the responsibilities of OSMRE or other Federal agencies. OSMRE will ensure that any information OSMRE receives which has a bearing on decisions regarding the PAP is promptly sent to ODM.

(b) ODM will review the PAP for compliance with the Program and State law and regulations.

(c) OSMRE will review the applicable portions of the PAP for compliance with the non-delegated responsibilities of the Act and for compliance with the requirements of other Federal laws, Executive orders, and regulations.

(d) OSMRE and ODM will develop a work plan and schedule for PAP review and each will identify a person as the project leader. The project leaders will serve as the primary points of contact between OSMRE and ODM throughout the review process. Not later than 50 days after receipt of the PAP, unless a different time is agreed upon, OSMRE will furnish ODM with its review comments on the PAP and specify any requirements for additional data. To the extent practicable, ODM will provide OSMRE all available information that may aid OSMRE in preparing any findings.

(e) ODM will prepare a State decision package, including written findings and supporting documentation, indicating whether the PAP is in compliance with the Program. The review and finalization of the State decision package will be conducted in accordance with procedures for processing PAP's agreed upon by ODM and OSMRE.

(f) ODM may make a decision on approval or disapproval of the permit on Federal lands in accordance with the Program prior to the necessary Secretarial decision on the mining plan, provided that ODM advises the operator in the permit that Secretarial approval of the mining plan must be obtained before the operator may conduct coal development or mining operations on the Federal lease. ODM will reserve the right to amend or rescind any requirements of the permit to conform with any terms or conditions imposed by the Secretary in the approval of the mining plan.

(g) The permit will include, as applicable, terms and conditions required by the lease issued pursuant to the MLA and by any other applicable Federal laws and regulations, including conditions imposed by the Federal land management agency relating to post-mining land use, and those of other affected agencies, and will be conditioned on compliance with the requirements of the Federal land management agency with jurisdiction.

(h) In the case that valid existing rights (VER) are determined to exist on Federal lands under section 522(e)(3) of the Act where the proposed operation will adversely affect a unit of the National Park Service (NPS), ODM will work with the NPS to develop mutually agreed upon terms and conditions for incorporation into the permit to mitigate environmental impacts as set forth under Article X of this Agreement.

(i) After making its decision on the PAP, ODM will send a notice to the applicant, OSMRE, the Federal land management agency, and any agency with jurisdiction over the publicly owned park or historic place included in the NRHP affected by a decision under section 522(e)(3) of the Act. A copy of the written findings and the permit will also be submitted to OSMRE.

(j) OSMRE will provide technical assistance to ODM when requested, if available resources allow. OSMRE will have access to ODM files concerning operations on Federal lands.

C. Review Procedures for Permit Revisions or Renewals

1. Any permit revision or renewal for an operation on Federal lands will be reviewed and approved or disapproved by ODM after consultation with OSMRE on whether such revision or renewal constitutes a mining plan modification. OSMRE will inform ODM within 30 days of receiving a copy of a proposed revision or renewal, whether the permit revision or renewal constitutes a mining plan modification. Where approval of a mining plan modification is required, OSMRE and ODM will follow the review procedures where leased Federal coal is involved as outlined in this Agreement.

2. OSMRE may establish criteria to determine which permit revisions and renewals clearly do not constitute mining plan modifications.

3. Permit revisions or renewals on Federal lands which are determined by OSMRE not to constitute mining plan modifications or that meet the criteria for not being mining plan modifications will be reviewed and approved by ODM.

4. Transfer, sale, or assignment of permit rights on Federal lands shall be processed in accordance with the Oklahoma Program and 30 CFR 740.13(e).

Article VII: Inspections

A. ODM will conduct inspections of all surface coal mining and reclamation operations on Federal lands, except for those operations listed in Article IV, in accordance with 30 CFR 740.4(c)(5) and the Program and prepare and file inspection reports in accordance with the Program.

B. ODM will, subsequent to conducting any inspection pursuant to 30 CFR 740.4(c)(5), and on a timely basis, file with OSMRE's Tulsa Field Office a legible copy of the completed State inspection report.

C. ODM will be the point of contact and primary inspection authority in dealing with the operator concerning operations and compliance with the requirements covered by the Agreement, except as described hereinafter. Nothing in this Agreement will prevent inspections by authorized Federal or State agencies for purposes other than those covered by this Agreement. The Department may conduct any inspections necessary to comply with 30 CFR Parts 842 and 843 and its obligations under laws other than the Act.

D. OSMRE will ordinarily give ODM reasonable notice of its intent to conduct an inspection under 30 CFR 842.11 in order to provide State inspectors with an opportunity to join in the inspection. When OSMRE is responding to a citizen complaint of an imminent danger to the public health and safety, or of significant, imminent environmental harm to land, air or water resources pursuant to 30 CFR 842.11(b)(1)(ii)(C), it will contact ODM no less than 24 hours prior to the Federal inspection, if practicable, to facilitate a joint Federal/State inspection. All citizen complaints which do not involve an imminent danger or significant, imminent environmental harm will be referred to ODM for action. The Secretary reserves the right to conduct inspections without prior notice to ODM to carry out his responsibilities under the Act.

Article VIII: Enforcement

A. ODM will have primary enforcement authority under the Act concerning compliance with the requirements of this Agreement and the Program in accordance with 30 CFR 740.4(c)(5). Enforcement authority given to the Secretary under other Federal laws and Executive orders including, but not limited to, those listed in Appendix A (attached) is reserved to the Secretary.

B. During any joint inspection by OSMRE and ODM, ODM will have primary responsibility for enforcement procedures including issuance of orders of cessation, notices of violation, and assessment of penalties. ODM will inform OSMRE prior to issuance of any decision to suspend or revoke a permit on Federal lands.

C. During any inspection made solely by OSMRE or any joint inspection where ODM and OSMRE fail to agree regarding the propriety of any particular enforcement action, OSMRE may take any enforcement action necessary to comply with 30 CFR parts 843, 845, and 846. Such enforcement action will be based on the standards in the Program, the Act, or both, and will be taken using the procedures and penalty system contained in 30 CFR parts 843, 845, and 846.

D. ODM and OSMRE will promptly notify each other of all violations of applicable laws, regulations, orders, or approved mining permits subject to this Agreement, and of all actions taken with respect to such violations.

E. Personnel of ODM and OSMRE will be mutually available to serve as witness in enforcement actions taken by either party.

F. This Agreement does not affect or limit the Secretary's authority to enforce violations of Federal laws other than the Act.

Article IX: Bonds

A. ODM and the Secretary will require each operator who conducts operations on Federal lands to submit a single performance bond payable to Oklahoma and the United States to cover the operator's responsibilities under the Act and the Program. Such performance bond will be conditioned upon compliance with all requirements of the Act, the Program, State rules and regulations, and any other requirements imposed by the Department. Such bond will provide that if this Agreement is terminated, the portion of the bond covering the Federal lands will be payable only to the United States. ODM will advise OSMRE of any adjustments to the performance bond made pursuant to the Program.

B. Prior to releasing the operator from any obligation under such bond, ODM will obtain the concurrence of OSMRE. OSMRE concurrence will include coordination with other Federal agencies having authority over the lands involved.

C. Performance bonds will be subject to forfeiture with the concurrence of OSMRE, in accordance with the procedures and requirements of the Program.

D. Submission of a performance bond does not satisfy the requirements for a Federal lease bond required by 43 CFR subpart 3474 or lessee protection bond required in addition to a performance bond, in certain circumstances, by section 715 of the Act.

Article X: Designating Land Areas Unsuitable for All or Certain Types of Surface Coal Mining and Reclamation Operations and Activities and Valid Existing Rights and Compatibility Determinations

A. Unsuitability Petitions.

1. Authority to designate Federal lands as unsuitable for mining pursuant to a petition is reserved to the Secretary.

2. When either ODM or OSMRE receives a petition that could impact adjacent Federal or non-Federal lands pursuant to section 522(c) of the Act, the agency receiving the petition will notify the other of receipt and the anticipated schedule for reaching a decision, and request and fully consider data, information and recommendations of the other. OSMRE will coordinate with the Federal land management agency with jurisdiction over the petition area, and will solicit comments from the agency.

B. Valid Existing Rights and Compatibility Determinations

The following actions will be taken when requests for determination of valid existing rights (VER) pursuant to section 522(e) of the Act or for determinations of compatibility pursuant to section 522(e)(2) of the Act are received prior to or at the time of submission of a PAP that involves surface coal mining and reclamation operations and activities:

1. For Federal lands within the boundaries of any areas specified under section 522(e)(1) of the Act, OSMRE will determine whether VER exist for such areas.

For non-Federal lands within section 522(e)(1) areas ODM, with the consultation and concurrence of OSMRE, will determine whether operations on such lands will or will

not affect Federal lands. For such non-Federal lands affecting Federal lands, OSMRE will make the VER determination.

Under section 522(e)(1), for non-Federal lands within the boundaries of the National Park System, ODM, with the consultation and concurrence of OSMRE, will determine whether operations on such lands will or will not affect the Federal interest. For such non-Federal lands within the boundaries of the National Park System which affect the Federal interest, OSMRE will make the VER determinations.

2. For Federal lands within the boundaries of any national forest where proposed operations are prohibited or limited by section 522(e)(2) of the Act and 30 CFR 761.11(b), OSMRE will make the VER determination.

OSMRE will process requests for determinations of compatibility under section 522(e)(2) of the Act and 30 CFR 761.12(c).

3. For Federal lands, ODM, with the consultation and concurrence of OSMRE, will determine whether any proposed operations will adversely affect units of the National Park System with respect to the prohibitions or limitations of section 522(e)(3) of the Act. For such operations adversely affecting units of the National Park System, ODM, with the consultation and concurrence of OSMRE, will make the VER determination.

For Federal lands, ODM will determine whether any proposed operation will adversely affect any publicly owned parks other than those covered in the preceding paragraph and, in consultation with the State Historic Preservation Officer, places listed in the National Register of Historic Places (NRHP), with respect to the prohibitions or limitations of section 522(e)(3) of the Act.

For Federal lands other than those on which the proposed operation will adversely affect units of the National Park System, ODM will make the VER determination for operations which are prohibited or limited by section 522(e)(3) of the Act. In the case that VER is determined to exist on Federal lands under section 522(e)(3) of the Act where a proposed operation will adversely affect a unit of the National Park System, ODM will work with the NPS to develop mutually agreed upon terms and conditions for incorporation into the permit in order to mitigate environmental impacts.

In the case that VER is determined not to exist under section 522(e)(3) of the Act or 30 CFR 761.11(c), no surface coal mining operations and activities will be permitted unless jointly approved by ODM and the Federal, State or local agency with jurisdiction over the publicly owned park or place included in the NRHP.

4. ODM will process determinations of VER on Federal lands for all areas limited or prohibited by section 522(e)(4) and (5) of the Act as unsuitable for mining. For operations on Federal lands, ODM will coordinate with any affected agency or agency with jurisdiction over the proposed surface coal mining and reclamation operation.

Article XI: Termination of Cooperative Agreement

This Agreement may be terminated by the Governor or the Secretary under the provisions of 30 CFR 745.15.

Article XII: Reinstatement of Cooperative Agreement

If this Agreement has been terminated in whole or in part it may be reinstated under the provisions of 30 CFR 745.16.

Article XIII: Amendment of Cooperative Agreement

This Agreement may be amended by mutual agreement of the Governor and the Secretary in accordance with 30 CFR 745.14.

Article XIV: Changes in State or Federal Standards

A. The Department or the State may from time to time promulgate new or revised performance or reclamation requirements or enforcement and administration procedures. Each party will, if it determines it to be necessary to keep this Agreement in force, change or revise its regulations or request necessary legislative action. Such changes will be made under the procedures of 30 CFR part 732 for changes to the Program and under the procedures of section 501 of the Act for changes to the Federal lands program.

B. ODM and the Department will provide each other with copies of any changes to their respective laws, rules, regulations or standards pertaining to the enforcement and administration of this Agreement.

Article XV: Changes in Personnel and Organization

Each party to this Agreement will notify the other, when necessary, of any changes in personnel, organization, and funding, or other changes that may affect the implementation of this Agreement to ensure coordination of responsibilities and facilitate cooperation.

Article XVI: Reservation of Rights

This Agreement will not be construed as waiving or preventing the assertion of any rights in this Agreement that the State or the Secretary may have under laws other than the Act or their regulations, including but not limited to those listed in Appendix A.

Approved:

Henry Bellmon,

Governor of Oklahoma.

Date: August 2, 1989.

Manuel Lujan, Jr.,

Secretary of the Interior.

Date: August 30, 1989.

Editorial note: This appendix will not appear in the Code of Federal Regulations.

Appendix A

1. The Federal Land Policy and Management Act, 43 U.S.C. 1701 *et seq.*, and implementing regulations.

2. The Mineral Leasing Act of 1920, 30 U.S.C. 1818 *et seq.*, and implementing regulations, including 43 CFR part 3480.

3. The National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, and implementing regulations, including 40 CFR part 1500.

4. The Endangered Species Act, 16 U.S.C. 1531 *et seq.*, and implementing regulations, including 50 CFR part 402.

5. The Fish and Wildlife Coordination Act, as amended, 16 U.S.C. 661 *et seq.*; 48 Stat. 401.

6. The National Historic Preservation Act of 1966, 16 U.S.C. 470 *et seq.*, and implementing regulations, including 36 CFR part 800.

7. The Clean Air Act, 42 U.S.C. 7401 *et seq.*, and implementing regulations.

8. The Federal Water Pollution Control Act, 33 U.S.C. 1251 *et seq.*, and implementing regulations.

9. The Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 *et seq.*, and implementing regulations.

10. The Reservoir Salvage Act of 1960, amended by the Preservation of Historical and Archaeological Data Act of 1974, 16 U.S.C. 469 *et seq.*

11. Executive Order 11593 (May 13, 1971), Cultural Resource Inventories on Federal Lands.

12. Executive Order 11988 (May 24, 1977), for flood plain protection.

13. Executive Order 11990 (May 24, 1977), for wetlands protection.

14. The Mineral Leasing Act for Acquired Lands, 30 U.S.C. 351 *et seq.*, and implementing regulations.

15. The Stock Raising Homestead Act of 1916, 43 U.S.C. 291 *et seq.*

16. The Constitution of the United States.

17. The Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.*

18. 30 CFR Chapter VII.

19. The Constitution of the State and State Law.

[FR Doc. 89-21240 Filed 9-8-89; 8:45 am]

BILLING CODE 4310-05-M

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 201-1, 201-8, 201-13, 201-38, 201-39, and 201-40

[FIRMR Amdt. 17]

Restructuring and Simplification of Federal Information Resources Management Standards

AGENCY: Information Resources Management Service, GSA.

ACTION: Final rule.

SUMMARY: This rule introduces several changes being proposed to ensure that agencies have up-to-date information about Federal standards. The intent of these changes is to remove redundant and non-regulatory provisions from the Federal Information Resources Management Regulation (FIRMR) that may be found in other agency issuances, and to reorganize the FIRMR so that

users may more readily locate standards provisions relevant to their particular requirements. These changes will also make FIRMR coverage of terminology to incorporate Federal standards in solicitations consistent with similar coverage in the Federal Acquisition Regulation (FAR). The changes do not relax an agency's obligation to comply with the standards. For example, Federal Information Processing Standards (FIPS) continue to be mandatory for Federal use after approval by the Secretary of Commerce.

The use of uniform standards permits the integration and sharing of information and processes among vendors, and helps agencies increase the productivity of their investments in information technology. Ready access to information about standards applicability and terminology for incorporating standards in solicitations is critical to realizing the benefits standards can help provide.

To ensure that agencies have up-to-date terminology to incorporate Federal standards in solicitation documents and contracts, GSA plans to update, publish, and distribute the "Federal ADP and Telecommunications Standards Index" at least twice each year, with updates published pursuant to a request for public comments. FIRMR changes are presently published infrequently, and continued inclusion of appropriate terminology to incorporate standards in solicitations in the codified regulation does not provide sufficiently timely information.

FIPS and the implementing terminology that is included in agency contracts can have important effects on agencies and on businesses that sell to the Government. Proposed changes to standards and applicable terminology will continue to be published in the **Federal Register** and circulated to agency regulatory and standards contracts for comment, and the comments resolved, before changes are adopted and printed in the Index. GSA plans to make the Index available on a subscription basis through the Government Printing Office to ensure widespread distribution. The FIRMR bulletin series will announce the availability of the Index and its updates.

EFFECTIVE DATE: September 11, 1989.

FOR FURTHER INFORMATION CONTACT: Margaret Truntich, General Services Administration, IRMS, Regulations Branch (KMPR), Washington, DC 20405. (Telephone: (202) 566–0194, or FTS 566–0194).

SUPPLEMENTARY INFORMATION: (1) A notice of proposed rulemaking regarding this action was published in the **Federal Register** on January 10, 1989 (54 FR 833). All comments received have been considered.

(2) In Part 201–2, Definitions of Words and Terms, the term "Standard terminology" and accompanying definition are removed.

(3) Part 201–8, Implementation and Use of Federal Standards, is removed and provisions are relocated as follows: (a) Provisions addressing overall policies and procedures for using Federal standards are relocated in part 201–13, and (b) contracting provisions that implement standards in the acquisition process are relocated in part 201–39. All existing Federal standard "requirements statements" for inclusion in solicitation documents will be removed.

(4) The changes made in part 201–13 are explained in the following paragraphs.

(a) Reserved part 201–13 is activated under the title, Operations and Control. It contains management policies and procedures pertaining to the use of standards. Information about other aspects of information resources management may be added in the future.

(b) Subpart 201–13.1, Standards, is established to contain overall policies and procedures for the use of standards, including Federal Information Processing Standards (FIPS), Federal Telecommunications Standards (FED–STDS), interim standards, and agency-unique standards. This subpart also contains the separation of Telecommunications standards in accordance with Public Law 99–500. All Federal Telecommunications Standards (FED–STDS) that relate to ADPE have been renamed by the National Institute of Standards and Technology as FIPS. All other FED–STDS remain unchanged and under the control of GSA.

(c) Other subparts in part 201–13 are reserved.

(5) In part 201–38, § 201–38.006 is amended to replace the reference "part 201–8" with "part 201–13."

(6) In part 201–38, subpart 201–38.1 is added and reserved.

(7) In part 201–38, subpart 201–38.2 is added and the information contained in part 201–39 is moved into this subpart.

(8) The changes made in part 201–39 are explained in the following paragraphs.

(a) Part 201–39 is removed. The information previously contained in part 201–39 has been moved to subpart 201–38.2.

(b) A new part 201–39 is added under the title, Acquisition of Information Processing Resources by Contracting. It contains the special acquisition rules that apply Governmentwide to information resources. The organizational structure established for this part is consistent with that of the FAR.

(c) Subpart 201–39.10, Standards, is established and organized consistent with part 10 of the FAR. It contains policies and procedures from part 201–8 pertaining to the implementation and use of requirements statements in the acquisition process. Provisions are amended by replacing the term "requirements statement" with the term "terminology to incorporate standards in solicitations", removing the applicability statements for individual standards, and prescribing language for obtaining the GSA "Federal ADP and Telecommunications Standards Index" when standards are to be incorporated into solicitations by reference.

(d) Subpart 201–39.52, Solicitation Provisions and Contract Clauses, is established and organized consistent with Part 52 of the FAR to contain provisions and contract clauses to be included in solicitation documents for information resources. Currently, this subpart only includes a provision for incorporating appropriate terminology in solicitations by reference to the "Federal ADP and Telecommunications Standards Index".

(9) In part 201–40, § 201–40.005 is amended to replace the references to "subpart 201–8.1" and "201–8.104" and replacing them with "part 201–13."

(10) The General Services Administration has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. GSA decisions are based on adequate information concerning the need for, and the consequences of, the rule. This rule is written to ensure maximum benefits to Federal agencies and it will not have a significant effect beyond the internal operating procedures of Federal agencies. This is a Governmentwide regulation that will have little or no net cost effect on society. It is certified that this rule will not have a significant impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

List of Subjects in 41 CFR parts 201–8, 201–13, and 201–39

Computer technology, Telecommunications, Information resources activities, Government procurement, Competition, Hearing and appeal procedures.

Chapter 201 of title 41 of the Code of Federal Regulations is amended as set forth below:

PART 201-2—DEFINITIONS OF WORDS AND TERMS

1. The authority citation for part 201-2 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c) and Sec. 101(f), 100 Stat. 1783-345; 40 U.S.C. 751(f).

§ 201-2.001 [Amended]

2. In § 201-2.001 remove the definition for "Standard terminology."

PART 201-8—[REMOVED AND RESERVED]

3. Part 201-8 is removed and reserved.

4. Part 201-13 is added to read as follows:

PART 201-13—OPERATIONS AND CONTROL

Sec.

201-13.000 Scope of part.
201-13.001 [Reserved]

Subpart 201-13.1—Standards

201-13.100 Scope of subpart.
201-13.101 General.
201-13.102 Policy.
201-13.103 Procedures.

Subparts 201-13.2—201-13.6 [Reserved]

Authority: 40 U.S.C. 486(c) and 40 U.S.C. 751(f).

§ 201-13.000 Scope of part.

This part prescribes policies and procedures pertaining to standards and other aspects of information resources management.

§ 201-13.001 [Reserved]

Subpart 201-13.1—Standards

§ 201-13.100 Scope of subpart.

This subpart prescribes policies and procedures of the General Services Administration (GSA) for the use of Federal Information Processing Standards (FIPS), Federal Telecommunications Standards (FED-STDS), interim standards, and agency-unique standards.

§ 201-13.101 General.

The FIRMR implements three types and seven categories of Federal standards. The "Federal ADP and Telecommunications Standards Index" published by GSA contains relevant information about the Federal standards.

(a) Types of Federal standards.

(1) Federal Information Processing Standards (FIPS). FIPS are automatic data processing standards adopted and issued under the provisions of 15 U.S.C. 278g-3 and 40 U.S.C. 759(d). FIPS are developed and issued by the National Institute of Standards and Technology (NIST) as part of their Federal Information Processing Standards Publications (FIPS PUBS) series.

(i) Public Law 99-500 title VIII, the "Paperwork Reduction Reauthorization Act of 1986," modified the definition of automatic data processing equipment (ADPE) to include most telecommunications resources (see 40 U.S.C. 759(a)).

(ii) Public Law 100-235, the "Computer Security Act of 1987," expressly provided the Secretary of Commerce authority for the development of Federal computer system standards, which were defined to encompass all ADPE standards (see 15 U.S.C. 278g-3(d)). All such ADPE standards are called FIPS.

(2) Federal Telecommunications Standards (FED-STDS).

(i) FED-STDS are official Federal Government publications relating to standards adopted and issued originally under the provisions of 40 U.S.C. 487. These standards are developed by the National Communications System under delegation from GSA. FED-STDS include those categories in the Federal Supply Class (FSC) of "Telecommunications" of the Federal Standards Program not redefined as ADPE by Public Law 99-500.

(ii) FED-STDS relating to ADPE that were in existence when Public Law 99-500 was enacted are covered by the modified definition of ADPE in Public Law 99-500 and therefore fall under the authority of NIST. These standards were redesignated by NIST as FIPS.

(b) Categories of Federal standards.

(1) Hardware standards include areas of standardization such as character recognition, interchange codes and media, transmission, interface, and keyboards.

(2) Software standards include areas of standardization such as programing languages, operating systems, operating procedures, and documentation.

(3) Application standards include items such as payroll, personnel, inventory, and accounting.

(4) Data standards include items such as data elements, data formats, data representations, and data codes.

(5) ADP operations standards include items such as benchmarking, computer performance management, computer security, and management of multivendor ADP systems.

(6) Telecommunications standards (i.e., FED-STDS) include those Federal Supply Class (FSC) telecommunications items not redefined as ADPE by Public Law 99-500 such as time and frequency reference, and transmission frequency for maritime mobile units.

(7) Computer-related telecommunications standards include those Federal Supply Class (FSC) telecommunications items redefined as ADPE by Public Law 99-500.

(c) Standards Index. GSA publishes the "Federal ADP and Telecommunications Standards Index" to provide information on mandatory standards as well as standards under development and interim standards. The Index includes terminology for incorporating Federal standards in solicitations. Applicable terminology for interim standards is not provided. Proposed changes to standards and applicable terminology are published for comment in the Federal Register and the comments resolved before changes are printed in the Index. The availability and ordering information for the Index is provided through the issuance of revisions to the FIRMR bulletin series.

§ 201-13.102 Policy.

(a) Mandatory use of Federal standards. Technical and requirements personnel shall implement Federal standards by:

(1) Reviewing each standard to determine its applicability to each requirement; and

(2) Working with contracting officials in accordance with subpart 201-39.10 to ensure that all applicable Federal standards are properly specified in any resulting solicitation and that the agency acquires only those information processing resources that comply with Federal standards.

(b) Use of interim standards. Certain Federal standards are published as "interim." Agencies are not required, but are encouraged, to apply these standards to the acquisition and use of automatic data processing and telecommunications resources in appropriate situations. Agencies should develop appropriate terminology for use in solicitations that is consistent with the intended use of the interim standard.

(c) Optional use of agency standards.

(1) In those instances where Federal standards do not exist for ADP and telecommunications resources being acquired, agencies should consider the use of applicable voluntary industry standards, such as American National Standards or International Standards. In cases where no Federal or voluntary industry standards exist, agencies should consider the development and use of agency-unique standards, provided such use is not in violation of the full and open competition requirements of Public Law 98-369, the "Competition in Contracting Act."

(2) The head of a Federal agency may allow the use of alternate standards in acquisitions of ADP and

telecommunications resources when required by computer security and privacy considerations. Such standards must be more stringent than the applicable Federal standards and contain, at a minimum, the provisions of the applicable Federal standards.

(3) The use of agency-unique standards shall be coordinated with the National Institute of Standards and Technology.

§ 201-13.103 Procedures.

Each Federal agency shall implement Federal standards as provided in this subpart except as discussed in this section.

(a) Waiver to a Federal Information Processing Standard (FIPS). The Secretary of Commerce has delegated the authority to waive the mandatory use of a FIPS by Federal agencies to the heads of Federal agencies under certain conditions (see 54 FR 4322, dated January 30, 1989). Further information regarding such waivers may be obtained from the: National Institute of Standards and Technology; Attn: FIPS Waiver Decisions; Technology Building, Room B-154; Gaithersburg, MD 20899. If a waiver is obtained from the use of a FIPS, a deviation from the FIRMR is not required.

(b) Exception to a Federal Telecommunications Standard (FED-STD). GSA may grant an exception to the mandatory use of a FED-STD upon receipt of adequate justification from the requesting agency. Requests for exceptions, notifications, and assistance should be addressed to the General Services Administration (KMP), Washington, DC 20405. If an exception is obtained from the use of a FED-STD, a deviation from the FIRMR is not required.

5. The table of contents of part 201-38 is revised to read as follows:

PART 201-38—MANAGEMENT OF TELECOMMUNICATION RESOURCES

Sec.
201-38.000 Scope of part.
201-38.001 General. [Reserved]
201-38.002 Planning.
201-38.003 Controlling and reviewing.
201-38.004 Privacy.
201-38.005 Security.
201-38.006 Standards.
201-38.007 Policies on the use of telecommunications services.
201-38.007-1 Authorized use of Government telephone systems.
201-38.007-2 Abuse by employees.
201-38.007-3 Prohibitions.
201-38.007-4 Collections.
201-38.007-5 Privacy Act considerations.
201-38.007-6 Agency responsibilities.
201-38.007-7 Delegation of authority.
201-38.008 Use of toll-free telephone services.
201-38.008-1 Agency responsibilities.
201-38.008-2 GSA responsibilities.
201-38.009 [Reserved]
201-38.010 Analysis of data communication requirements. [Reserved]
201-38.011 Agency surveys and inventories of telephone station equipment.
201-38.011-1 Guidelines.
201-38.012 Use of functional telecommunications system specifications.
201-38.013 [Reserved]
201-38.014 Telecommunication requirements.
201-38.014-1 Submission of requirements to GSA.
201-38.014-2 GSA actions.
201-38.014-3 Review of proposed determinations by the Office of Management and Budget.
201-38.015 Competition.
201-38.016 Acquisition policies.
201-38.017 GSA provided service through the FTS.

Subpart 201-38.1—[Reserved]

Subpart 201-38.2—Major Changes and New Installations of Telecommunication Resources

Sec.
201-38.200 Scope of part.
201-38.201 General.
201-38.202 Description of major changes and new installations.
201-38.202-1 Local telephone service.
201-38.202-2 Intercity telephone service.
201-38.202-3 Data, facsimile, and record telecommunications services.
201-38.202-4 Communications security service.
201-38.202-5 Radio service.
201-38.202-6 Video and audio service.
201-38.202-7 Teleconference service.
201-38.203—201-38.205 [Reserved]
201-38.206 Submission of major changes and new installation requirements to GSA.
201-38.206-1 Local telephone service submissions.
201-38.206-2 Intercity telephone service submissions.
201-38.206-3 Federal Telecommunications System (FTS) intercity voice network service submissions.
201-38.206-4 Data, facsimile, and record telecommunications services submissions.
201-38.206-5 GSA common user data communication system submissions.
201-38.206-6 Other telecommunication services submissions.
201-38.207 GSA action on agency submissions.
201-38.207-1 Action on other than FTS submissions.
201-38.207-2 Action on FTS submissions.
201-38.207-3 Action on data telecommunication service submissions.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c) and Sec. 101(f), 100 Stat. 1783-345 and 2128; 40 U.S.C. 751(f).

§ 201-38.006—[Amended]

6. Section 201-38.006 is amended by removing the reference to "Part 201-8" and adding "part 201-13."

Subpart 201-38.1—[Added and Reserved]

7. Part 201-38 is further amended by adding and reserving subpart 201-38.1.

Subpart 201-38.2—[Redesignated From Part 201-39]

8. The current part 201-39 is redesignated as subpart 201-38.2 in Part 201-38. The old reference numbers to part 201-39 appear below on the left. The newly designated reference numbers to subpart 201-38.2 appear to the right as follows:

Old reference	New reference
Part 201-39	Subpart 201-38.2
201-39.000	201-38.200
201-39.001	201-38.201
201-39.002	201-38.202
201-39.002-1	201-38.202-1
201-39.002-2	201-38.202-2
201-39.002-3	201-38.202-3
201-39.002-4	201-38.202-4
201-39.002-5	201-38.202-5
201-39.002-6	201-38.202-6
201-39.002-7	201-38.202-7
201-39.003	201-38.203
201-39.004	201-38.204
201-39.005	201-38.205
201-39.006	201-38.206
201-39.006-1	201-38.206-1
201-39.006-2	201-38.206-2
201-39.006-3	201-38.206-3
201-39.006-4	201-38.206-4
201-39.006-5	201-38.206-5
201-39.006-6	201-38.206-6
201-39.007	201-38.207
201-39.007-1	201-38.207-1
201-39.007-2	201-38.207-2
201-39.007-3	201-38.207-3

9. A new part 201-39 is added to read as follows:

PART 201-39—ACQUISITION OF INFORMATION PROCESSING RESOURCES BY CONTRACTING

Sec.
201-39.000 Scope of part.
201-39.001 [Reserved]

Subparts 201-39.1—201-39.9—[Reserved]

Subpart 201-39.10—Terminology for Incorporating Standards in Solicitations

201-39.1000 Scope of subpart.
201-39.1001 [Reserved]
201-39.1002 Standards.
201-39.1002-1 General.
201-39.1002-2 Policy.
201-39.1002-3 Procedures.
201-39.1002-4 Solicitation provision.

Subparts 201-39.11—201-39.51—[Reserved]

Subpart 201-39.52—Solicitation Provisions and Contract Clauses

201-39.5200 Scope of subpart.
201-39.5201 General. [Reserved]
201-39.5202 Texts of provisions and clauses.
201-39.5202-1 Availability of Standards Index.

Subpart 201-39.53—[Reserved]

Authority: 40 U.S.C. 486(c) and 751(f).

§ 201-39.000 Scope of part.

This part sets forth the special acquisition rules that apply Governmentwide to information processing resources.

§ 201-39.001 [Reserved]

Subparts 201-39.1—201-39.9 [Reserved]

Subpart 201-39.10—Terminology for Incorporating Standards in Solicitations

§ 201-39.1000 Scope of subpart.

This subpart prescribes policies and procedures for the implementation and use of terminology for standards in the acquisition of information processing resources.

§ 201-39.1001 [Reserved]

§ 201-39.1002 Standards.

§ 201-39.1002-1 General.

(a) GSA publishes a handbook entitled "Federal ADP and Telecommunications Standards Index" which provides guidance to agencies regarding Federal standards. The Index provides terminology to incorporate applicable Federal standards in solicitations. The Index also contains a "Standards Checklist" that can be included in solicitations to incorporate applicable Federal standards.

(b) In instances where appropriate Federal standards do not exist for information processing resources being acquired, agencies may optionally develop terminology for interim Federal standards or agency-unique standards.

§ 201-39.1002-2 Policy.

The contracting officer shall include in solicitations terminology provided by technical and requirements personnel to incorporate each standard that is applicable to the information processing resource being acquired.

§ 201-39.1002-3 Procedures.

The contracting officer shall use one or a combination of the following methods to specify standards in solicitations:

(a) Include the full text of the terminology contained in the Index for each applicable standard.

(b) Incorporate the applicable terminology into the solicitation by reference to the Index.

(c) For each applicable standard, include the full text of the terminology as developed by the agency.

§ 201-39.1002-4 Solicitation provision.

If any of the terminology is incorporated by reference, the contracting officer shall insert in a solicitation the provision at § 201-39.5202-1, Availability of Standards Index.

Subparts 201-39.11—201-39.51—[Reserved]

Subpart 201-39.52—Solicitation Provisions and Contract Clauses

§ 201-39.5200 Scope of subpart.

This subpart contains provisions and contract clauses to be included in solicitations for information resources.

§ 201-39.5201 General. [Reserved]

§ 201-39.5202 Texts of provisions and clauses.

§ 201-39.5202-1 Availability of Standards Index.

As prescribed in § 201-39.1002-4, insert the following provision in solicitations:

Availability of the Federal ADP and Telecommunications Standards Index (Apr 89 FIRMR)

Copies of the "Federal ADP and Telecommunications Standards Index" may be obtained by submitting a written request to the Superintendent of Documents; U.S. Government Printing Office; Washington, DC 20402.

(End of provision)

PART 201-40—CONTRACTING FOR TELECOMMUNICATION RESOURCES

§ 201-40.005 [Amended]

10. Section 201-40.005 is amended by removing the references to "Subpart 201-8.1" and "§ 201-8.104" and replacing them with "part 201-13."

Dated: July 28, 1989.

Richard G. Austin,

Acting Administrator of General Services.

[FR Doc. 89-21142 Filed 9-8-89; 8:45 am]

BILLING CODE 6820-25-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 442

[BERC-396-CN]

RIN 0938-AD12

Medicaid; Long-Term Care Facilities

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Correction.

SUMMARY: This document corrects technical errors in final rules with comment period that dealt with long-term care facilities and were published on February 2, 1989 at 54 FR 5316. In that document, we made changes in 42 CFR part 442 without taking into account—

- Changes already made to some of those sections by a final rule published on June 3, 1988 at 53 FR 20448, but not yet in the printed CFR; and
- The fact that Subpart B of 42 CFR part 483, established by the February 2, 1989 document, changed terminology previously used in connection with long-term care facilities. (The effective date of the February 2nd rule was postponed until January 1, 1990 by a final rule published on July 14, 1989 at 54 FR 29717.)

In order to preclude any confusion with respect to the requirements for long-term care facilities, we are presenting the complete correct revised text of the affected portions of part 442.

EFFECTIVE DATE: January 1, 1990.

FOR FURTHER INFORMATION CONTACT: Irene Gibson, (301) 966-6768.

List of Subjects

42 CFR part 442, Grant programs-health, Health facilities, Health professions, Health records, Medicaid, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

PART 442—[AMENDED]

The authority citation for part 442 continues to read:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302), unless otherwise noted.

§ 442.13 [Amended]

1. In § 442.13:

a. Paragraph (b) is correctly revised to read as follows:

* * * * *

(b) *All Federal requirements are met on the date of the survey.* The agreement must be effective on the date the onsite survey is completed (or on the day following the expiration of a current

agreement) if, on the date of the survey the provider meets all Federal requirements.

* * * * *

b. In the February 2, 1989 rule, we failed to conform paragraph (c)(2) to the changed terminology used in the new 42 CFR part 483. Paragraph (c)(2) is revised to read as follows:

* * * * *

(c) * * *

(2) The date on which a SNF or ICF is found to meet all level A requirements, or an ICF/MR is found to meet all conditions of participation, and the facility submits an acceptable correction plan for lower level deficiencies, or an approvable waiver request, or both.

§ 442.30 [Amended]

2. In § 442.30, paragraph (a)(1) is correctly revised to read as follows:

(a) * * *

(1) The survey agency failed to apply the applicable requirements under subparts B and D of part 483 of this chapter, which set forth, respectively, the requirements for SNFs and ICFs, and the conditions of participation for ICFs/MR.

* * * * *

§ 442.101 [Amended]

3. In § 442.101, paragraph (d)(1) is correctly revised to read as follows:

* * * * *

(d) * * *

(1) The facility meets the applicable requirements:

(i) A SNF or ICF meets the requirements set forth in subpart B of part 483 of this chapter.

(ii) AN ICF/MR meets the conditions of participation set forth in subpart D of part 483 of this chapter.

* * * * *

§ 442.105 [Amended]

4. The undesignated introductory text is correctly revised to read as follows:

If a survey agency finds a facility deficient in meeting the level B requirements (for SNFs and ICFs) or the standards (for ICFs/MR), as specified, respectively, under subparts B and D of part 483 of this chapter, the agency may certify the facility for Medicaid purposes under the following conditions:

* * * * *

§ 442.117 [Amended]

5. Paragraph (a)(1) is correctly revised to read as follows:

(a) * * *

(1) The facility no longer meets applicable Level A requirements (for SNFs or ICFs,) or applicable conditions of participation for ICFs/MR as specified in Subparts B and D, respectively, of part 483 of this chapter.

* * * * *

§ 442.118 [Amended]

6. In § 442.118:

a. Paragraph (a) is correctly revised to read as follows:

(a) *Basis for denial of payments.* The Medicaid agency may deny payment for new admissions to a SNF or ICF that no longer meets the level A requirements or an ICF/MR that no longer meets the applicable conditions of participation specified under Subparts B and D, respectively, of part 483 of this chapter.

* * * * *

b. Paragraph (b)(1) is correctly revised to read as follows:

(b) * * *

(1) Provide the facility up to 60 days to correct the cited deficiencies and comply with the level A requirements (for SNFs and ICFs) or the conditions or participation (for ICFs/MR).

* * * * *

c. Paragraph (b)(3)(i) is correctly revised to read as follows:

* * * * *

(b) * * *

(i) The opportunity for the facility to present, before a State Medicaid official who was not involved in making the initial determination, evidence or documentation, in writing or in person, to refute the decision that the facility is out of compliance with the applicable level A requirements (for SNFs and ICFs) or the applicable conditions of participation (for ICFs/MR.)

* * * * *

(Catalog of Federal Domestic Assistance Program No. 13714, Medical Assistance)

Dated: August 21, 1989.

James E. Larson,

Deputy Assistant Secretary for Information and Resources Management.

[FR Doc. 89-21219 Filed 9-8-89; 8:45 am]

BILLING CODE 4120-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018-AA93

Migratory Bird Hunting; Zones in Which Lead Shot Will Be Prohibited for the Taking of Waterfowl, Coots and Certain Other Species in the 1989-90 Hunting Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule amendment.

SUMMARY: This final rule amendment redescribes State zones, in which the use of lead shot is prohibited for hunting waterfowl, coots and certain other species in the 1989-90 season, that were contained in the rulemaking dated Thursday, April 13, 1989 (54 FR 14814). The zones described below for the affected States (Arkansas, Kansas and Washington) consist of (1) the same areas that were already identified as nontoxic shot zones for waterfowl and coot hunting in § 20.108 of title 50 of the Code of Federal Regulations (50 CFR) for the 1988-89 hunting season and (2) the added counties identified for 1989-90 in Appendix N of the Final Supplemental Environmental Impact Statement on the Use of Lead Shot for Hunting Migratory Birds in the United States (see Table 1 in 54 FR 14814, Supplementary Information), and (3) those areas identified by the States where changes in zone descriptions are appropriate because of omissions, potential administrative, enforcement and/or lead poisoning problems.

EFFECTIVE DATE: September 11, 1989.

FOR FURTHER INFORMATION CONTACT: Byron K. Williams, Acting Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Room 634—Arlington Square, 4401 N. Fairfax Drive, Arlington, Virginia 22203, or write Director (FWS/MBMO) Mail Stop 634—Arlington Square, 18th & C Streets NW., Washington, DC 20240 (703/358-1773).

SUPPLEMENTARY INFORMATION: Subsequent to publishing the parent rule (referenced above) for this rule, the Service became aware of the need to revise certain State nontoxic shot zone descriptions for the 1989-90 waterfowl hunting seasons because of omissions and an accelerated conversion. States having revised zone descriptions are Arkansas, Kansas and Washington; the revised descriptions are as follows:

Arkansas

The Arkansas Game and Fish Commission advised that Sevier County was omitted from the list of Arkansas counties appearing in the codified section of the final 1989-90 nontoxic shot zone rule. Apparently, this mistake originated with the proposed rule, although the county name appears in the tables of the two rules. Nevertheless, Sevier County is scheduled for conversion to nontoxic shot status this current waterfowl hunting season, as per Appendix N of the Final Supplemental Environmental Impact Statement on the use of lead shot for hunting waterfowl in the United States;

the Arkansas zones are reprinted herein with the correction.

Kansas

The Kansas Department of Wildlife and Parks advised that the Flint Hills National Wildlife Refuge, in its entirety, should also be subject to nontoxic shot restrictions for the 1989–90 waterfowl hunting season. The Kansas nontoxic shot zone descriptions are reprinted herein with the Flint Hills National Wildlife Refuge added. It has been the policy of the Service to convert a refuge in its entirety with the first converting county of which it is a part.

Washington

The Washington State Department of Wildlife advised the Service prior to publication of the final rule that a significant change in zones was being contemplated for the 1989–90 waterfowl hunting season, but that confirmation would not be forthcoming until later in the summer. The proposed changes were confirmed to the Service on August 12, 1989, and identify 2 major zone areas as follows: (1) A Western Washington Zone that replaces the Puget Sound and Southwestern Zones and includes all areas west of the Pacific Crest National Scenic Trail and (2) a Columbia Basin Zone that is not really changed from the previous final rule coverage—but is redescribed. The Washington State zone descriptions are prefaced with an introductory statement warning that it is "* * * unlawful in the described zones to possess while hunting for or to take ducks, geese or coots with shotshells or a muzzle-loader shotgun loaded with any other metal than steel."

The Service takes this action under authority of the Migratory Bird Treaty Act (16 U.S.C. 703 *et seq.*; 40 Stat. 755).

In summary, this rule amends § 20.108 of 50 CFR to add areas to expand existing nontoxic shot zones for the 1989–90 waterfowl hunting season.

Economic Effect

Executive Order 12291, "Federal Regulation," of February 17, 1981, requires the preparation of regulatory impact analyses for major rules. A major rule is one likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, government agencies of geographic regions; or significant adverse effects on the ability of United States-based enterprises to compete with foreign-based enterprises. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) further requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which includes small businesses, organizations and/or governmental jurisdictions.

In accordance with Executive Order 12291, a determination has been made that this rule is not a major rule. In accordance with the Regulatory Flexibility Act, a determination has been made that this rule, if implemented without adequate notice, could result in lead shot ammunition supplies for which there would be no local demand. Conversely, nontoxic shot zones could conceivably be established where little or no nontoxic shot ammunition will be available to hunters. Therefore, this rule would not have a significant economic effect on a substantial number of small entities.

Waiver of 30 Day Effective Date

Since the upcoming waterfowl hunting seasons begin around October 1, 1989, the Service has determined that the effective date of this rule should be immediately upon publication. Delay of this rule for 30 days would place the requirements into effect after the seasons have begun and would be confusing to hunters as well as reducing the protection to waterfowl. Therefore, under the provisions of 5 U.S.C. 553(d)(3), the Service finds good cause to waive the 30 day effective date.

Paperwork Reduction Act

This rule will not result in the collection of information from, or place recordkeeping requirements on, the public under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Environmental Consideration

Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)), a Final Environmental Statement (FES) on the use of steel shot for hunting waterfowl in the United States was published in 1976. As stated above, a supplement to the FES was completed in June 1986. In this supplement, pursuant to the Endangered Species Act, a "section 7" consultation was done on the potential impacts of the provisions of this rule on bald eagles. The "section 7" opinion concluded that implementation of the preferred alternative would not be likely to jeopardize the continued existence of the bald eagle. Also, a "section 7" opinion has concluded that the action being carried out is not likely to jeopardize the continued existence of the Aleutian Canada goose.

Authorship

The primary author of this final rule is Keith A. Morehouse, Office of Migratory Bird Management.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Transportation, Wildlife.

Accordingly, part 20, subchapter B, chapter I of title 50 of the Code of Federal Regulations is amended as follows:

PART 20—[AMENDED]

1. The authority citation for part 20 continues to read as follows:

Authority: Migratory Bird Treaty Act, sec. 3, Pub. L. 65–186, 40 Stat. 755 (16 U.S.C. 701–708h); sec. 3(h), Pub. L. 95–616, 92 Stat. 3112 (16 U.S.C. 712).

2. Section 20.108 is amended by revising the entries for Arkansas, Kansas, and Washington to read as follows:

§ 20.108 Nontoxic shot zones.

The areas described within the States indicated below are designated for the purpose of § 20.21(j) as nontoxic shot zones for hunting waterfowl, coots and certain other species.

* * * * *

Mississippi Flyway

* * * * *

Arkansas

1. Arkansas, Ashley, Clay, Conway, Craighead, Crawford, Crittenden, Cross, Desha, Green, Jackson, Jefferson, LaFayette, Lawrence, Lincoln, Little River, Lonoke, Mississippi, Monroe, Phillips, Poinsett, Prairie, Pulaski, Randolph, Sevier, St. Francis, White, Woodruff and Yell Counties.

2. Lake Dardanelle and Millwood Lake Wildlife Management Areas.

3. Felsenthal National Wildlife Refuge.

* * * * *

Central Flyway

* * * * *

Kansas

1. Barron, Cherokee, Coffey, Cowley, Crawford, Doniphan, Ellsworth, Jefferson, Linn, Mitchell, Montgomery, Neosho, Prait, Reno, and Stafford Counties.

2. All areas administered by the Kansas Department of Wildlife and Parks, U.S. Army Corps of Engineers and U.S. Bureau of Reclamation, including those within the boundaries of the above counties.

3. Kirwin Reservoir.

4. Flint Hills, Kirwin and Quivira National Wildlife Refuges.

* * * * *

Pacific Flyway

* * * * *

Washington

1. Western Washington Zone—All areas west of the Pacific Coast National Scenic Trail and west of (and including) the Big White Salmon River in Klickitat County.

2. Columbia Basin Zone—

A. Those portions of Adams, Benton, Chelan, Douglas, Franklin, Grant, Kittitas, Klickitat, Lincoln, Okanogan and Yakima Counties bounded by the following line: Beginning at the Washington-Oregon State border on the Celilo 1 ridge on US 97, north on US 97 to State Highway 14, east on State Highway 14 to US 395/I–82, north on US 395/I–82 (formerly a continuation of State Highway 14) to Kennewick, west on State Highway 240, north on State Highway 240 to State Highway 24, west on State Highway 24 to US 97, north on US 97 to State Highway 155 at Omak, east and south on State Highway 155 to State Highway 174 at Grand Coulee, southeast on State Highway 174 to US 2, west on US 2 to State Highway 17, south on State Highway 17 to US 395, south on US 395 to US 12, south on US 12 and US 730 to the Oregon border (including the entire McNary National Wildlife Refuge), and west along the Columbia River and the Washington-Oregon border to the point of origin.

B. That part of Franklin County east of State Highway 17; that part of Grant County east and/or south of State Highway 17 and US 2; and all of Walla Walla County—including the Snake River.

* * * * *

Dated: August 23, 1989.

Richard N. Smith,

Director.

[FR Doc. 89–21302 Filed 9–8–89; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 675

[Docket No. 90407–9170]

RIN 0648–AC74

Foreign Fishing; Groundfish of the Bering Sea and Aleutian Islands; Corrections

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule; corrections.

SUMMARY: This document corrects errors in the final rule to implement Amendment 12A to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area published August 9, 1989 (54 FR 32642).

EFFECTIVE DATE: September 3, 1989, through December 31, 1990.

FOR FURTHER INFORMATION CONTACT: Jay J.C. Ginter (Fishery Management Biologist), 907–586–7229.

In rule document 89–18612 beginning on page 32642 in the issue of August 9, 1989, make the following corrections:

§ 675.2 [Corrected]

1. On page 32649, in the first column, in § 675.2, the bottom portion of the description of Figure 2 referring to "Bycatch limitation zone 2H", the second entry under the "North latitude" heading, "56°00′ " should read "56°30′ ".

2. On the same page, in the same column in § 675.2, the fourth entry "55°42′ " should read "55°46′ ".

§ 675.21 [Corrected]

3. On the same page, in the third column, in § 675.21(b)(1), in the fifth line of that paragraph, "bycatch" should read "PSC".

Dated: September 5, 1989.

James W. Brennan,

Assistant Administrator for Fisheries, National Marine Fisheries Services.

[FR Doc. 89–21225 Filed 9–8–89; 8:45 am]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 54, No. 174
Monday, September 11, 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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

Prevailing Rate System

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is proposing regulations which will delegate to the Department of Defense (DoD) the responsibility for establishing and issuing the appropriated and nonappropriated fund wage schedules for United States citizen wage employees in foreign areas. The proposal will simplify the process and result in the issuance of wage schedules on a more timely basis.

DATE: Comments must be submitted on or before November 13, 1989.

ADDRESS: Send or deliver written comments to Barry E. Shapiro, Deputy Assistant Director for Pay Programs, Personnel Systems and Oversight Group, Office of Personnel Management, Room 7H28, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Allan Summers, (202) 632–7830.

SUPPLEMENTARY INFORMATION: The Federal Wage System law (Pub. L. 92–392), codified in subchapter IV of chapter 53, title 5, United States Code, requires that OPM shall establish wage schedules and rates for appropriated and nonappropriated fund prevailing rate employees who are United States citizens employed in foreign areas of the world. The implementing regulations are in §§ 532.233 and 532.235 of title 5, Code of Federal Regulations.

We are proposing that the responsibility for computing and issuing the overseas schedules be delegated to DoD. The computation of the schedules is a mechanical process which involves the averaging of regular wage schedules in effect at a certain time. Under current procedures, OPM each year obtains from DoD a data file of current regular wage schedules, computes the foreign area schedules, and issues them as Federal Personnel Manual Letters. This process is time-consuming and sometimes results in schedules not being issued or implemented on time. We are proposing to streamline this process by delegating to DoD the responsibility for computing, issuing and distributing the schedules. DoD has a large wage survey staff familiar with the preparation and issuance of wage schedules and is the employing agency for almost all of the wage employees covered by the schedules.

E.O. 12291, Federal Regulation

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

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they are changes which will effect only employees of the Federal Government.

List of Subjects in 5 CFR Part 532

Administrative practices and procedure, Government employees, Wages.

U.S. Office of Personnel Management.
Constance B. Newman,
Director.

Accordingly, OPM is proposing to amend 5 CFR part 532 as follows:

PART 532—[AMENDED]

1. The authority for part 532 continues to read:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552, Freedom of Information Act, Pub. L. 92–502.

2. In § 532.233, paragraph (a) is revised to read as follows:

§ 532.233 Regular appropriated fund wage schedules in foreign areas and certain U.S. possessions.

(a) The Department of Defense shall establish and issue regular appropriated fund wage schedules for U.S. citizens who are employees in foreign areas and for employees in Guam, Midway, and the U.S. Virgin Islands. The Department of Transportation shall establish and issue wage schedules for employees in American Samoa. These wage schedules will provide rates of pay for nonsupervisory, leader, supervisory, and production facilitating employees.

* * * * * * *

§ 532.235 [Amended]

3. In § 532.235, paragraph (a) is amended by replacing the term "Office of Personnel Management" with the term "Department of Defense" and by adding the words "establish and" after the word "shall".

[FR Doc. 89–21040 Filed 9–8–89; 8:45 am]
BILLING CODE 6325–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89–NM–134–AD]

Airworthiness Directives; Airbus Industrie Model A300, A310, A300–600 Series

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to require modification of the emergency lighting system on all Airbus Industrie Model A300, A310, and A300–600 series airplanes. This proposal is prompted by flight crew reports that the Floor Proximity Emergency Escape Path Marking System (FPEEPMS), which is part of the airplane's emergency lighting system, does not illuminate automatically with loss of AC power. This condition, if not corrected, could result in lack of FPEEPMS lighting for evacuation in an emergency situation. This proposal would also supersede an existing airworthiness directive (AD), applicable only to Airbus Industrie Model A300 series airplanes, which currently requires certain changes to the procedures in the Airplane Flight Manual (AFM) related to operation of the emergency lighting system.

DATE: Comments must be received no later than October 30, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane

Directorate, ANW-103, Attention: Airworthiness Rules Docket No. 89-NM-134-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Standardization Branch, ANM-113; telephone (206) 431-1918. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68996, Seattle, Washington 98168.

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-134-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On August 8, 1988, the FAA issued AD 88-18-01, Amendment 39-5998 (53 FR 30975; August 17, 1988), applicable to Airbus Model A300 series airplanes, to require certain changes to the procedures in the Airplane Flight Manual (AFM) related to operation of the emergency lighting system. That action was prompted by pilot reports which indicated that the emergency lighting system did not illuminate with loss of AC power, and that the AFM does not contain compensating procedures which would ensure that the lights would be turned on by the flight crew prior to the need for an emergency evacuation. This condition, if not corrected, could result in failure of the emergency lights to operate when required in an emergency situation.

Since issuance of that AD, a modification has been developed to correct deficiencies in the emergency lighting operation on Airbus Industrie Model A300, A310, and A300-600 series airplanes.

Airbus Industrie has issued the following service bulletins which describe procedures for modification of the emergency lighting system:

Model	Service Bulletin
A300	A300-33-117, dated Apr. 17, 1989.
A310	A300-33-2015, dated Apr. 17, 1989.
A300-600	A300-33-6013, dated Mar. 30, 1989.

Although the Direction Générale de L'Aviation Civile (DGAC), which is the airworthiness authority of France, has classified only the service bulletins pertaining to the Model A300 and A310 series airplanes as mandatory, the FAA has determined that installation of the modifications described in all three service bulletins is required to ensure automatic operation of the emergency lighting system on all affected airplane models.

These airplane models are manufactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would supersede AD 88-18-01, Amendment 39-5998, with a new airworthiness directive that would require modification of the emergency lighting system on Model A300, A310, and A300-600 series airplanes, in accordance with the service bulletins previously described.

The A300 modification, when accomplished, would constitute terminating action for the AFM changes required by AD 88-18-01, Amendment 39-5998, for Airbus Industrie Model A300 series airplanes.

It is estimated that 103 airplanes of U.S. registry would be affected by this AD, that it would take approximately 25 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The estimated cost for the modification kit is $500. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $154,500.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding Amendment 39-5998 (53 FR 30975; August 17, 1988), AD 88-18-01, with the following new airworthiness directive:

Airbus Industrie: Applies to Model A300, A310, and A300-600 series airplanes, certificated in any category. Compliance is required within 120 days after the effective date of this AD, unless previously accomplished.

To ensure automatic operation of the emergency lighting system, including the

Floor Proximity Emergency Escape Path Marking System (FPEEPMS), accomplish the following:

A. Modify the emergency lighting system in accordance with Airbus Industrie Service Bulletin A300-33-117, dated April 17, 1989; or A310-33-2015, dated April 17, 1989; or A300-33-6013, dated March 30, 1989; as appropriate.

B. For Model A300 series airplanes: After the modification required by paragraph A., above, is accomplished, the Airplane Flight Manual (AFM) revisions required by Amendment 39-5998, AD 88-18-01, may be removed.

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

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on August 29, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-21243 Filed 9-8-89; 8:45 am]

BILLING CODE 4910-13-M

[Docket No. 89-NM-130-AD]

Airworthiness Directives; Airbus Industrie Model A300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Airbus Industrie Model A300 series airplanes, which would require repetitive inspections for corrosion and cracking in the area of the rear pressure bulkhead. This proposal is prompted by reports of corrosion and cracking in the various components associated with the rear pressure bulkhead. This condition, if not corrected, could lead to reduced structural capability of the fuselage and subsequent decompression of the airplane.

DATE: Comments must be received no later than October 30, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-130-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Standardization Branch, ANM-113; telephone (206) 431-1918. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-130-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The Direction Generale de L'Aviation Civile (DGAC), which is the airworthiness authority of France, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain Airbus Industrie Model A300 series airplanes. Fatigue testing by the manufacturer has revealed cracks and corrosion in various components associated with the rear pressure bulkhead. This condition, if not corrected, could lead to reduced structural capability of the fuselage, and subsequent decompression of the airplane.

Airbus Industrie has issued Service Bulletin A300-53-217, Revision 1, dated March 6, 1989, which describes procedures for a visual inspection for cracks and corrosion in the lower rim area of the rear pressure bulkhead, and removal of corrosion and repair of cracks, if necessary.

Airbus Industrie has also issued Service Bulletin A300-53-218, Revision 1, dated July 28, 1989, which describes procedures for a visual and eddy current inspections for corrosion and cracks in the upper rim area of the rear pressure bulkhead and the service apertures in the rear pressure bulkhead.

The French DGAC has classified these service bulletins as mandatory, and has issued French Airworthiness Directive 89-068-093(B).

This airplane model is manufactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require repetitive visual and eddy current inspections of the rear pressure bulkhead and associated components, in accordance with the service bulletins previously described.

It is estimated that 66 airplanes of U.S. registry would be affected by this AD, that it would take approximately 44 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $116,160.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship

between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficent federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

Airbus Industrie: Applies to Model A300 series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent reduced structural capability of the fuselage, accomplish the following:

A. 1. Within the time limits specified in paragraph A.2., below, conduct the following inspections in accordance with Airbus Industrie Service Bulletin A300-53-217, Revision 1, dated March 6, 1989:

a. Perform a visual inspection and non-destructive testing (NDT) for cracking and corrosion of the lower rim area of the rear pressure bulkhead, forward and aft faces, including skin panels, circumferential joint doublers, stringers attachment fittings, cleat profile, Frame 80, attachment angles, circumferential strap, radial stiffeners, bonding points, and attach brackets of support struts between Stringer 27 left-hand (LH) and right-hand (RH).

b. Perform a visual inspection for cracking and corrosion of the drain and toilet system pipe couplings in the vicinity of the rear pressure bulkhead.

2. a. For airplanes whose first flight was less than 7 years ago as of the effective date of this AD, perform the initial inspection required by paragraph A.1., above, within 6 months after achieving 7 years since first flight, or within 6 months after the effective date of this AD, whichever occurs later.

b. For airplanes whose first flight was 7 years ago or more as of the effective date of this AD, perform the initial inspections required by paragraph A.1., above, within 6 months after the effective date of this AD.

B. If no corrosion or cracking is found as a result of the inspections required by paragraph A., above, perform repetitive inspections as follows:

1. Repeat the visual inspections at intervals not to exceed 3 years.

2. Repeat the NDT inspection at intervals not to exceed 8,000 landings.

3. If the modification specified in Airbus Industrie Service Bulletin A300-53-226, Revision 3, dated July 10, 1989 has been accomplished:

a. Repeat the visual inspection at intervals not to exceed 5 years.

b. Repeat the NDT inspections at intervals not to exceed 8,000 landings.

C. If cracking or corrosion is found as a result of the inspections required by paragraphs A. or B., above, repair prior to further flight, in accordance with Airbus Industrie Service Bulletin A300-53-217, Revision 1, dated March 6, 1989.

D. 1. Within the time limits specified in paragraph D.2., below, conduct the following inspections in accordance with Airbus Industrie Service Bulletin A300-53-218, Revision 1, dated July 28, 1989:

a. Perform an X-ray inspection for cracking of the rim area of the rear pressure bulkhead, in the area of Stringer 21 LH and RH.

b. Perform a visual inspection for corrosion and cracking of the upper rim area of the rear pressure bulkhead from the aft face.

c. Perform an eddy current inspection for cracks from the outboard side in the following areas:

(1) For airplanes, MSN 002 through 008: between Stringer 25 LH and RH.

(2) For airplanes, MSN 009 through 305: between Stringer 26 LH and RH.

d. Perform a visual inspection for cracks and corrosion of the service apertures in the rear pressure bulkhead.

e. Perform an eddy current inspection for cracks of the apertures for the auxiliary power unit (APU) bleed-air and fuel.

2. a. For airplanes having accumulated 26,000 landings or fewer as of the effective date of this AD, perform the initial inspections required by paragraph D.1., above, prior to the accumulation of 24,000 landings or within 2,000 landings after the effective date of this AD, whichever occurs later.

b. For airplanes having accumulated more than 26,000 landings as of the effective date of this AD, perform the initial inspections required by paragraph D.1., above, within 1,000 landings after the effective date of this AD.

E. If no cracking or corrosion is found as a result of the inspections required by paragraph D., above, perform repetitive inspections as follows:

1. Repeat the X-ray inspection of the rim area of the pressure bulkhead at Stringer 21 LH and RH at intervals not to exceed 4 years.

2. Repeat the visual inspections of the upper rim area at intervals not to exceed 8,000 landings.

3. Repeat the eddy current inspection from the outboard side between Stringer 25 LH and RH, or Stringer 26 LH and RH, as appropriate, at intervals not to exceed 8,000 landings.

4. Repeat the visual inspection of the service apertures at intervals not to exceed 6,000 landings.

5. Repeat eddy current inspections of APU fuel apertures at intervals not to exceed 6,000 landings.

6. Repeat the eddy current inspection of the APU bleed air line service aperture at intervals not to exceed 12,000 landings.

F. If cracking or corrosion is found as a result of the inspections required by paragraphs D. or E., above, repair prior to further flight, in accordance with Airbus Industrie Service Bulletin A300-53-218, Revision 1, dated July 28, 1989.

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

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on August 29, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-21242 Filed 9-8-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-NM-155-AD]

Airworthiness Directives; Airbus Industrie Model A300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Airbus Industrie Model A300 series airplanes, which would require repetitive eddy current inspections of the left- and right-hand lower flanges of gantries 1 to 5 between Frame 47 and Frame 54, and repair, if necessary. This proposal is prompted by results of the manufacturer's full-scale fatigue testing, which revealed cracks in the lower flanges between Frame 47 and Frame 54. Undetected fatigue cracks could lead to reduced structural capability of the fuselage.

DATE: Comments must be received no later than October 30, 1989.

ADDRESS: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-155-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way, South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Standardization Branch, ANM-113; telephone (206) 431-1918. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-155-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The Direction Générale de L'Aviation Civile (DGAC), which is the airworthiness authority of France, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain Airbus Industrie Model A300 series airplanes.

The manufacturer reported that, during full-scale fatigue tests, cracks developed in the left-hand and right-hand lower flanges of gantries 1 to 5, between Frame 47 and Frame 54. Undetected fatigue cracks could lead to reduced structural capability of the fuselage.

Airbus Industries has issued Service Bulletin A300-53-266, dated March 13, 1989, which describes procedures for repetitive eddy current inspections of the left-handed and right-handed flanges of gantries 1 to 5, between Frame 47 and Frame 54, for cracks, and repair, if necessary. The DGAC has classified this service bulletin as mandatory.

This airplane model is manufactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require repetitive eddy current inspections for cracks in the left-hand and right-hand flanges of gantries 1 to 5, between Frame 47 and Frame 54, and repair, if necessary, in accordance with the service bulletin previously described.

It is estimated that 66 airplanes of U.S. registry would be affected by this AD, that it would take approximately 12 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $31,680.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

Airbus Industrie: Applies to Model A300 series airplanes, as listed in Airbus Industrie Service Bulletin A300-53-266, dated March 13, 1989, certificated in any category. Compliance is required within 30 days after the effective date of this AD or upon the accumulation of 28,500 landings, whichever occurs later, unless previously accomplished; and thereafter at intervals not to exceed 4,500 landings.

To prevent reduced structural capability of the fuselage, accomplish the following:

A. Perform an eddy current inspection of the left-hand and right-hand lower flanges of gantries 1 to 5, between Frame 47 and Frame 54, in accordance with Airbus Industrie Service Bulletin A300-53-266, dated March 13, 1989. If cracks are found, repair prior to further flight, in accordance with the service bulletin.

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

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on August 29, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-21244 Filed 9-8-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-NM-158-AD]

Airworthiness Directives; Airbus Industrie Model A300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Airbus Industrie Model A300 series airplanes, which would require repetitive inspections for cracks of the left-hand and right-hand lower radius of fuselage frame 47, and repair, if necessary. This proposal is prompted by full-scale fatigue testing which revealed cracks in the lower radius of fuselage frame 47. This condition, if not corrected, could compromise the structural capability of the fuselage.

DATE: Comments must be received no later than October 30, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-158-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Standardization Branch, ANM-113; telephone (206) 431-1918. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-address, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-158-AD." The post card will be date/time stamped and retured to the commenter.

Discussion

The Direction Général de L'Aviation Civile (DGAC), which is the airworthiness authority of France, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on Airbus Industrie Model A300 series airplanes. Full-scale fatigue testing by the manufacturer has revealed cracks in the left-hand and right-hand lower radius of fuselage frame 47. Undetected cracks could lead to cracking of the rear spar flange and bottom skin panel. This condition, if not corrected, could compromise the structural capability of the fuselage.

Airbus Industrie has issued Service Bulletin A300-53-259, dated January 26, 1989, which describes procedures for repetitive inspections of the right-hand and left-hand lower radius of fuselage frame 47 for cracks, and repair or modification, if necessary. The French DGAC has classified this service bulletin as mandatory.

This airplane model is manufactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require repetitive inspections of the lower radius of fuselage frame 47 for cracks, and repair or modification, if necessary, in accordance with the service bulletin previously described.

It is estimated that 66 airplanes of U.S. registry would be affected by this AD, that it would take approximately 15 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $39,600.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that his proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies

and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations as follows:

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

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

§ 39.13 [Amended]

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

Airbus Industrie: Applies to Model A300 series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent structural failure of the fuselage, accomplish the following:

A. Prior to the accumulation of the number of landings indicated below or within 750 landings after the effective date of this AD, whichever occurs later, and thereafter at intervals indicated below, perform either a visual or eddy current inspection of the left-hand and right-hand lower radius of frame 47, in accordance with Airbus Industrie Service Bulletin A300-53-259, dated January 26, 1989.

PART 39—[AMENDED]

1. For airplanes identified as Configuration 3 in the service bulletin, the initial inspection must be performed prior to the accumulation of 22,200 landings.

a. If the immediately preceding inspection was performed using the visual method, the next inspection must be performed within 4,600 landings.

b. If the immediately preceding inspection was performed using the eddy current method, the next inspection must be performed within 13,200 landings.

2. For airplanes identified as Configuration 4 in the service bulletin, the initial inspection must be performed prior to the accumulation of 30,300 landings.

a. If the immediately preceding inspection was performed using the visual method, the next inspection must be performed within 4,600 landings.

b. If the immediately preceding inspection was performed using the eddy current method, the next inspection must be performed within 13,200 landings.

3. For airplanes identified as Configuration 7 in the service bulletin, the initial inspection must be performed prior to the accumulation of 19,200 landings.

a. If the immediately preceding inspection was performed using the visual method, the next inspection must be performed within 3,700 landings.

b. If the immediately preceding inspection was performed using the eddy current method, the next inspection must be performed within 10,600 landings.

4. For airplanes identified as Configuration 10 in the service bulletin, the initial inspection must be performed prior to the accumulation of 14,700 landings.

a. If the immediately preceding inspection was performed using the visual method, the next inspection must be performed within 2,800 landings.

b. If the immediately preceding inspection was performed using the eddy current method, the next inspection must be performed within 8,200 landings.

5. For airplanes identified as Configuration 12 in the service bulletin, the initial inspection must be performed prior to the accumulation of 27,600 landings.

a. If the immediately preceding inspection was performed using the visual method, the next inspection must be performed within 4,200 landings.

b. If the immediately preceding inspection was performed using the eddy current method, the next inspection must be performed within 12,600 landings.

B. If cracks found are less than or equal to 4.2 mm (.165 inch), repair prior to further flight and perform an eddy current inspection to ensure that the crack has been eliminated, in accordance with Airbus Industrie Service Bulletin, A300-53-259, dated January 26, 1989. Repeat the inspections at intervals indicated in paragraph A., above.

C. If cracks are greater than 4.2 mm (.165 inch), repair prior to further flight and reinspect in a manner approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

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

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on August 29, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certificate Service.

[FR Doc. 89-21245 Filed 9-8-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-CE-20-AD]

Airworthiness Directives; de Havilland Models DHC-2 Mk. I (L-20A, YL-20, U6, U-6A) and DHC-2 Mk. II Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This Notice proposes to adopted a new Airworthiness Directive (AD), applicable to de Havilland Models DHC-2 Mk. I and DHC-2 Mk. II airplanes, which would supercede AD 54-11-01, to require inspections for cracks and distorted rivets at the horizontal tailplane to fuselage front attachment brackets and replacement of these brackets if cracked. This proposal extends the serial number effectively of the AD and introduces additional modifications for these airplanes. This action is prompted by new service information from the manufacturer which will prevent failure of these brackets and the resultant loss of the airplane.

DATE: Comments must be received on or before November 13, 1989.

ADDRESSES: de Havilland Service Bulletin (S/B) No. 2/42, Revision C, dated February 2, 1989, applicable to this AD, may be obtained from Boeing of Canada Ltd., de Havilland Division, Garratt Boulevard, Downsview, Ontario, Canada M3K 1Y5, or may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to the Federal Aviation Administration, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 89-CE-20-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. John Maher, Airframe Branch, ANE-

172, New York Aircraft Certification Office, FAA, New England Region, 181 South Franklin Avenue, Valley Stream, New York 11581; Telephone (516) 791–6220.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Assistant Chief Counsel, Attention: Docket No. 89–CE–20–AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

AD 54–11–01 was issued in 1954 and is applicable to certain serial numbered de Havilland Models DHC–2 Mk. I and DHC–2 Mk. II airplanes, with the exception of the agricultural model. That AD was based on information presented in de Havilland Technical News Sheets (TNS) Nos. 73 and 75, Series B, which specified repetitive inspections for cracks of the tailplane to fuselage front attachment brackets, inspections for distorted rivets therein, and replacement of damaged parts with new parts. Also, the tailplane front attachment bolts were to be replaced at every 1000 hour repetitive inspection. During production of the Model DHC–2 Mk. I airplanes, the TNS were never updated to include airplanes with serial numbers (S/N) 619 through 1056. It was not until S/N 1057 was produced that Modification No. 2/1338 was incorporated on the production line. This modification involves the installation of thicker brackets and rivets, and eliminates the need for the 1000 hour repetitive inspections. de Havilland issued S/B No. 2/42, dated August 14, 1987, to include airplane S/N 1 through 1056 for the inspections, and to introduce Modification No. 2/1338, or Agricultural Modification 2/984, as applicable, with new replacement brackets for damaged Pre-Mod parts. Revision C to S/B No. 2/42 dated February 2, 1989, was issued to revise Figure 2 and change from AN456AD6–5 and –6 rivets to AN470AD6–5 and –6 rivets. As a result, Transport Canada who has responsibility and authority to maintain the continuing airworthiness of these airplanes in Canada, has issued Canadian AD CF–54–08R1, effective January 15, 1988, updating their original AD CF–54–08, and has classified this Service Bulletin and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes. On airplanes operated under Canadian registration, this action has the same effect as an AD on airplanes certified for operation in the United States. The FAA relies upon the certification of Transport Canada combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness conformity of products of this design certificated for operation in the United States. The FAA has examined the available information related to the issuance of de Havilland S/B No. 2/42, Revision C, dated February 2, 1989, and the mandatory classification of this S/B on de Havilland DHC–2 Mk. I and Mk. II airplanes by Transport Canada. Based on the foregoing, the FAA believes that the condition addressed by S/B No. 2/42, Revision C, dated February 2, 1989, is an unsafe condition that may exist on other products of this type design certificated for operation in the United States. Consequently, the proposed AD would supersede AD 54–11–01 and require initial and repetitive inspections for cracks in the horizontal tailplane to fuselage Pre-Modification No. 2/1338 attachment brackets P/N C2–FS–543A and P/N C2–FS–544A, and distorted rivets in the brackets on de Havilland Models DHC–2 Mk. I and DHC–2 Mk. II airplanes. Replacement of cracked brackets and distorted rivets with new brackets, P/N C2FS1589 and P/N C2FS1590, and bolts, AN174–H12A, in Modification No. 2/1338, would be required to be accomplished prior to further flight. Pre-Modification 2/1338 brackets, P/N C2–FS–543A and P/N C2–FS–544A are no longer available. The original AD 54–11–01 required that the ¼-inch diameter forward attachment bolts must be replaced every 1000 hours time-in-service, and the new AD will continue to require this replacement of these bolts per S/B No. 2/42.

The FAA has determined there are approximately 166 airplanes affected by the proposed AD. The cost of inspecting the tailplane-fuselage front attachment brackets, as required by the proposed AD, is estimated to be $200 per airplane. If a defective bracket is found, the replacement cost is $270 per bracket per airplane. The total cost for the inspection only is estimated to be $33,200. The total labor cost only of replacing one bracket per airplane for the fleet is estimated to be $39,840. The cost of compliance with the proposed AD is so small that the expense of compliance will not be a significant financial impact on any small entities operating these airplanes. The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Therefore, I certify that this action (1) is not a "major rule" under the provisions of Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of part 39 of the FAR as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By superseding AD 54-11-01 with the following new AD:

de Havilland: Applies to Models DHC-2 Mk. I (including L-20A, YL-20, U-6, and U-6A), and DHC-2 Mk. II (serial numbers 1 through 1056) airplanes certificated in any category.

Compliance: Required as indicated in the body of the AD.

To ensure the structural integrity of the horizontal tailplane to fuselage front attachment brackets, accomplish the following:

(a) Within the next 200 hours time-in-service (TIS), or prior to the accumulation of 1000 hours TIS, whichever occurs later after the effective date of this AD, unless already accomplished per the requirements of AD 54-11-01, and thereafter at intervals not to exceed 1000 hours TIS:

(1) Inspect attachment brackets, part number (P/N) C2-FS-543A and P/N C2-FS-544A for cracks and distorted rivets in accordance with paragraph 'A' of the "ACCOMPLISHMENT INSTRUCTIONS" in de Havilland Service Bulletin (S/B) No. 2/42, Revision C, dated February 2, 1989.

(2) Prior to further flight replace any distorted rivets as indicated in the above S/B, paragraph 'B', and any cracked brackets as indicated in paragraph 'C' of the Service Bulletin.

(b) At intervals not exceeding 1000 hours TIS since the last bolt replacement, replace all ¼-inch diameter forward attachment bolts on the tailplane front attachment brackets with new bolts, P/N AN174-H12A, in accordance with S/B No. 2/42 Rev. C.

(c) The repetitive inspections or modifications in paragraph (a) of this AD are not required on airplanes modified in accordance with de Havilland Modification No. 2/1338, or Agricultural Modification No. 2/984, as applicable.

(d) Airplanes may be flown in accordance with FAR 21.197 to a location where the requirements of this AD may be accomplished.

(e) An alternate method of compliance or adjustment of the initial or repetitive compliance times, which provides an equivalent level of safety, may be approved by the Manager, New York Aircraft Certification Office, FAA, New England Region, 181 South Franklin Avenue, Valley Stream, New York 11581.

Note: The request should be forwarded through an FAA Maintenance Inspector, who may add comments and then send it to the Manager, New York Aircraft Certification Office, at the above address. All persons affected by this directive may obtain copies of the documents referred to herein upon request to Boeing of Canada, Ltd.; de Havilland Division, Garratt Boulevard, Downsview, Ontario, Canada M3K 1Y5, Telephone (416) 633-7310; or may examine these documents at the FAA, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This AD supersedes AD 54-11-01.

Issued in Kansas City, Missouri, on August 28, 1989.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-21246 Filed 9-8-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 301 and 602

[INTL-361-89]

RIN 1545-AN87

Treaty-Based Return Positions

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document contains proposed Income Tax Regulations relating to the requirement that any taxpayer who takes a position that a treaty of the United States overrules, or otherwise modifies, an internal revenue law of the United States shall disclose such position. This action is necessary to implement sections 6114 and 6712 of the Internal Revenue Code of 1986 as added by the Technical and Miscellaneous Revenue Act of 1988. In the Rules and Regulations portion of this **Federal Register**, the Internal Revenue Service is issuing temporary regulations relating to these matters. The text of those temporary regulations also serves as the comment document for this proposed rulemaking.

DATES: These regulations are proposed to be effective for taxable years of the taxpayer for which the due date for filing returns (without extensions) occurs after December 31, 1988. It is anticipated, however, that any taxpayer desiring to apply the temporary regulations in lieu of the final regulations for the period prior to the adoption of the final regulations will be allowed to so choose. Written comments and requests for a public hearing must be delivered or mailed by November 13, 1989.

ADDRESS: Send comments and requests for a public hearing to: Internal Revenue Service [Attention: CC:CORP:T:R, INTL-361-89]], Room 4429, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: David Bergkuist of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention: CC:CORP:T:R (INTL-361-89)) (202-566-3872, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (1545-1126), Washington, DC 20503, with copies to the Internal Revenue Service, Attention: IRS Reports Clearance Officer T:FP, Washington, DC 20224.

The collection of information in these regulations is primarily in § 301.6114-1T(d). This information is required by section 6114 of the Code and will be used by the Service to identify taxpayers taking a treaty-based return position and the specific income for which such treaty-based return position is taken. This information will include the facts relied upon to support such position. The likely respondents are residents of foreign countries with which the United States has a treaty that affects the United States tax on income received by that resident.

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

Estimated total annual reporting burden: 10,000 hours.

The estimated annual burden per respondent varies from ½ hour to 3 hours, depending on individual circumstances, with an estimated average of 1 hour.

Estimated number of respondents: 10,000.

Estimated annual frequency of responses: Annually.

Background

The temporary regulations published in the Rules and Regulations portion of this issue of the **Federal Register** add new §§ 301.6114-1T and 301.6712-1T. The final regulations that are proposed to be based on the temporary regulations would amend 26 CFR parts 301 and 602. For the text of the

temporary regulations, see T.D. 8262 published in the Rules and Regulations portion of this issue of the **Federal Register**.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It is hereby certified that the proposed rules will not have a significant impact on a substantial number of small entities because small entities will infrequently be required to report the information set forth in these regulations. Therefore, an initial Regulatory Flexibility Analysis is not required by the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Comments and Request for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. A public hearing will be held upon written request by any person who submits written comments on the proposed rules. Notice of the time and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is David Bergkuist of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. Other personnel from the Internal Revenue Service and Treasury Department participated in developing the regulations.

List of Subjects

26 CFR Part 301

Administrative practice and procedure, Bankruptcy, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income tax investigations, Law enforcement, Penalties, Pensions, Statistics, Taxes, Disclosure of information, Filing requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

The temporary regulations [T.D. 8262], published in the Rules and Regulations portion of this issue of the **Federal Register**, are hereby also proposed as final regulations under sections 6114 and 6712 of the Internal Revenue Code of 1986.

Michael J. Murphy,

Acting Commissioner of Internal Revenue.

[FR Doc. 89-21202 Filed 9-8-89; 8:45 am]

BILLING CODE 4830-10-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Parts 1602 and 1627

Proposed Modifications to Recordkeeping Provisions; Cancellation of Public Hearing

AGENCY: Equal Employment Opportunity Commission.

ACTION: Proposed rule: cancellation of hearing.

SUMMARY: Notice is hereby given that the Commission is cancelling the public hearing on the above-proposed modifications of its recordkeeping provisions. No requests to give oral testimony at the hearing were received from the public within the thirty-day time period specified in the hearing notice of July 8, 1989. Therefore it will not be necessary to hold the hearing.

FOR FURTHER INFORMATION CONTACT: Nicholas M. Inzeo, Assistant Legal Counsel, or Gary L. Janus, at 202/663-4669, Equal Employment Opportunity Commission, 1801 L Street NW., Washington, DC 20507.

Signed this day at Washington, DC.

Dated: August 29, 1989.

Clarence Thomas,

Chairman, Equal Employment Opportunity Commission.

[FR Doc. 89-20770 Filed 9-8-89; 8:45 am]

BILLING CODE 6570-06-M

ENVIRONMENTAL PROTECTION AGENCY

40 FR Part 52

[FRL-3643-9]

Approval and Promulgation of Implementation Plans; Maine Ozone Attainment Plan; Control of Gasoline Volatility

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve State Implementation Plan (SIP) revisions submitted by the State of Maine. These revisions will reduce emissions of volatile organic compounds from gasoline by reducing the Reid Vapor Pressure (RVP) of gasoline. EPA is also proposing to find that Maine's RVP regulations are "necessary to achieve" the national ambient air quality standards (NAAQS) for ozone and are excepted from federal preemption under section 211(c)(4) of the Clean Air Act. The intended effect of this action is to make reasonable further progress toward statewide attainment of the ozone standard as expeditiously as practicable as required under the Clean Air Act.

DATE: Comments must be received on or before October 11, 1989.

ADDRESSES: Comments may be mailed to Louis F. Gitto, Director, Air Management Division, Room 2311, JFK Federal Building, Boston, MA 02203. Copies of the submittal and EPA's evaluation are available for public inspection during normal business hours at the Environmental Protection Agency, Room 2311, JFK Federal Building, Boston, MA 02203; and the Maine Department of Environmental Protection, Upham Building, 71 Hospital Street, Augusta, ME 04333.

FOR FURTHER INFORMATION CONTACT: Jennifer York (617) 565-3220, FTS: 835-3220.

SUPPLEMENTARY INFORMATION: On February 14, 1989 and May 3, 1989 EPA received a SIP revision from the Commissioner of the Maine Department of Environmental Protection (DEP) that would add a new section to Maine Regulation Chapter 119. The new section requires that no person shall dispense, sell or supply gasoline from a bulk plant or terminal having a Reid Vapor Pressure (RVP) greater than 9.0 pounds per square inch (psi) from May 1 through September 15 beginning in 1989 and continuing each year thereafter.

Background

On November 12, 1987, the Commissioners of the Northeast States for Coordinated Air Use Management (NESCAUM) signed a Memorandum of Understanding expressing their intention to reduce the Reid Vapor Pressure (RVP) of gasoline to 10.0 pounds per square inch (psi) starting in the summer of 1988 and to 9.0 psi in the summer of 1989 and continuing every ozone season thereafter. The State of Maine held a hearing on April 7, 1988 on a regulation to implement this strategy. Since there were delays in adopting necessary regulations, the 1988 limit of 10.0 psi was eliminated and Maine is limiting RVP to 9.0 psi from May 1 to September 15 starting in 1989, and continuing each year thereafter. Maine

adopted its regulation on August 10, 1988 and submitted it to EPA as a SIP revision on February 14, 1989. On May 3, 1989, EPA received a supplemental submittal from the state containing additional information on the state's VOC inventory and necessary changes to the state's RVP regulation.

EPA published a notice of final rulemaking on March 22, 1989 (54 FR 11868) which calls for the control of the volatility of gasoline nationally. The rule requires that in the Northeast the standard will be 10.5 psi beginning in the summer of 1989. The federal standard will be enforced each year beginning June 1 (for retail users and other end-users of gasoline) or May 1 (for all other points in the distribution system) except in 1989 when enforcement will begin June 30, 1989 and June 1, 1989 (100 days and 70 days, respectively, after the publication date of the final rule). Enforcement ends at all points in the system on September 15 of each year. The EPA regulation would normally preempt the state provision under section 211(c)(4) of the Clean Air Act (the Act). However, section 211(c)(4)(C) of the Act provides for approval of state control of fuel or fuel additives if the control is part of the SIP and is necessary to achieve the primary or secondary national ambient air quality standard (NAAQS) which the plan implements.

Criteria for Approval

Section 211(c)(4)(A) of the Act, in describing federal preemption authority, 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.

For the reasons described below, EPA does not believe this section of the Act preempts approval of the Maine revision. First, EPA has not made the finding described in subparagraph (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 findings in the Federal Register. In fact EPA published a national fuel volatility regulation (54 FR 1188) on March 22, 1989.

Second, although EPA's national 10.5 RVP rule preempts a state's 9.0 RVP regulation, EPA may still approve certain state provisions for limits on RVP of fuel where EPA can make a finding under section 211(c)(4)(C) which would authorize EPA approval and, thus, eliminate the preemption problem. As set forth below, section 211(c)(4)(C) authorizes EPA to approve into the SIP a state-adopted fuel control measure that has otherwise been preempted by final EPA action if EPA finds that the state control "is necessary to achieve" the standard that the SIP implements.

Section 211(c)(4)(C) of the Act, in setting forth the circumstances under which an exception to federal preemption of state regulation may occur, states:

> A State may prescribe and enforce, for purposes of motor vehicle emission control, a control or prohibition respecting the use of a fuel or fuel additive in a motor vehicle or motor vehicle engine if an applicable implementation plan for such State under section 110 so provides. The Administrator may approve such provision in an implementation plan, or promulgate an implementation plan containing such a provision, only if he finds that the State control or prohibition is necessary to achieve the national primary or secondary ambient air quality standard which the plan implements.

EPA first interpreted this language as requiring the Agency to find that a fuel control requirement was essential to achieve timely attainment of the standard in the Federal Register discussion of EPA's approval of a state oxygenated fuels program in the Maricopa County, Arizona SIP. There EPA said that a fuel control measure may be "necessary" for timely attainment if no other measures that would bring about timely attainment exist, or if such other measures exist and are technically possible to implement, but are unreasonable or impracticable. Otherwise, no fuel control would ever be "necessary," since for any area there is at least one measure—namely, required shutdowns and prohibitions on driving—that would result in timely attainment of the NAAQS. It is doubtful that Congress would have intended to bar EPA from approving State fuel controls into a SIP based on the availability of such drastic alternatives.[1] EPA has since reaffirmed this rationale in its approval of state RVP control programs in Connecticut, Massachusetts, New Jersey, New York, and Rhode Island.

Evaluation of How the Maine Revision Satisfies the "Necessary" Criterion

The Maine submittal and related documents contain the state's and EPA's analysis of the emissions reductions that various measures would achieve and the remaining shortfall needed to achieve attainment. That analysis concludes that the Maine RVP regulation would reduce VOC emissions by an estimated 3750 tons per year (TPY) statewide from the 11.5 psi gasoline in use at the time the state prepared this revision. Subsequent EPA regulation to 10.5 psi resulted in a reduction of approximately 2175 TPY. The current effect of Maine's regulation to 9.0 psi would be a 1575 TPY reduction.

The quantity of reduction was derived from AP-42 emission factors for storage and transfer of gasoline and from the EPA MOBILE 3 emission factor model for motor vehicle emissions. This estimate may understate the actual reductions because it does not include the emissions reductions that would result from decreased running losses from motor vehicles associated with lower volatility gasoline. Running losses are emissions from the gasoline tank and fuel system that occur while a car is being driven and which result from an overload of the evaporative control system or escape through the filler cap.

EPA used information available in the 1979 Maine SIP, supplemental inventory information submitted by the state, emission and population factors, and National Emissions Data System (NEDS) data to determine whether Maine's RVP control program is "necessary to achieve" the standard. Since its 1979 submittal, Maine has not submitted, nor has it been required by EPA to submit, any additional VOC reducing strategies or reasonable further progress (RFP) reports.

The VOC strategies which have the greatest potential for significant future statewide VOC reductions are:

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[1] Federal Register August 10, 1988, 53 FR 30220, 30228; See also EPA's approval of state RVP control programs in Massachusetts (54 FR 19173, May 4, 1989), Rhode Island and Connecticut (54 FR 23650, June 2, 1989).

Statewide measure	Statewide estimated tons reduced	Statewide estimated control	Percent Reduction from 1986 inventory
Enhanced I/M+basic I/M [1]	7238 TPY	N/A	6.0
Stage II controls	2730 TPY	70%	2.2
Stage I (gas stations) [2]	2506 TPY	85%	2.1
Consumer/commercial solvents	2244 TPY	60%	1.9
RVP 11.5 to 10.5 psi EPA	2175 TPY	100%	1.8
Misc. surface coating	1850 TPY	50%	1.5
Architectural coatings	1638 TPY	70%	1.4
RVP 10.5 to 9.0 psi	1575 TPY	100%	1.3
Paper coating	1559 TPY	70%	1.3
Bulk terminal controls	753 TPY	85%	0.6
Auto body	650 TPY	50%	0.5
Degreasing	650 TPY	50%	0.5
Printing	490 TPY	70%	0.4
Drycleaning	330 TPY	30%	0.3
Industrial solvents	350 TPY	50%	0.3
Furniture coating	210 TPY	70%	0.2
Tank truck tightness [3]	250 TPY	90%	0.2
Printing (non RACT) [4]	150 TPY	50%	0.1
Fabricated metal coating	140 TPY	70%	0.1
Traffic paint	90 TPY	90%	0.1
			22.8

Note: Percent reductions from 1986 inventory were calculated using total inventory value of 121,126 TPY in state submittal.
[1] I/M is being considered as part of post-1987 reduction strategy. To date, EPA has not required I/M in Maine as part of its post-1987 policy.
[2] The state has stage I controls which are being phased in statewide.
[3] The state has tank truck tightness regulations which are being phased in statewide. The regulations require compliance only at gas stations which have installed stage I controls.
[4] Reasonably Available Control Technology (RACT) is required for certain categories of sources in nonattainment areas.

The available control strategies, if found practicable, would collectively yield approximately a 22.8% reduction, given the expected estimated achievable control. Based on EPA's experience with Regional Oxidant Model runs it seems likely that a reduction of approximately 25% from 1986 levels in the nonattainment areas is needed for attainment of the ozone standard. This still leaves a VOC emission reduction shortfall of approximately 2.2%. Given the rural nature of much of Maine and the widespread distribution of traffic densities, and in light of the minimal VOC emission reductions that could be expected, neither Maine nor EPA has at this time concluded that any specific transportation controls are reasonable measures for achieving VOC emission reductions in Maine. No other measures that are clearly reasonable for implementation in Maine could provide sufficient reductions to achieve attainment without the state HVP control. In addition, none of the available control strategies which could achieve the same magnitude of reductions as limiting the RVP of gasoline can be as quickly implemented.

All or part of 12 of Maine's 16 counties are currently located in AQCRs which have a nonattainment designation. Recent monitoring data indicates that these areas will continue to be designated nonattainment. These 12 counties represent approximately 75% of the statewide VOC emissions inventory (based on NEDS data). NEDS data show that area source emissions of VOCs, which include mobile source emissions, represent approximately 95% of total VOC emissions measured statewide. Of those area source emissions of VOCs, 79% are in the nonattainment areas. (See the Technical Support Document which EPA has prepared for this proposal. The Technical Support Document is available as part of the docket for this action at the locations in the "**ADDRESSES**" section above.)

The NEDS data (Attachments One and Two to the Technical Support Document) indicate that there is a greater need for statewide area source controls than for statewide point source controls. While the amount of mobile source emissions in the available data cannot be apportioned between the attainment and nonattainment areas, data from the state's submittal, models and other factors suggest that mobile sources represent a substantial proportion of area source emissions. The mobile source categories in the table listing "VOC strategies which have the greatest potential for significant future VOC reductions" (above) represent approximately 15% (of the 22.8% total) of the VOC emission reductions potentially attainable.

Thus, Maine's RVP program appears to meet the appropriate test of being "necessary" to achieve attainment of the ozone standard in Maine's nonattainment areas. The fact that the state RVP regulation might not by itself fill the remaining shortfall and hence by itself achieve the standard does not mean the rule would not be "necessary" to achieve the standard within the meaning of section 211(c)(4)(C). EPA believes that if Congress intended EPA to approve a state fuel-content rule only if it were necessary and sufficient to achieve the standard, then it would have used that language in section 211(c)(4)(C). EPA believes that the "necessary to achieve" standard must be interpreted to apply to measures which are needed to reduce ambient levels (thus bringing the area closer to achieving the NAAQS) when no other reasonable measures are available to achieve this reduction. A contrary application of "necessary to achieve" in this situation would mean that measures which result in significantly improved air quality are nonetheless unacceptable (even though no other reasonable measures are available) just because they are insufficient to actually result in attainment.

Statewide Approval of the Maine RVP Program

Although not all of the State of Maine is designated as nonattainment for the ozone standard, Maine has requested approval of this SIP revision statewide. EPA proposes approving a statewide volatility limit in Maine based on a number of factors. The ozone problem in the State of Maine has worsened as population increases, vehicle miles travelled (VMT) increase, and industrial sources increase in number and density. As evidence of the worsening ozone problem, EPA's post-1987 SIP call and

requirements for post-1987 SIP strategies includes an additional county, Hancock County (53 FR 20722, June 6, 1988). The county is located further north and east of the presently designated nonattainment air quality control regions (AQCRs) in Maine.

Based on the locations of the gasoline terminals (which are primarily n the nonattainment region of the state), Maine would have administrative difficulties enforcing two separate RVP limits and distributors could be supplying two separate RVP gasolines to one state. This would result in the patchwork regulations which the petroleum industry has, in its comments on EPA's actions on other state RVP SIPS, been anxious to avoid. It is in the interests of both gasoline distributors and state enforcement agencies to avoid a patchwork of regulatory requirements within a state.

The success of Maine's volatility program depends on gasoline consumers using 9.0 RVP fuel. If 10.5 RVP fuel is available in part of the state, perhaps at a cheaper price, not only is there an incentive to use the higher RVP fuel, and thus undermine the program, but also certain distributors or retail outlets in the same state could be put at an economic disadvantage as gasoline consumers cross the boundaries of the nonattainment areas to purchase the less expensive, higher volatility gasoline. There might also be additional incentives for bootlegging noncomplying gasoline.

In light of the factors discussed above, until EPA is in a position to conclude that the RVP program is definitely not necessary in the areas designated attainment, the Agency believes it is appropriate to make a finding under section 211(c)(4)(C) with respect to the RVP program in the northern attainment areas. Such a finding is necessary in the northern attainment areas to preserve the integrity and enforceability of the RVP program in the southern nonattainment areas. EPA therefore proposes today to make such a finding. Furthermore, it appears that since the gasoline distribution patterns do not discriminate between attainment and nonattainment regions, logistically Maine had to make its RVP rule apply on a statewide basis in order to ensure compliance in the nonattainment areas without producing supply and distribution problems.

EPA acknowledges that the technical data to support a section 211(c)(4)(C) finding for the northern Maine attainment areas is not extensive. EPA therefore specifically requests comment on the propriety of such a finding under section 211(c)(4)(C) for the northern Maine attainment areas.

Enforceability

EPA's review of the enforceability of the Maine revision revealed a problem with the test methods section of Regulation Chapter 119 (section 4). The state requires that fuel sampling and testing shall be conducted in accordance with ASTM method D4177–82, ASTM method D4057–81, or D323–58, which are acceptable to EPA, or "* * * any other method approved by the Commissioner." EPA has informed the state that alternative methods must be approved by EPA as well. DEP has changed the regulation since the original submission to also require EPA approval of other methods by changing the language to read: "* * * any other method approved by the Commissioner and EPA." EPA is proposing to approve the DEP's RVP controls with the understanding that the state must submit an official copy of the amended regulation before EPA finally approves the regulation into the SIP. DEP has also agreed to clarify its definitions of "bulk gasoline terminal" and bulk gasoline plant." DEP must also submit an official copy of these changes before EPA will finally approve the program.

Waivers

As with its approvals of other state RVP programs, EPA proposes to approve Maine's program including any waivers or variances from compliance Maine may grant to address emergency supply dislocations that might occur as a result of Maine's lower RVP requirement. Such waivers would not affect the federal limit of 10.5 psi, but they will give the state some flexibility when initially implementing its program. EPA has received assurances from Maine that it possesses authority to grant such waivers in emergency situations.

Proposed Action

EPA is proposing to approve this revision to the Maine ozone state implementation plan to control gasoline volatility with the understanding that the state will revise the test method section of the regulation prior to final Agency action. EPA is also approving any variances Maine may issue to avoid supply dislocations. EPA is also proposing to make a finding that this SIP revision meets the requirements of section 211(c)(4)(C) of the Act for an exception to federal preemption. EPA is soliciting public comment on its proposed action. Comments will be considered before taking final action. Interested parties may participate in the federal rulemaking process by submitting written comments to the address noted at the beginning of today's notice.

Since Maine's RVP regulation cannot be implemented in time for a May 1, 1989 start date, if Maine is excepted from Federal preemption, EPA will publish a date of implementation in the final rulemaking notice on this SIP revision. EPA is proposing that the date of implementation be within thirty days of final approval of this revision. EPA requests comments on appropriate leadtime for implementation of this revision.

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. (See 46 FR 8709.)

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

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Ozone.

The Administrator's decision to approve or disapprove the plan revisions will be based on whether it meets the requirements of sections 110(a)(2) (A)–(K), 110(a)(3) and 211(c)(4)(C) of the Clean Air Act, as amended, and EPA regulations in 40 CFR part 51. These revisions are being proposed pursuant to sections 110(a) and 301(a) of the Clean Air Act, as amended.

Authority: 42 U.S.C. 7401 and 7642.

EPA is today proposing approval of the Maine SIP revision pertaining to its state gasoline volatility program.

Dated: July 10, 1989.

Paul G. Keough,

Acting Regional Administrator.

[FR Doc. 89–21268 Filed 9–8–89; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 64 and 98

[CGD 84–043]

RIN 2115–AB69

Portable Tanks for the Transportation of Bulk Hazardous Materials by Vessel

AGENCY: Coast Guard, DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Coast Guard proposes to discontinue approving marine portable

tanks ("MPTs") and to authorize liquid hazardous materials to be transferred to and from DOT specification portable tanks aboard vessels. Existing approved MPTs would be permitted to remain in service. The Coast Guard now inspects and approves MPTs while DOT tanks are inspected and approved by private sector agencies. Among the expected benefits of this proposal are removal of the Coast Guard from competition with private industry and greater availability of portable tanks, especially for overseas operations. In addition, in response to a petition for rulemaking, the Coast Guard proposes to permit DOT Specification 57 portable tanks to be used for the bulk carriage of high flashpoint Grade E combustible liquids and other low hazard liquids.

DATE: Comments must be received on or before December 11, 1989.

ADDRESSES: Comments should be submitted to Commandant (G–LRA–2/3600) (CGD 84–043), U.S. Coast Guard, Washington, DC 20593. Comments will be available for examination in Room 3600, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC, between the hours of 8 a.m. and 4 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Frank K. Thompson, (202) 267–1577.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, data, and arguments. Each comment should include the name and address of the person submitting it, identify this notice, and give the reason for the comment. Those desiring acknowledgement that their comments have been received should enclose a stamped self-addressed post card or envelope.

This proposal may be changed in light of the comments received. All comments will be considered before final action is taken on this proposal. Copies of all written comments will be available for examination by interested persons.

No public hearing is planned but one will be held at a time and place to be set in a later notice in the Federal Register if the Coast Guard determines that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The principal persons involved in drafting this notice are Mr. Frank K. Thompson, Project Manager, Office of Marine Safety, Security and Environmental Protection, and Mr. William Register, Project Attorney, Office of the Chief Counsel.

Discussion of Proposed Rules

a. Background

The Marine Portable Tank (MPT) regulations currently in part 64 of title 46, Code of Federal Regulations, were developed in 1973–74 by the Coast Guard in consultation with interested manufacturers and representatives of the offshore oil industry. These regulations were developed to be consistent with the portable tank standards of the International Maritime Organization (IMO) as incorporated into the International Maritime Dangerous Goods (IMDG) Code. Since the development of the Coast Guard's regulations, the IMO portable tank standards have been improved and expanded. Additionally, the Department of Transportation has authorized two specification portable tanks, IM–101 and IM–102, analogous to the IMO Type 1 and Type 2 portable tanks. The DOT specifications for these tanks (49 CFR 178.270 through 178.272) were published in the Federal Register of January 29, 1981 (46 FR 9895).

The DOT specification for portable tanks requires no approval action by the Coast Guard. Instead, the owner or manufacturer of an IM portable tank sends an application to an independent approval agency (The American Bureau of Shipping, for example) designated by the Director, Office of Hazardous Materials Transportation (OHMT) for approval of the tank. The designated approval agency reviews the owner's or manufacturer's design drawings and calculations, and witnesses the required tests. If the portable tank passes the tests, the designated approval agency affixes its identifying mark to each approved tank, issues an approval certificate to the applicant and forwards a copy of the certificate to OHMT.

The current regulations allow hazardous materials to be transferred to and from portable tanks on board vessels only if those tanks meet the requirements for MPTs in 46 CFR part 64. Further, the cargoes currently authorized to be transferred to and from these tanks are limited to Grades D and E combustible liquids and those 10 cargoes listed in 46 CFR 64.9 and 98.30–3(b).

The Coast Guard's involvement in the approval of marine portable tanks (MPTs) has been costly both in terms of manpower and money. Design drawings for MPTs must be submitted to the Coast Guard Marine Safety Center for design approval. Tanks constructed to approved plans must be inspected and hydrostatically tested in the presence of a Coast Guard inspector. As now administered, the Coast Guard is performing a service that could readily be performed by private industry.

Additionally, the availability of MPTs is a problem for U.S. flag mobile offshore drilling units (MODUs) operating overseas. Even though outside the territorial boundaries of the United States, MODUs, including their equipment, are subject to U.S. regulations and Coast Guard inspection. Many U.S. flag MODUs rarely return to U.S. waters; nevertheless, their MPTs must be fabricated and approved in the United States.

An analysis was performed to determine the suitability of DOT Specification IM–101 and IM–102 portable tanks for use in service presently restricted to MPTs. From this analysis, a copy of which is in the public docket, the Coast Guard concludes that DOT specification IM–101 and IM–102 tanks are equivalent to MPTs and are suitable for this service. There is nothing inherent in the design of IM specification tanks that prohibit their use in bulk cargo service; and in other modes of transportation they are filled and discharged in much the same manner as are MPTs on board vessels.

Under 46 CFR 50.20–30 and subpart 98.15, the Commandant may accept other equipment and designs as substitutes for those specified in the subchapters in which those sections appear, if it is established that the alternative arrangement will provide a level of safety consistent with the requirements of the regulations. As indicated above, these tanks are equivalent and are being accepted for the carriage and transfer of hazardous materials. Acceptance of these tanks under the equivalence provisions will facilitate the transition from MPTs to DOT specification tanks for manufacturers and vessel operators.

b. Objectives

The objectives of this proposed rulemaking are:

1. To discontinue approving MPTs and to authorize the continued use of existing MPTs, provided they are maintained in accordance with the plans originally approved by the Coast Guard and the applicable provisions of part 64 and subpart 98.30 as revised by this rulemaking. The Coast Guard would cease accepting applications to approve plans for MPTs under 46 CFR part 64 six months after the date on which the Final Rules become effective, and cease performing shop inspections approximately 18 months after that date. This lead time would afford manufacturers of MPTs under design or fabrication time to complete their work

and obtain approval of their current production before the approval program is terminated. The continued use of existing approved MPTs would be authorized ("grandfathered") for as long as they are maintained and repaired in accordance with the plans originally approved by the Coast Guard and the applicable provisions of part 64 and subpart 98.30 as revised.

2. To allow the transfer of liquid hazardous materials to and from DOT specification IM 101 and IM 102 portable tanks on vessels as long as they comply with the cargo handling requirements in subpart 98.30 as revised. By allowing the use of DOT specification tanks, difficulties that vessels on overseas operations have encountered in obtaining approved portable tanks would be alleviated since OHMT-designated approval agencies include agencies located outside the United States.

3. To revise the list of hazardous materials currently authorized to be transferred to and from MPTs on board vessels. The current list was originally developed to meet specific needs of the offshore oil production industry at the time of its publication. This list would be partially replaced by provisions allowing various hazardous materials which are authorized to be transported as packaged cargo in portable tanks to be transferred to and from portable tanks on board vessels. The effect of this revision would be to greatly expand the number of authorized cargoes.

4. To permit Grade E combustible liquids with flashpoints of 300 °F or higher and cargoes classed by DOT as hazardous substances (Hazard Class "ORM–E") which do not meet the definition of any other hazard class to be transferred to and from portable tanks meeting DOT Specification 57.

c. Description of Proposed Specific Changes

To achieve the preceding objectives, the Coast Guard proposes to make the following changes in 46 CFR part 64 and subpart 98.30:

1. Section 64.7 concerning submission and approval of MPT plans, and subpart D of part 64—Shop Inspection would be removed entirely. This removal would become effective 24 months after the final rules are published to give manufacturers ample time to fulfill existing contracts and to complete production that was going on or planned at the time the rules change. The provisions for approval of plans for cargo handling systems would be retained, but transferred to subpart F of part 64, since they would apply to all types of portable tanks authorized under 46 CFR subpart 98.30 and 98.33.

2. Two new sections, 98.30–2 and 98.30–3a, would be added to define the types of portable tanks to or from which hazardous materials could be transferred on board vessels; and to state the provisions under which portable tanks other than MPTs could be used for this service.

3. Existing § 64.9 and paragraph 98.30–3(b) would be replaced by a new section, § 98.30–5, which would authorize the transfer of hazardous materials to and from portable tanks on the basis of their conformance with the generic hazardous materials class definitions in 49 CFR parts 171 through 179. This would allow the transfer of more hazardous materials than are permitted to be transferred under the present regulations. All products now authorized would continue to be authorized either under a generic description or by name.

4. Section 64.3 would be revised to improve the statement of applicability of the proposed rules. The MPT descriptive information and design criteria from this section would be transferred to sections 64.5 and 64.11 respectively.

5. Section 64.3 would be revised to indicate that MPT plans would not be accepted for approval by the Coast Guard after a date six months after the effective date for these rules. This should give manufacturers ample time to complete and submit their plans. It should be noted here that the Coast Guard would continue to inspect and stamp MPTs for approximately 18 months after this date, and that MPTs which are maintained and periodically tested in accordance with the proposed rules may continue in use indefinitely.

6. Sections 64.53, 64.57, 64.65, and 64.77 would be revised to make it clear that these design standards apply only to MPTs but not to other types of portable tanks.

7. The references to the 1974 Edition would be removed from the citations of the ASME Boiler and Pressure Vessel Code in sections and paragraphs 64.5(d), 64.11(a), 64.13 (a) and (b), 64.21, 64.25(b), and 64.31. The ASME Code has been revised many times since 1974, and it is now unlikely that the 1974 Edition would still be available. A new § 64.2 "Incorporation by reference" which would be added, would give the date of the currently authorized ASME Code edition which supersedes the edition date cited in the text of the rules. It should be noted that the reference to the 1974 Edition would remain in § 64.7(a)(4) during the interval between the effective date of the bulk of the rules and the effective date of the removal of § 64.7. Since the incorporation by reference section cites a more recent edition of the ASME Code, it has not been considered necessary to revise the text of the rule which would soon be removed. During the interval, manufacturers would be expected to comply with the more recent edition.

8. The design standards for MPTs in subpart B of 46 CFR part 64 would be retained. Even though there would be no new construction of MPTs after the termination date mentioned above, the Coast Guard believes that these standards would stil be needed for inspection purposes and for future repairs and alterations of "grandfathered" MPTs.

Proposed Subpart 98.33. The American Institute of Merchant Shipping (AIMS) has petitioned the Coast Guard to permit the use of Department of Transportation Specification 57 aluminum portable tanks in a bulk cargo application in which Grade E combustible lubricants having flashpoints in excess of 400 °F would be transferred from a barge or lighter to an anchored vessel. AIMS proposes that all transfer operations would be conducted in accordance with 46 CFR subpart 98.30 under the supervision of a certified tankerman, and would take place only within the confines of harbors or bay areas. Further, the probability of spilling the lubricant during transfer operations would be reduced by the use of spring-activated, cam-type valves and hose couplings, and by enclosing the deck area to ensure that any spill would be contained on the deck. A copy of AIMS's petition has been placed in the public docket.

In consideration of AIMS's petition, the Coast Guard proposes to add a new subpart 98.33 which would permit Grade E combustible liquids which have a flashpoint of 300 °F or higher to be transferred to or from DOT Specification 57 portable tanks, tanks approved by the Coast Guard for the transport of combustible liquids under 49 CFR 176.340, and other tanks specifically approved by the Coast Guard. 300 °F is the maximum flashpoint limit for various operational requirements in subpart 98.30. The high flashpoint liquids described in the AIMS petition are not regulated as hazardous materials under 49 CFR Chapter I. Experience in transporting hazardous materials in both land and water transportation to and from these tanks. The proposal also includes stowage and transfer requirements which correspond to similar proposed requirements applicable to MPTs and DOT

Specification IM–101 and IM–102 portable tanks.

Subpart 98.35. Gravity type portable tanks constructed before October 1, 1974, were "grandfathered" under subpart 98.35, until October 1, 1984. Since the use of this type of tank is no longer authorized, subpart 98.35 would be removed.

Finally, the formula for minimum emergency venting capacity in § 64.63 is misprinted in the current edition of the CFR. This proposed rulemaking would restate this formula in its correct form.

Draft Regulatory Evaluation

This proposed rulemaking is considered to be non-major under Executive Order 12291 and nonsignificant under the Department of Transportation's "Policies and Procedures for Simplification, Analysis and Review of Regulations" (44 FR 11034, February 26, 1979). A draft regulatory evaluation has been prepared and placed in the rulemaking docket. It may be inspected and copied at the address listed above under **ADDRESSES.** Copies may also be obtained by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

This proposed rulemaking would affect owners, manufacturers, and users of marine portable tanks for use in support of the offshore oil industry. The costs to the public of the proposed action would be minimal. Replacing MPTs in marine service with DOT specification IM 101 and IM 102 portable tanks would result in several benefits to the industry:

a. Design approval and construction would not be affected by backlogs in the Marine Safety Center or delays in scheduling inspections.

b. Approval agencies would be able to provide improved response to scheduling and problem resolution.

c. The IM specification tanks are truly intermodal providing flexibility in tank utilization.

d. Tank availability, especially overseas, would be improved.

e. The number of authorized cargoes would be greatly expanded.

Shifting responsibility for design review, inspection, and testing of portable tanks to third party approval agencies would remove the Coast Guard from competition with private industry while reducing the Coast Guard effort by 95 percent or approximately 600 manhours per year of predominantly technical support. The annual savings to the Coast Guard would be approximately $17,000. There might be some increase in costs to the industry in acquiring design approval, inspection, and testing of their portable tanks which could range up to $1,000 for a single tank built to a new design. This figure, however, could be reduced to as little as $100 per tank if multiple tanks were built from the same design drawings. This is the more common occurrence and should be considered a nonsignificant increment in the cost of the tank. The total estimated annual increase in costs to all purchasers of portable tanks for use in the service discussed in this preamble would be approximately $35,000.

Each of the three known private sector operators affected by AIMS's petition is believed to own approximately 20 DOT–57 portable tanks. If subpart 98.33 were not adopted, these operators would have to replace their existing tanks with MPTs or DOT Specification IM–102 portable tanks at an approximate cost of $8000 each. The estimated total cost of such a replacement would be approximately $160,000 per operator or $480,000 for the affected industry.

Based on the information in the draft evaluation, as discussed above, the Coast Guard certifies that this proposal, if adopted, would not have a significant impact on a substantial number of small entities.

Environmental Analysis

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

Federalism Implications

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.

Paperwork Reduction Act

This proposed rulemaking does not add any significant reporting or recordkeeping requirements or increase the paperwork burden on industry. Since no new applications for approval of MPTs would be considered after 6 months after the effective date of the final rule, the information collection approved under OMB Control Number 2115–0101 would be eliminated. The reporting and record-keeping burdens associated with the approval, inspection, and periodic retesting of DOT specification portable tanks are addressed under OMB Control Number 2137–0018.

Proposed §§ 98.30–5(a) and 98.33–3(a) would allow the Coast Guard to authorize the transfer of materials not specifically covered by the proposed regulations. It is not anticipated that this would generate more than one or two requests annually, resulting in only a minor increment to the existing information collection approved under OMB Control Number 2115–0016.

This proposed rulemaking contains information collection and recordkeeping requirements in sections 64.9(c), 98.30–3(a), and 98.33–5(a)(3). They have been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act of 1980 [Public Law 96–511, 44 USC 3501 et seq.]. Persons desiring to comment on these recordkeeping and information collection requirements should submit their comments to: Office of Regulation Policy, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. ATTN: Desk Officer, U.S. Coast Guard. Persons submitting comments to OMB are also requested to submit a copy of their comments to the Coast Guard as indicated under **"ADDRESSES".**

List of Subjects in 46 CFR Parts 64 and 98

Hazardous materials transportation, Marine safety, Packaging and containers, Vessels

In consideration of the foregoing, the Coast Guard proposes to amend parts 64 and 98 of title 46, Code of Federal Regulations as set forth below:

PART 64—MARINE PORTABLE TANKS (MPT) AND CARGO HANDLING SYSTEMS

1. The authority citation of part 64 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 U.S.C. App. 1804; 46 CFR 1.46.

2. By revising § 64.1 to read as follows:

§ 64.1 Purpose.

(a) This part contains the following:

(1) Requirements for the design, construction, repairs, alterations and marking of marine portable tanks authorized by this chapter to be carried on board inspected vessels.

(2) Requirements for periodic inspections and tests of marine portable tanks.

(3) Design and construction requirements for cargo handling systems

for marine portable tanks and other portable tanks authorized under § 98.30 of this chapter.

2a. By adding a new § 64.2 to read as follows:

§ 64.2 Incorporation by reference.

(a) Certain material is 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 the 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, Washington, DC 20408 and at the U.S. Coast Guard, Office of Marine Safety, Security, and Environmental Protection, 2100 Second Street SW., Washington, DC 20593–0001, and is available from the source indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part and the sections affected are:

American Society of Mechanical Engineers
United Engineering Center, 1345 East 47th St., New York, NY 10017

Boiler and Pressure Vessel Code, Section VIII, Division 1, Pressure Vessels, 1989
64.5, 64.7, 64.11, 64.13, 64.21, 64.25, 64.31

3. By revising § 64.3 to read as follows:

§ 64.3 Applicability.

(a) This part applies to each Marine Portable Tank for which an application for approval is received by the Commanding Officer, U.S. Coast Guard Marine Safety Center, before (six months after effective date of Final Rules) and which is constructed, inspected and subsequently stamped by a Coast Guard inspector.

(b) Subpart F of this part also applies to portable tanks and cargo-handling systems for portable tanks authorized under subpart 98.30 of this chapter.

4. By revising paragraphs (a) and (d) of § 64.5 to read as follows:

§ 64.5 Definitions.

(a) *Marine Portable Tank* or "MPT" means a liquid carrying tank that—

(1) Has a capacity of 110 gallons or more;

(2) Is designed to be carried on board a vessel;

(3) Can be lifted onto and off a vessel in a filled or empty condition, or filled and discharged while aboard a vessel;

(4) Is not permanently attached to the vessel;

(5) Was inspected and stamped by a Coast Guard Inspector before (24 months after publication of Final Rules).

* * * * *

(d) *Maximum allowable working pressure* means the maximum gauge pressure at the top of the tank in the operating position at 122 °F, equal to or greater than the total containment pressure as defined in paragraph (c) of this section. The maximum allowable working pressure is used in the calculation of the minimum thickness of each element of the tank, excluding the allowance for corrosion and the thickness for loadings other than pressure, as provided for in Division 1 of Section VIII of the ASME Code.

* * * * *

§ 64.7 [Removed]

5. By removing § 64.7, effective (24 months after publication date of Final Rules).

6. By revising § 64.9 to read as follows:

§ 64.9 Maintenance, repair, and alteration of MPTs.

(a) Each MPT must be maintained in accordance with the approved plans, this Part, and Subpart 98.30 of this Chapter.

(b) Repair of an MPT is authorized, provided that the repairs are in accordance with the approved plans.

(c) An approved MPT may not be altered, except as approved in writing by the Commanding Officer, U.S. Coast Guard Marine Safety Center.

(d) After each welded repair or alteration, an MPT must be hydrostatically pressure tested in accordance with § 64.83(a) of this part.

7. By revising § 64.11 to read as follows:

§ 64.11 MPT design.

(a) An MPT must be designed:

(1) In accordance with Division 1 of Section VIII of the ASME Code and this subpart;

(2) With a maximum gross weight of 55,000 pounds;

(3) To hold a liquid cargo that has a vapor pressure of 43 pounds per square inch absolute (psia) or less at a temperature of 122 °F;

(4) With a minimum service temperature of 0 °F or higher;

(5) With a maximum allowable working pressure of at least 20 pounds per square inch gauge (psig) but not more than 48 psig; and

(6) To withstand dynamic loading conditions applied simultaneously.

§§ 64.13, 64.21, 64.25 and 64.31 [Amended]

8. In §§ 64.13(a), 64.21, 64.25(b), and 64. 31, and footnote 1 of § 64.13(b), by removing the comma and words reading ", 1974 edition".

9. By revising § 64.53 to read as follows:

§ 64.53 MPT information plate.

(a) A corrosion resistant metal plate containing the information in paragraph (b) of this section must be permanently attached to each MPT.

(b) Each information plate required in paragraph (a) of this section must have the following information in legible letters that are 3/16 inch or more in height:

(1) Owner's name.

(2) Manufacturer's name.

(3) Date of manufacture.

(4) Tank serial number.

(5) Maximum allowable working pressure in psig.

(6) Test pressure in psig.

(7) External pressure rating in psig.

(8) Total capacity in gallons.

(9) Maximum net weight in long tons.

(10) Maximum gross weight in long tons.

(11) Percent ullage at 122 °F.

(12) Hydrostatic test date.

10. By revising the heading of Subpart C to read as follows:

Subpart C—Pressure and Vacuum Relief Devices for MPTs

11. By revising the introductory clause of § 64.57 to read as follows:

§ 64.57 Pressure relief device acceptance.

A pressure relief device for an MPT must be—

* * * * *

12. In § 64.63(a), by revising the formula to read as follows:

§ 64.63 Minimum emergency venting capacity.

(a) * * *

$$Q = 633{,}000 \left(\frac{A}{L\,C} \right)^{0.82} \sqrt{\frac{Z\,T}{M}}$$

* * * * *

13. by revising § 64.65 to read as follows:

§ 64.65 Vacuum relief device.

(a) Each MPT that is designed for an external pressure of less than 7.5 psig must have a vacuum relief device.

(b) A vacumm relief device for an MPT must—

(1) Open at an external pressure of not less than 3 psig; and

(2) Have an opening with a cross-section of 0.44 square inches or more.

Subpart D—[Removed]

14. By removing subpart D, effective (24 months after publication date of Final Rules)

15. By revising the heading of subpart E to read as follows:

Subpart E—Periodic Inspections and Tests of MPTs

16. By revising the introductory paragraph of § 64.77 to read as follows:

§ 64.77 Inspection and test.

For the handling and stowage requirements in § 98.30–3 of this chapter, each MPT must pass the following inspections and tests conducted by the owner or the owner's representative:

* * * * *

§ 64.85 [Removed]

17. By removing § 64.85.

Subpart F—Cargo Handling System

18. By revising § 64.87 to read as follows:

§ 64.87 Purpose.

Each cargo handling system required to meet § 98.30–25 or § 98.33–13 of this chapter must meet the requirements of this subpart.

19. By adding new § 64.88 to read as follows:

§ 64.88 Plan approval, construction, and inspection of cargo handling systems.

(a) Plans for the cargo handling system of a portable tank authorized under subpart 98.30 of this Chapter must be approved by the Coast Guard in accordance with the requirements of § 56.01–10 of this subchapter. In addition, the cargo handling system must be constructed and inspected in accordance with part 56 of this subchapter.

PART 98—SPECIAL CONSTRUCTION, ARRANGEMENT AND OTHER PROVISIONS FOR CERTAIN DANGEROUS CARGOES IN BULK

20. By removing all authority citations within part 98. The authority citation of the part continues to read as follows:

Authority: 33 U.S.C. 1903; 46 U.S.C. 3306, 3703; 49 U.S.C. App. 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 98.01-1 [Amended]

21. By removing and reserving paragraphs (b) and (d) of § 98.01–1.

22. By revising § 98.01–5 including the section heading to read as follows:

§ 98.01-5 Incorporation by reference.

(a) Certain material is 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 the 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, Washington, DC 20408 and at the U.S. Coast Guard, Office of Marine Safety, Security, and Environmental Protection, 2100 Second Street SW., Washington, DC 20593–0001, and is available from the source indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part, and the sections affected, are:

Materials Transportation Bureau (now the Office of Hazardous Materials Transportation), Research and Special Programs Administration, Department of Transportation 400 7th St. SW., Washington, DC 20590	
IM Tank Table, January 1, 1989 ...	98.30–3a, 98.30–5.

23. By revising the heading of subpart 98.30 to read:

Subpart 98.30—Portable Tanks

24. By revising § 98.30–1 to read as follows:

§ 98.30-1 Applicability.

(a) This Subpart contains regulations concerning transfer of a combustible liquid or other hazardous material to or from a portable tank on board a vessel.

25. By adding new § 98.30–2 to read as follows:

§ 98.30-2. Definitions.

(a) As used in this part, "Portable tank" includes—

(1) A marine portable tank (MPT);

(2) A Department of Transportation (DOT) Specification IM–101 or IM–102 portable tank constructed in accordance with 49 CFR 178.270 through 178.272 and approved under 49 CFR 173.32a; or

(3) A portable tank authorized for liquid hazardous materials, other than liquefied gases, by the Director, Office of Hazardous Materials Transportation, DOT, Under a DOT exemption issued in accordance with subpart B of 49 CFR part 107.

(b) *MPT* means a marine portable tank which was inspected and stamped by the Coast Guard before (24 months after the publication date of the final rule) and which meets the applicable requirements in this part and part 64 of this chapter.

26. By revising § 98.30–3, including the section heading, to read as follows:

§ 98.30-3 Vessels carrying MPTs.

(a) Each MPT on board a vessel to which this part applies must have—

(1) On a metal or other corrosion-resistant tag, an inspection date for pressure and vacuum relief devices in accordance with § 64.79(b) of this Chapter that is within 12 months before the month in which the vessel is operated.

(2) an inspection date in accordance with § 64.81(b) of this chapter that is within 30 months before the month during which the vessel is operated; and

(3) a hydrostatic test date in accordance with § 64.83(b) of this chapter that is within 60 months before the month during which the vessel is operated.

27. By adding new § 98.30–3a to read as follows:

§ 98.30-3a Vessels carrying portable tanks other than MPTs.

(a) Each portable tank, other than an MPT, on board a vessel to which this part applies must be one of the following:

(1) A DOT Specification IM–101 or IM–102 tank that is authorized for its contents in accordance with 49 CFR part 173 under the conditions set forth in the "IM Tank Table".

(2) A portable tank that is authorized by the Director, Office of Hazardous Materials Transportation, DOT under a DOT exemption issued in accordance with subpart B of 49 CFR part 107, and which is—

(i) According to the terms of the exemption equivalent to a DOT Specification IM–101 or IM–102 portable tank; and

(ii) Authorized for its contents under the terms of the exemption or by written acknowledgement from the Director, Office of Hazardous Materials Transportation.

(b) Each IM–101 and IM–102 portable tank must be tested and inspected in accordance with 49 CFR 173.32b, and used only as specified in 49 CFR 173.32c.

(c) Each portable tank authorized under a DOT exemption must be inspected and tested, maintained, and

used in accordance with the terms of that exemption.

§ 98.30-4 [Amended]

28. In paragraphs (a) and (b) of § 98.30-4, by removing the word "marine" before "portable tank".

§ 98.30-6 [Redesignated from § 98.30-5]

29. By redesignating present § 98.30-5 as § 98.30-6, and adding new § 98.30-5 to read as follows:

§ 98.30-5 Materials authorized for transfer to and from portable tanks.

(a) The following hazardous materials are authorized to be transferred to and from portable tanks under this subpart:

(1) Any Grade D or E combustible liquid listed in § 30.25-1 of this chapter that does not meet the definition of any hazard class in 49 CFR part 173 other than the definitions of "flammable liquid", "combustible liquid", or "ORM-E".

(2) Corrosive liquids that—

(i) Are compatible with the materials of the tank;

(ii) Meet to other hazard class definition in 49 CFR part 173; and

(iii) Are authorized for transport in IM-101 or IM-102 portable tanks under subpart F of 49 CFR part 173.

(3) A hazardous material listed in Table 98.30-5(a).

(4) Liquid hazardous substances classed as ORM-E and listed in the Appendix to 49 CFR Table 172.101, and aqueous solutions of solid hazardous substances classed as ORM-E and listed in that Appendix.

(5) Other hazardous materials authorized in writing by the Commandant (G-MTH).

TABLE 98.30-5(A)—CERTAIN HAZARDOUS MATERIALS AUTHORIZED FOR TRANSFER TO AND FROM PORTABLE TANKS

Acetone
Alcohols; flash point of 80 °F (27 °C) or less by open cup test
Benzene
Gasoline
Hydrochloric acid—hydrofluoric acid mixtures containing not more than 36 percent hydrochloric acid or 2 percent hydrofluoric acid [1]
Methyl Ethyl Ketone
Toluene (Toluol)

Note:
1. Marine portable tanks (MPTs) must be lined with rubber or equally acid-resistant material of equivalent strength and durability.

(b) Grades D and E combustible liquids with flash points of 100 °F (38 °C) or higher by closed cup test which are not listed by name in the IM Tank Table may be transferred to and from MPTs or IM-102 portable tanks conforming to the IM Tank Table entry for "Combustible liquid, not listed by name in this table."

(c) MPTs for sulfuric acid having a concentration not over 51 percent must be lined with rubber or equally acid-resistant material of equivalent strength and durability.

(d) Sulfuric acid having a concentration of 65.25 percent or greater may be transferred to or from a portable tank, provided that the corrosion rate on steel measured at 100 °F (38 °C) of sulfuric acid having a concentration greater than 65.25 percent is not greater than the corrosion rate of 65.25 percent sulfuric acid.

(e) Liquids classed as ORM-E may be transferred only from an IM-101 or IM-102 portable tank or an MPT.

(f) A hazardous material authorized to be transferred to and from an IM-102 portable tank may also be transferred to and from an IM-101 portable tank.

(g) Hazardous materials not referred to in this section may not be transferred to or from a portable tank on board a vessel.

30. By adding a new § 98.30-8 to read as follows:

§ 98.30-8 Gaskets and lining.

(a) No person may transfer a hazardous material to or from a portable tank on board a vessel unless each gasket and the lining of the portable tank is made of a material that is—

(1) Chemically compatible with the product for which the portable tank is approved; and

(2) Resistant to deterioration from the product for which the portable tank is approved.

31. By revising § 98.30-9(b)(2) to read as follows:

§ 98.30-9 Portable tank stowage.

* * * * *

(b) * * *

(2) Unless all electrical equipment is explosion-proof or intrinsically safe, as defined in §§ 111.105-9 and 111.105-11, respectively, of this chapter, in the area of the tank and its associated equipment that is—

* * * * *

32. By adding a new § 98.30-10 to read as follows:

§ 98.30-10 Pipe connections and filling and discharge openings.

(a) No person may transfer a hazardous material to or from a portable tank on board a vessel, unless each filling and discharge opening in the tank bottom is equipped with the following:

(1) If an IM-101 or IM-102 portable tank, the closures specified in 49 CFR 173.32c(g)(2).

(2) If an MPT, the valves and closures specified in §§ 64.33 through 64.41 of this chapter.

§ 98.31-5 [Amended]

33. In § 98.31-5, by removing the word "marine" before "portable tank".

34. By adding a new subpart 98.33 to read as follows:

Subpart 98.33—Portable Tanks for Certain Grade E Combustible Liquids and Other Regulated Materials

Sec.

98.33-1 Applicability.
98.33-3 Cargoes authorized.
98.33-5 Portable tanks authorized.
98.33-7 Pipe and hose connections.
98.33-9 Stowage.
98.33-11 Smoking.
98.33-13 Cargo handling system.
98.33-15 Transfer operations.

§ 98.33-1 Applicability.

(a) This subpart applies to the transportation of certain low-hazard materials in portable tanks by vessel when that transportation involves the transfer of those materials to or from the portable tank while on board the vessel.

§ 98.33-3 Cargoes authorized.

(a) The following cargoes are authorized to be transferred to or from a portable tank described in § 98.33-5:

(1) Grade E combustible liquids that have a closed cup flashpoint of 300 °F or higher, and which do not meet the definition of a DOT hazard class in 49 CFR part 173 except hazardous substance ("ORM-E").

(2) Materials and aqueous solutions thereof which meet the definition of hazardous substance in 49 CFR 171.8 and which are of DOT Hazard Class ORM-E. (See Appendix to 49 CFR 172.101 and 49 CFR part 173, subpart J.)

(3) Other cargoes subject to regulation under 49 CFR parts 171 through 176 when approved in writing by the Commandant (G-MTH).

§ 98.33-5 Portable tanks authorized.

(a) The following portable tanks are authorized for the transport of the cargoes authorized under § 98.33-3:

(1) DOT Specification 57 Portable Tanks. (See 49 CFR 173.24, 173.32, 173.251, and 173.253.) Minimum design pressure must be 9 psig. Pressure relief devices may not open at less than 5 psig. Frangible pressure relief devices (rupture disks) are not authorized.

(2) A portable tank authorized under 49 CFR 176.340(a)(4).

(3) A portable tank approved by the Commandant (G-MTH).

§ 98.33-7 Pipe and Hose Connections.

(a) If a portable tank authorized under § 98.33–5 of this part has a pipe or hose connection in its bottom, the connection must have a manually operated valve and a bolted flange, threaded cap, or similar device to protect against leakage of the tank's contents.

§ 98.33-9 Stowage.

(a) Each portable tank authorized under § 98.33–5 of this part must be secured to the vessel by devices of sufficient strength and number to prevent the tank from moving in any direction during transport.

§ 98.33-11 Smoking.

(a) No person may smoke within 50 feet of a portable tank containing a combustible liquid on the deck where the tank is stowed.

§ 98.33-13 Cargo handling system.

(a) A cargo authorized under § 98.33–3 of this part may not be transferred to or from a portable tank authorized under § 98.33–5 of this part on board a vessel unless the cargo handling system meets the requirements of subpart F of part 64 of this chapter.

§ 98.33-15 Transfer operations.

A cargo authorized under § 98.33–3 of this part may not be transferred to or from a portable tank authorized under § 98.33–5 of this part on board a vessel unless the following requirements are met:

(a) *Cargo pumps:* See § 98.30–11 of this part.

(b) *Ground connection:* See § 98.30–13 of this part.

(c) *Leakage containment:* See § 98.30–15 of this part.

(d) *Qualification of person in charge:* See § 98.30–17 of this part.

(e) *Supervision of person in charge:* See § 98.30–19 of this part.

(f) *Requirements for transfer, general:* See § 98.30–23 of this part.

(g) *Connections:* See § 98.30–27 of this part.

(h) *Pumping incompatible products:* See § 98.30–29 of this part.

(i) *Conditions for pumping:* See § 98.30–31 of this part.

Subpart 98.35—[Removed]

35. By removing subpart 98.35 entitled "Portable Tanks Constructed Before October 1, 1974 That Carry Combustible Liquids."

Dated: August 21, 1989.

J. D. Sipes,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 89–21234 Filed 9–8–89; 8:45 am]

BILLING CODE 4910–14–M

Notices

Federal Register
Vol. 54, No. 174
Monday, September 11, 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.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Meeting

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the Advisory Council on Historic Preservation will meet on Monday, September 18, 1989. The meeting will be held in the Grand Ballroom at the Officers' Club, the Presidio of San Francisco, California, beginning at 1:00 p.m.

The Council was established by the National Historic Preservation Act of 1966 (16 U.S.C. section 470) to advise the President and the Congress on matters relating to historic preservation and to comment upon Federal, federally assisted, and federally licensed undertakings having an effect upon properties listed in or eligible for inclusion in the National Register of Historic Places. The Council's members are the Architect of the Capitol; the Secretaries of the Interior, Agriculture, Housing and Urban Development, Treasury, and Transportation; the Director, Office of Administration; the Chairman of the National Trust for Historic Preservation; the President of the National Conference of State Historic Preservation Officers; a Governor; a Mayor; and eight non-Federal members appointed by the President.

The agenda for the meeting includes the following:

I. Chairman's Welcome/Opening
II. Council Business
III. Executive Director's Report
IV. Section 106 Cases
V. New Business
VI. Adjourn

Note: The meetings of the Council are open to the public. If you need special accommodations due to a disability, please contact the Advisory Council on Historic Preservation, 1100 Pennsylvania Ave., NW., Room 809, Washington, DC, 202-786-0503, at least seven (7) days prior to the meeting.

For further information contact: Additional information concerning the meeting is available from the Executive Director, Advisory Council on Historic Preservation, 1100 Pennsylvania Ave., NW., #809, Washingotn, DC 20004.

Dated: September 6, 1989.

Robert D. Bush,

Executive Director.

[FR Doc. 89-21298 Filed 9-8-89; 8:45 am]

BILLING CODE 4310-10-M

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

National Arboretum Advisory Council; Meeting

According to the Federal Advisory Committee Act of October 6, 1972 (Public Law 92-463), the Agricultural Research Service announces the following meeting:

Name: National Arboretum Advisory Council.

Date: October 29-31, 1989.

Time: 8:30 a.m.—4:30 p.m., October 30, 8:30 a.m.—3:30 p.m., October 31.

Place: U.S. National Arboretum, 3501 New York Avenue, NE., Washington, DC.

Type of meeting: Open to the public. Persons may participate in the meeting as time and space permits.

Comments: The public may file written comments before or after the meeting with the contact person below.

Purpose: To review progress of National Arboretum relating to Congressional mandate of research and education concerning trees and plant life. The Council submits its recommendations to the Secretary of Agriculture.

Contact person: Howard J. Brooks, Executive Secretary, National Arboretum Advisory Council, Room 234 Bg-005, BARC-W, Beltsville, MD 20705. Telephone: AC 301/344-3912.

Done at Beltsville, Maryland, this 27th day of July 1989.

Howard J. Brooks,

Executive Secretary, National Arboretum Advisory Council.

[FR Doc. 89-21288 Filed 9-8-89; 8:45 am]

BILLING CODE 3410-03-M

Intention To Grant an Exclusive License; AgriSense

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to AgriSense, 4230 West Swift, Suite 106, Fresno, California 93722, an exclusive license to U.S. Patent Application Serial No. 07/247,546, "Attractants for Dacus Latifrons, The Malaysian Fruit Fly," dated September 2, 1988.

DATE: Comments must be received by November 13, 1989.

ADDRESS: Send comments to: USDA-ARS-Office of Cooperative Interactions, Beltsville Agricultural Research Center, Baltimore Boulevard, Building 005, Room 401, BARC-W, Beltsville, Maryland 20705.

FOR FURTHER INFORMATION CONTACT: M. Ann Whitehead of the Office of Cooperative Interactions at the Beltsville addres given above; telephone: 301/344-2786, (FTS) 344-2786.

SUPPLEMENTARY INFORMATION: The USDA-ARS intends to grant to AgriSense, an exclusive license in the United States, its territories, possessions, and selected foreign countries to practice the invention disclosed in U.S. Patent Application Serial No. 07/247,546, "Attractants for Dacus Latifrons, The Malaysian Fruit Fly," dated September 22, 1988.

Patent rights to this invention are assigned to the United States of America as represented by the Secretary of Agriculture. The exclusive license will be royalty bearing and will comply with the provisions of 35 U.S.C. 209 and 37 CFR 404.7.

The applicant has submitted acceptable development and marketing plans and it is in the public interest to award this license to bring the invention to the point of practical application and, thereby, make it available to the public. The license will be granted unless ARS receives written evidence and argument which convincingly establishes that the

intended course of action is not in the public interest.

William H. Tallent,

Assistant Administrator.

[FR Doc. 89-21286 Filed 9-8-89; 8:45 am]

BILLING CODE 3410-03-M

Availability for Licensing and Intention To Grant an Exclusive License; Bristol-Myers Co.

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of availability and intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, has available for licensing U.S. Patent Application Serial No. 07/327,493, "Production of Taxol or Taxol-Like Compounds in Cell Culture," dated March 23, 1989, and intends to grant an exclusive license to Bristol-Myers Company, 345 Park Avenue, New York, New York 10154.

DATE: Comments must be received December 11, 1989.

ADDRESS: Send comments to: USDA-ARS-Office of Cooperative Interactions, Beltsville Agricultural Research Center, Baltimore Boulevard, Building 005, Room 401, BARC-W, Beltsville, Maryland 20705.

FOR FURTHER INFORMATION CONTACT: M. Ann Whitehead of the Office of Cooperative Interactions at the Beltsville address given above; telephone: 301/344-2786, (FTS) 344-2786.

SUPPLEMENTARY INFORMATION: The USDA-ARS intends to grant to Bristol-Myers Company, 345 Park Avenue, New York, New York 10154, a worldwide exclusive license to practice the invention disclosed in U.S. Patent Application Serial No. 07/327,493 "Production of Taxol or Taxol-Like Compounds in Cell Culture," dated March 23, 1989. Patent rights to this invention are assigned to the United States of America as represented by the Secretary of Agriculture. The exclusive license will be royalty-bearing and will comply with the provisions of 35 U.S.C. 209 and 37 CFR 404.7.

This action is based upon acceptable development plans submitted by the applicant and is necessary to bring the invention to the point of practical application and, thereby, make it available to the public. The applicant is also negotiating a Cooperative Research and Development Agreement with the Agricultural Research Service.

The license will be granted unless ARS receives written evidence and argument which convincingly establishes that the intended course of actions is not in the public interest.

William H. Tallent,

Assistant Administrator.

[FR Doc. 89-21287 Filed 9-8-89; 8:45 am]

BILLING CODE 3410-03-M

Commodity Credit Corporation

1989 Price Support Levels for Fire-Cured (Type 21), Fire-Cured (Types 22-23), Dark Air-Cured (Types 35-36), Virginia Sun-Cured (Type 37), Cigar-Filler and Binder (Types 42-44, 53-55) and Cigar-Filler (Type 46) Tobaccos

AGENCY: Commodity Credit Corporation (CCC).

ACTION: Notice of determination of 1989 price support levels for six kinds of tobacco.

SUMMARY: This notice sets forth the levels of price support for: (1) Fire-cured (type 21), (2) fire-cured (types 22-23), (3) dark air-cured (types 35-36), (4) Virginia sun-cured (type 37), (5) cigar-filler and binder (types 42-44; 53-55), and (6) cigar-filler (type 46) kinds of tobacco for the 1989 marketing year. The levels of price support for these kinds of tobacco are required to be determined under the provisions of section 106 of the Agricultural Act of 1949, as amended.

EFFECTIVE DATE: May 18, 1989.

FOR FURTHER INFORMATION CONTACT: Robert H. Miller, (202) 447-8839 or Kenneth Robison, (202) 4476-7477. A Final Regulatory Impact Analysis describing the options considered in developing this notice and the impact of implementing each option is available upon request from Mr. Robison.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation 1512-1, and has been classified as "not major." The provisions of this notice will not 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 governments, or geographical regions; or (3) significantly adverse effects on competition, employment, investment, productivity, innovation, the environment, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this notice applies are: Title—Commodity Loans and Purchases; Number—10.051, as set forth in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject of this notice.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983). It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Determinations of Levels of Price Support

Price support is required to be made available for each crop of a kind of tobacco for which marketing quotas are in effect or for which marketing quotas have not been disapproved by producers. With respect to the 1989 crop of the six kinds of tobacco which are the subject of this notice, the respective maximum level of support is determined in accordance with section 106 of the Agricultural Act of 1949, as amended (the "Act").

Section 106(f)(6)(A) of the Act provides that the level of support for the 1989 crop of a kind of tobacco shall be the level in cents per pound at which the 1988 crop of such kind of tobacco was supported, plus or minus, respectively, the amount by which (i) the support level for the 1989 crop, as determined under section 106(b) of the Act, is greater or less than (ii) the support level for the 1988 crop, as determined under section 106(b) of the Act, as that difference may be adjusted by the Secretary under section 106(d) of the Act if the support level under clause (i) is greater than the support level under clause (ii).

Accordingly, under section 106(f)(6)(A) of the Act, the support level for the 1989 crop of such kind of tobacco will be the 1988 level, adjusted by the difference between (plus or minus) the 1989 "basic support level" and the 1988 "basic support level."

In addition, section 106(f)(6)(B) of the Act provides that to the extent requested by the board of directors of an association through which price support is made available to producers

("producer association") the Secretary may reduce the support level determined under section 106(f)(6)(A) for any kind of tobacco (except flue-cured and burley) to more accurately reflect the market value and improve the marketability of tobacco. Accordingly, the price support for a kind of tobacco which are set forth in this notice could be reduced if such a request is made.

Additionally, section 106(f)(8)(A) of the Act provides that for the 1989 crop of a kind of tobacco the support level shall be reduced by 1.4 percent of the level otherwise established. Any such reduction under this subsection shall not be taken into consideration in determining the support level for the subsequent crop of tobacco. Also, section 106(f)(8)(B) provides that in lieu of making any such reduction, the Secretary may impose assessments on the producers and purchasers in an amount sufficient to realize a reduction in outlays equal to the amount that would have been achieved as a result of the reduction required under section 106(f)(8)(A).

The levels of price support for the 1988 crops of various kinds of tobacco, which were determined in accordance with section 106(f)(6)(A), are as follows:

Kind and type	Support (cents per pound)
Virginia fire-cured, type 21	118.8
KY-TN fire-cured, types 22-23	123.0
Dark air-cured, types 35-36	104.7
Virginia sun-cured, type 37	104.9
Cigar-filler and binder, types 42-44, 53-55	90.8
Puerto Rican filler, type 46	74.1

Section 106(b) of the Act provides that the "basic support level" for any year is determined by multiplying the support level for the 1959 crop of such kind of tobacco by the ratio of the average of the index of prices paid by farmers including wage rates, interest, and taxes (referred to as the "parity index") for the three previous calendar years to the average index of such prices paid by farmers, including wage rates, interest, and taxes for the 1959 calendar year (298). For the 1989-crop year, the average parity indexes for the three previous years are: 1986—1093; 1987—1110; and 1988—1166. The average of the parity indexes for these years is 1123 and the ratio of the 1986–88 index to the 1959 index is 3.77. For the 1988-crop year, the average parity indexes used to calculate the 1988 "basic support level" were: 1985—1120; 1986—1096; and 1987—1115. The ratio of the 1985–87 index to the 1959 index equaled 3.72. Thus, the "basic support level" for the 1988 and 1989 crops of the various kinds of tobaccos and the annual increase are as shown in the following table:

Kind and type	Basic support level (cents per pound)		Increase in 1989 from 1988
	1988	1989	
Virginia fire-cured type 21	144.3	146.3	2.0
Kentucky-Tennessee fire-cured, types 22-23	144.3	146.3	2.0
Dark air-cured, types 35-36	128.3	130.1	1.8
Virginia sun-cured, type 37	128.3	130.1	1.8
Cigar-filler and binder, types 42-44, 53-55	106.4	107.8	1.4
Puerto Rican filler, type 46	110.5	112.0	1.5

Section 106(d) of the Act provides that the Secretary of Agriculture may reduce the level of support which would otherwise be established for any grade of such kind of tobacco which the Secretary determines will likely be in excess supply. In addition, the weighted average of the level of support for all eligible grades of such tobacco must, after such reduction, reflect not less than 65 percent of the increase in the support level for such kind of tobacco which would otherwise be established under section 106 of the Act if the support level is higher than the support level for the preceding crop. Before any such reduction is made, the Secretary must consult with the associations handling price support loans and consideration must be given to the supply and anticipated demand of such tobacco, including the effect of such reduction on other kinds of quota tobacco. In determining whether the supply of any grade of any kind of tobacco of a crop will be excessive, the Secretary shall take into consideration the domestic supply, including domestic inventories, the amount of such tobacco pledged as security for price support loans, and anticipated domestic and export demand, based on the maturity, uniformity and stalk position of such tobacco.

As noted in the following table, the stocks of the associations that manage the loan inventories for Kentucky-Tennessee fire-cured and dark air-cured tobaccos are composed almost exclusively of thin leaf, lug and nondescript grades. Therefore, these grades of Kentucky-Tennessee fire-cured and dark air-cured tobaccos are determined to be in excess supply.

Grade Groups	Kentucky-Tennessee fire-cured Types 22-23		Dark air-cured Types 35-36	
	Mil. lbs.	Percent	Mil. lbs.	Percent
Heavy body	1.3	1	.7	7
Thin body	7.7	62	4.8	46
Tip			.3	3
Lug	3.0	24	4.3	42
Nondescript	.4	3	.2	2
Total	12.4	100	10.3	100

ASCS/CAD, April 30, 1989.

For Puerto Rican filler (type 46) tobacco, the Secretary proclaimed national marketing quotas for the 1989–90, 1990–91, 1991–92 marketing years and proclaimed a zero quota for the 1989–90 marketing year on March 1, 1989. With carryover from the 1988–89 marketing year estimated to be 3.7 million pounds and the reserve supply level set at 2.0 million pounds, an excess supply situation exists. Because of the excess supply situation and the proclamation of a zero quota, zero pounds are eligible to be marketed by a producer without the assessment of a penalty during the 1989–90 marketing year. Even though no Puerto Rican filler production is expected it will eliminate confusion in future price support calculations to determine a price support level for the 1989–90 marketing year.

Because the total supply is below the reserve supply level for fire-cured (type 21), Virginia sun-cured (type 37), and cigar-filler and binder (types 42–44; 53–55) tobaccos, the 1989 support level for each kind consists of the 1988 level of support increased by the difference between the 1989 "basic support level" and the 1988 "basic support level". Because the total supply is near the reserve supply level, but certain grades are in excess supply for fire-cured (types 22–23) and dark air-cured (types 35–36) tobaccos, the 1989 support level for each kind consists of the 1988 level of support increased by 65 percent of the difference between the 1989 "basic support level" and the 1988 "basic support level."

Because the total supply is well above the reserve supply level for Puerto Rican filler (type 46) tobacco, the 1989 support level consists of the 1988 level of support increased by 65 percent of the difference between the 1989 "basic support level" and the 1988 "basic support level."

For the 1989 crops, the 1.4 percent decrease provided by section 106(f)(8)(A) of the Act would require reductions to the support level of 1.7 cents to 1.3 cents per pound, depending on the kind of tobacco.

Determinations

Accordingly, the Secretary of Agriculture has determined, in accordance with sections 106(f)(6)(A) and 106(f)(8)(A) of the 1949 Act, the following price support levels for the 1989 crops of Virginia fire-cured (type 21), Kentucky-Tennessee fire-cured (types 22–23), dark air-cured (types 35–36), Virginia sun-cured (type 37), cigar filler and binder (types 42–44, 53–55), and Puerto Rican filler (type 46) tobaccos:

Kind and type	Amount (cents per pound)	Reduced 1.4 percent
Virginia fire-cured, type 21	120.8	119.1
Kentucky-Tennessee fire-cured, types 22-23	124.3	122.6
Dark air-cured, types 35-36	106.7	105.2
Cigar-filler and binder, types 42-44, 53-55	92.2	90.9
Puerto Rican filler (type 46)	75.1	74.0

Authority: Secs. 4 and 5, Stat. 1070, 1072, as amended (15 U.S.C. 714b, 714c); Secs. 101, 106, 401, 403, 406, 63 Stat. 1051, as amended, 74 Stat. 6, as amended, 63 Stat. 1054, as amended, 1055 (7 U.S.C. 1441, 1445, 1421, 1423, 1426).

Signed at Washington, DC on August 30, 1989.

Keith D. Bjerke,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 89-21248 Filed 9-8-89; 8:45 am]
BILLING CODE 3410-05-M

Forest Service

Lowman Fire Recovery, Boise National Forest, Boise County, Idaho

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare environmental impact statement.

SUMMARY: The Department of Agriculture, Forest Service, will prepare an environmental impact statement for wildfire recovery activitives on the Lowman fire complex near Lowman, Idaho. Wildfire recovery activities may include the harvesting of salvageable timber with development of associated harvest systems, reforestation, and watershed and wildlife habitat restoration.

DATE: Comments concerning the scope of the analysis should be received in writing by October 10, 1989.

ADDRESS: Written comments are encouraged, and should be sent to Dave Rittersbacher, Forest Supervisor, Boise National Forest, 1750 Front Street, Boise, Idaho 83702.

FOR FURTHER INFORMATION CONTACT: Daniel Deiss, Project Director, Bosie National Forest, 1750 Front Street, Boise, ID 83702, (208) 364–4173.

SUPPLEMENTARY INFORMATION: A range of alternatives for recovery of the burn area will be considered in the environmental impact statement, including natural recovery of the fire affected area. Other alternatives will consider the salvage of fire damaged timber and actions to recover long-term productivity of wildlife, watershed, timber, and other resource values. Federal, State, and local agencies, organizations, and individuals who may be interested in or affected by the decision will be invited to participate in the scoping process. This process will include:

1. Identification of those issues to be addressed in the environmental impact statement.

2. Elimination of insignificant issues or those which have been covered by a previous environmental review.

3. Identification of interested agencies, organizations, businesses, and individuals who may wish to prepare alternatives for the analysis.

Some of the issues and alternatives to be analyzed in the environmental impact statement include: the salvaging of fire damaged timber, the relationship of roadless areas to salvage timber and transportation needs, and proposed activity effects on cultural resources, wildlife, fish, water, soils, range, and local communities. Further defining of issues, concerns, opportunities and alternatives will occur through scoping with other Federal, State and local agencies, and with interested individuals and organizations. Contracts with these groups will be through the news media, by letter or personal contact.

Scoping meetings to provide opportunity for comments will be held at Boise, ID, Boise National Forest Supervisor's Office, 1750 Front Street, Sept. 19, 1989, 7:00 p.m.; Garden Valley area, Community Hall, Crouch, ID, Sept.

19, 1989, 7:00 p.m.; Cascade, ID, Senior Citizen's Center, Sept. 20 1989, 7:00 p.m.; Yellowpine, ID, Community Hall, Sept. 20, 1989, 7:00 p.m.; Lowman, ID, Lowman Ranger District Office, Sept. 21, 1989, 7:00 p.m.

Comments concerning Forest Service recovery efforts for all recent burn areas on the Forest will be entertained at these meetings.

Due to the short timeframes involved with the fire recovery efforts, scoping document preparation, and public involvement processes must be expedited.

Dave Rittersbacher, Forest Supervisor of the Boise National Forest in Boise, Idaho, is the responsible official.

The analysis is expected to take four months. The draft environmental impact statement will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the Federal Register. It is very important that those interested in this proposed action participate at that time. To be the most helpful, comments on the draft environmental impact statement should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedure provisions of the National Environmental Policy Act at 40 CFR 1503.3).

In addition, Federal court decisions have established that reviewers of draft environmental review of the proposal so that it is meaningful and alerts an agency to the reviews' position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *City of Angoon* v. *Hodel* (9th Circuit, 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

Dated: September 1, 1989.

Dave Rittersbacher,

Forest Supervisor.

[FR Doc. 89-21204 Filed 9-8-89; 8:45 am]

BILLING CODE 3410-11-M

Warm Lake Fire Recovery, Boise National Forest, Valley County, Idaho

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare environmental impact statement.

SUMMARY: The Department of Agriculture, Forest Service, will prepare an environmental impact statement for wildfire recovery activities on the Warm Lake fire complex near Warm Lake, Idaho. Wildfire recovery activities may include the harvesting of salvageable timber with development of associated harvest systems, reforestation, and watershed and wildlife habitat restoration.

DATE: Comments concerning the scope of the analysis should be received in writing by October 10, 1989.

ADDRESSES: Written comments are encouraged, and should be sent to Dave Rittersbacher, Forest Supervisor, Boise National Forest, 1750 Front Street, Boise, Idaho 83702.

FOR FURTHER INFORMATION CONTACT: Daniel Deiss, Project Director, Boise National Forest, 1750 Front Street, Boise, ID 83702, (208) 364-4173.

SUPPLEMENTARY INFORMATION: A range of alternatives for recovery of the burn area will be considered in the environmental impact statement, including natural recovery of the fire affected area. Other alternatives will consider the salvage of fire damaged timber and actions to recover long-term productivity of wildlife, watershed, timber, and other resource values. Federal, State, and local agencies, organizations, and individuals who may be interested in or affected by the decision will be invited to participate in the scoping process. This process will include:

1. Identification of those issues to be addressed in the environmental impact statement.

2. Elimination of insignificant issues or those which have been covered by a previous environmental review.

3. Identification of interest agencies, organizations, businesses, and individuals who may wish to prepare alternatives for the analysis.

Some of the issues and alternatives to be analyzed in the environmental impact statement include: The salvaging of fire damaged timber, the relationship of roadless areas to salvage timber and transportation needs, and proposed activity effects on cultural resources, wildlife, fish, water, soils, range, and local communities. Further defining of issues, concerns, opportunities and alternatives will occur through scoping with other Federal, State and local agencies, and with interested individuals and organizations. Contacts with these groups will be through the news media, by letter or personal contact.

Scoping meetings to provide opportunity for comments will be held at Boise, ID, Boise National Forest Supervisor's Office, 1750 Front Street, Sept. 19, 1989, 7:00 p.m.; Garden Valley area, Community Hall, Crouch, ID, Sept. 19, 1989, 7:00 p.m.; Cascade, ID, Senior Citizen's Center, Sept. 20, 1989, 7:00 p.m.; Yellowpine, ID, Community Hall, Sept. 20, 1989, 7:00 p.m.; Lowman, ID, Lowman Ranger District Office, Sept. 21, 1989, 7:00 p.m.

Comments concerning Forest Service recovery efforts for all recent burn areas on the Forest will be entertained at these meetings.

Due to the short timeframes involved with the fire recovery efforts, scoping, document preparation, and public involvement processes must be expedited.

Dave Rittersbacher, Forest Supervisor of the Boise National Forest in Boise, Idaho, is the responsible official.

The analysis is expected to take four months. The draft environmental impact statement should be available for public review by December 30, 1989. The final EIS will be filed by March 2, 1990.

The comment period of the draft environmental impact statement will be 45 days from the date of Environmental Protection Agency's notice of availability appears in the Federal Register. It is very important that those interested in this proposed action participate at that time. To be the most helpful, comments on the draft environmental impact statement should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3).

In addition, Federal court decisions have established that reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Environmental objections could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *City of Angoon* v. *Hodel*, (9th Circuit, 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is ensure that substantive comments and objections are made

available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

Dated: September 1, 1989.

Dave Rittersbacher,

Forest Supervisor.

[FR Doc. 89-21205 Filed 9-8-89; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Transportation and Related Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Transportation and Related Equipment Technical Advisory Committee will be held September 26, 1989, 9:30 a.m., Herbert C. Hoover Building, Room 1092, 14th Street and Constitution Avenue, NW, Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to transportation and related equipment or technology.

Agenda

General Session

1. Opening Remarks by the Chairman or Commerce Representative.
2. Introduction of Members and Visitors.
3. Presentation of Papers or Comments by the Public.
4. Presentation by the National Center for Advanced Technologies on Key Technologies for the 1990's.
5. Discussion of the 1989 Annual Report and the 1990 Annual Plan.
6. Discussion on Committee Support on the FX Project.

Executive Session

7. Discusssion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control programs and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, in order to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that you forward your public presentation materials two weeks prior to the meeting to the below listed address: Ms. Ruth D. Fitts, U.S. Department of Commerce/BXA, Office of Technolgy & Policy Analysis, 14th & Constitution Avenue, NW., Room 4069A, Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittee thereof, dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes call Ruth D. Fitts, 202-377-4959.

Dated: September 5, 1989.

Betty A. Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology and Policy Analyses.

[FR Doc. 89-21207 Filed 9-8-89; 8:45 am]

BILLING CODE 3510-DT-M

Foreign-Trade Zones Board

[Docket No. 14-89]

Proposed Foreign-Trade Zone, Palmetto, FL; Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Manatee County Port Authority (MCPA), requesting authority to establish a general-purpose foreign-trade zone at Port Manatee in Palmetto, Florida, within the Port Manatee Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on August 31, 1989. The applicant is authorized to make this proposal under § 288.36, Florida Statutes Annotated (1987).

The application requests zone status for the 837-acre Port Manatee complex operated by MCPA at the east entrance of Tampa Bay on the West Coast of Florida. The site is located west of U.S. Highway 41, adjacent to Piney Point Road, in northwest Manatee County. The Port owns approximately 775 acres and leases an additional 62 acres from the State of Florida.

The application contains evidence of the need for zone services at Port Manatee. Initially, 12,500 square feet of warehouse space within an existing 112,500 square foot warehouse would be activated. Several firms have indicated an interest in using zone procedures for the storage and warehousing of vehicles and vehicle parts, lumber and lumber products, as well as production involving glass, fish, and rubber life raft products. Specific manufacturing approvals are not being sought at this time, however, such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Howard Cooperman, Deputy Assistant Regional Commissioner, U.S. Customs Service, Southeast Region, 909 SE. First Avenue, Miami, Florida 33131-2595; and Colonel Bruce A. Malson, District Engineer, U.S. Army Engineer District Jacksonville, P.O. Box 4970, Jacksonville, Florida 32232-0019.

As part of its investigation, the examiners committee will hold a public hearing on October 18, 1989, beginning at 9 a.m., at the Manatee County Administration Center, Manatee County Commission Chambers, 1st Floor, 1112 Manatee Avenue West, Bradenton, Florida 34206.

Interested parties are invited to present their views at the hearing. Persons wishing to testify should notify the Board's Executive Secretary in writing at the address below or by phone (202/377-2862) by October 11, 1989. Instead of an oral presentation, written statements may be submitted in accordance with the Board's regulations to the examiners committee, care of the Executive Secretary, at any time from the date of this notice through November 20, 1989.

A copy of the application and

accompanying exhibits will be available during this time for public inspection at each of the following locations:

Manatee County Port Authority, Port Manatee, Route #1/Tampa Bay, Palmetto, Florida 34221

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th and Pennsylvania Avenue NW., Room 2835, Washington, DC 20230

Dated: September 5, 1989.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 89-21303 Filed 9-8-89; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

Background: Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party as defined in section 771(9) of the Tariff Act of 1930 may request, in accordance with §§ 353.22 or 355.22 of the Commerce Regulations, that the Department of Commerce ("the Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity to request a review: Not later than September 30, 1989, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in September for the following periods:

	Period
Antidumping Duty Proceeding	
Canada: Replacement Parts for Self-Propelled Bituminous Paving Equipment (A-122-057)	09/01/88-08/31/89
Canada: Carbon Steel Bars & Structural Shapes (A-122-005)	09/01/88-08/31/89
Canada: Steel Jacks (A-122-006)	09/01/88-08/31/89
Italy: Pads for Woodwind Instrument Keys (A-475-017)	09/01/88-08/31/89
Japan: Filament Fabric (A-588-607)	09/01/88-08/31/89
Japan: Metal-Walled Above-Ground Swimming Pools (A-588-058)	09/01/88-08/31/89
The Federal Republic of Germany: Certain Forged Steel Crankshafts (A-428-604)	09/01/88-08/31/89
The People's Republic of China: Greige Polyester/Cotton Printcloth (A-570-101)	09/01/88-08/31/89
The United Kingdom: Certain Forged Steel Crankshafts (A-412-602)	09/01/88-08/31/89
Suspension Agreements	
Canada: Light Weight Steel Sheet Piling (A-122-007)	09/01/88-08/31/89
Argentina: Carbon Steel Wire Rod (C-357-004)	01/01/88-12/31/88
Peru: Cotton Shop Towels (C-333-401)	01/01/88-12/31/88
Countervailing Duty Proceeding	
Argentina: Pipe and Tube (C-357-801)	07/14/88-12/31/89
Israel: Fresh Cut Roses (C-508-064)	10/01/87-09/30/88
New Zealand: Lamb Meat (C-614-503)	04/01/88-03/31/89
New Zealand: Steel Wire (C-614-601)	07/01/88-06/30/89
Mexico: Lime (C-201-402)	01/01/88-12/31/88
Mexico: Portland Hydraulic Cement and Cement Clinker (C-201-013)	01/01/88-12/31/88

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B-099, U.S. Department of Commerce, Washington, DC 20230.

The Department will publish in the **Federal Register** a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review," for requests received by September 30, 1989.

If the Department does not receive by September 30, 1989 a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Dated: August 31, 1989.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 89-21208 Filed 9-8-89; 8:45 am]

BILLING CODE 3510-DS-M

Importers and Retailers' Textile Advisory Committee; Partially Closed Meeting

A meeting of the Importers and Retailers' Textile Advisory committee will be held on Friday, September 22, 1989, Herbert C. Hoover Building, Room H3407, 14th Street and Constitution Avenue, NW, Washington, DC 20230. (The Committee was established by the Secretary of Commerce on August 13, 1963 to advise Department officials of the effects on import markets and retailing of cotton, wool, and man-made fiber, silk blend and other vegetable fiber textiles.)

General Session: 10:00 a.m. Review of import trends, international activities, report on conditions in the market, and other business.

Executive Session: 10:30 a.m. Discussion of matters properly classified under Executive Order 12356 (3 CFR, 1982 Comp. p. 166) and listed in 5 U.S.C. 552b(c)(1).

The general session will be open to the public with a limited number of seats available. A Notice of Determination to close meetings or portions of meetings to the public on the basis of 5 U.S.C. 552b(c)(1) has been approved in accordance with the Federal Advisory Committee Act. A copy of the notice is available for public inspection and copying in the Central Facility Room H6628, U.S. Department of Commerce, (202) 377-3031.

For further information or copies of the minutes, contact Alfreda Burton, (202) 377-3737.

Dated: September 6, 1989.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-21304 Filed 9-8-89; 8:45 am]

BILLING CODE 3510-DR-M

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews; Request for Panel Review

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Commerce.

ACTION: Notice of first request for panel review of a final determination of sales at less than fair value respecting new steel rail, except light rail, from Canada made by International Trade Administration, Import Administration, which was filed by the Algoma Steel Corporation, Limited, with the United States Section of the Binational Secretariat on September 1, 1989.

SUMMARY: On September 1, 1989, the Algoma Steel Corporation, Limited, filed a Request for Panel Review with the United States Section of the Binational Secretariat pursuant to Article 1904 of the United States-Canada Free-Trade Agreement. Panel review was requested of the final determination of sales at less than fair value respecting new steel rail, except light rail, from Canada, Import Administration file number C-122-804, issued by the International Trade Administration, Import Administration, and published in 54 FR 31984 on August 3, 1989. The Binational Secretariat has assigned Case Number USA-89-1904-08 to this Request for Panel Review.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, Acting U.S. Secretary, Binational Secretariat, Suite 4012, 14th and Constitution Avenue, Washington, DC 20230, (202) 377-5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the U.S.-Canada Free-Trade Agreement ("Agreement") establishes a mechanism for replacing domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel will be established to act in place of national courts to expeditiously review the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1989, the Government of the United States and Government of Canada established "Rules of Procedure for Article 1904 Binational Panel Reviews" ("Rules"). These Rules were published in the Federal Register on December 30, 1988, (53 FR 53212). The panel review in this matter will be conducted in accordance with these Rules.

Rule 35(2) requires the Secretary to publish Notice of the receipt of a Request for Panel Review stating that a Request for Panel Review was filed with the United States Section of the Binational Secretariat on September 1, 1989, pursuant to Article 1904 of the Agreement.

Rule 35(1)(c) of the Rules provides that:

(a) a Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is October 2, 1989);

(b) a Party, investigating authority or interested person that does not file a Complaint may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is October 16, 1989); and

(c) the panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: September 6, 1989.

James R. Holbein,

Acting U.S. Secretary, FTA Binational Secretariat.

[FR Doc. 89-21305 Filed 9-8-89; 8:45 am]

BILLING CODE 3510-DA-M

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews; Request for Panel Review

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of first request for panel review of final affirmative countervailing duty determination respecting new steel rail, except light rail, from Canada made by International Trade Administration, Import Administration, which was filed by the Sydney Steel Corporation with the United States Section of the Binational Secretariat on September 1, 1989

SUMMARY: On September 1, 1989, the Sydney Steel Corporation filed a Request for Panel Review with the United States Section of the Binational Secretariat pursuant to Article 1904 of the United States-Canada Free-Trade Agreement. Panel review was requested of the final affirmative countervailing duty determination respecting new steel rail, except light rail, from Canada, Import Administration file number C-122-805, issued by the International Trade Administration, Import Administration, and published in 54 FR 31991 on August 3, 1989. The Binational Secretariat has assigned Case Number USA-89-1904-07 to this Request for Panel Review.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, Acting U.S. Secretary, Binational Secretariat, Suite 4012, 14th and Constitution Avenue, Washington, DC 20230, (202) 377-5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the U.S.-Canada Free-Trade Agreement ("Agreement") establishes a mechanism for replacing domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel will be estabilshed to act in place of national courts to expeditiously review the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

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Rule 35(1)(c) of the Rules provides that:

(a) a Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is October 2, 1989);

(b) a Party, investigating authority or interested person that does not file a Complaint may participate in the panel review by filing a Notice of Appearance in

accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is October 16, 1989); and

(c) the panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: September 6, 1989.

James R. Holbein,

Acting U.S. Secretary, FTA Binational Secretariat.

[FR Doc. 89-21306 Filed 9-8-89; 8:45 am]

BILLING CODE 3510-DA-M

National Institute of Standards and Technology

Visiting Committee on Advanced Technology; Partially Closed Meeting

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the National Institute of Standards and Technology Visiting Committee on Advanced Technology will meet Tuesday, September 26, 1989, from 8:30 a.m. to 5:00 p.m., and Wednesday, September 27, 1989 from 8:30–11:00 a.m. The Visiting Committee on Advanced Technology is composed of nine members appointed by the Director of the National Institute of Standards and Technology who are eminent in such fields as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations. The purpose of this meeting is to review and make recommendations regarding general policy for the Institute, its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. The discussion on NIST Budget scheduled to begin at 10:00 a.m. and ending at 11:00 a.m., on September 27, 1989, will be closed.

DATES: The meeting will convene September 26, 1989, at 8:30 a.m. and will adjourn for the day at 5:00 p.m. The meeting will resume at 8:30 a.m. on September 27, 1989, and will end at 11:30 a.m.

ADDRESS: The meeting will be held in Lecture Room A, Administration Building, National Institute of Standards and Technology, Gaithersburg, Maryland.

FOR FURTHER INFORMATION CONTACT: Dale E. Hall, Visiting Committee Executive Director, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2158.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on September 1, 1989, that portions of the meeting of the Visiting Committee on Advanced Technology which involve examination and discussion of the budget for the Institute may be closed in accordance with Section 552(b)(9)(B) of Title 5, United States Code, since the meeting is likely to disclose financial information that may be privileged or confidential.

Dated: September 5, 1989.

Raymond G. Kammer,

Acting Director.

[FR Doc. 89-21276 Filed 9-8-89; 8:45 am]

BILLING CODE: 3510-13-M

DEPARTMENT OF DEFENSE

Department of the Navy

Intention To Prepare An Environmental Impact Statement for Dredging at Naval Air Station Alameda, California and at Naval Support Center Oakland, CA

Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969 as implemented by the Council of Environmental Quality regulations (40 CFR parts 1500–1508), the Department of the Navy announces its intent to prepare an Environmental Impact Statement (EIS) to dredge about 600,000 cubic yards at Naval Air Statement (NAS) Alameda to increase the exiting authorized maintenance depth from −42 feet mean lower low water (MLLW) with an overdraft of two feet to −50 feet MLLW. Also, the EIS will address dredging of about 1,000,000 cubic yards at Naval Supply Center (NSC) Oakland to increase the authorized maintenance depth from −35 feet MLLW to −38 feet MLLW in the berthing area and −41 MLLW in the channel. Dredge material disposal alternatives being considered are upland disposal, in-bay disposal, open ocean disposal, and the no action alternative. Environmental impacts of the proposed project and its alternatives shall be determined in the EIS.

The Navy will initiate a scoping process for the purpose of determining the scope of issues to be addressed and for identifying the significant issues related to this action. The Navy will hold a public scoping meeting on September 27, 1989, beginning at 7:30 pm, in the Gold Room of the Henry J. Kaiser Convention Center, 10 Tenth Street, Oakland, California. This meeting will be advertised in Alameda and Oakland area newspapers.

A formal presentation will precede request for public comment. Navy representatives will be available at this meeting to receive comments from the public regarding issues of concern to the public. It is important that federal, state, and local agencies and interested individuals take this opportunity to identify environmental concerns that should be addressed during the preparation of the EIS.

Agencies and the public are also invited and encouraged to provide written comment in addition to, or in lieu of, oral comments at the public meetings. To be most helpful, scoping comments should clearly describe specific issues or topics which the commentor believes the EIS should address. Written statements and or questions regarding the scoping process should be mailed no later than 30 days from date of this publication to Dr. Ronald Hudson, (telephone (415) 877–7695 (Code 2022)), Western Division, Naval Facilities Engineering Command, P.O. Box 727, San Bruno, California 94055–0720.

Dated: September 6, 1989.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 89-21263 Filed 9-8-89; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM90-1-70-000]

Columbia Gulf Transmission Co.; Proposed Changes in FERC Gas Tariff

September 1, 1989.

Take notice that Columbia Gulf Transmission Company (Columbia Gulf) on August 30, 1989 tendered for filing the following proposed changes to its FERC Gas Tariff, Original Volume No. 1, to be effective October 1, 1989:

Seventh Revised Sheet No. 5A
Sixth Revised Sheet No. 31

Columbia Gulf states that the listed tariff sheets set forth the transportation rates and applicable tariff provisions required to place the rates into effect, applicable to the Annual Charge Adjustment, pursuant to the

Commission's Regulations as set forth in Order No. 472 and 472–A issued May 29, 1987 and June 17, 1987, respectively.

Columbia Gulf also states that copies of the filing were served upon the Company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before September 12. 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 petition to intervene. Copies of Columbia Gulf's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–21226 Filed 9–8–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ID–2424–000]

Robert G. Lane; Filing

September 1, 1989.

Take notice that on August 28, 1989, Robert G. Lane (Applicant) tendered for filing an application under section 305(b) of the Federal Power Act to hold the following positions:

Senior Vice President Operations—Central Illinois Public Service Company
Director—Electric Energy, Inc.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 18, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois C. Cashell,

Secretary.

[FR Doc. 89–21227 Filed 9–8–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM90–1–71–000]

Michigan Consolidated Gas Co., Interstate Storage Division; Proposed Changes in FERC Gas Tariff

September 1, 1989.

Take notice that on August 30, 1989, Michigan Consolidated Gas Company-Interstate Storage Division (ISD) tendered for filing proposed changes to the following tariff sheets in its FERC Gas Tariff, Original Volume No. 1, Original Volume No. 2 and Original Volume No. 3:

Original Volume No. 1

Third Revised Sheet No. 1E

Original Volume No. 2

Third Revised Sheet No. 1A

Original Volume No. 3

Fifth Revised Sheet No. 2

The proposed changes reflect the revised Annual Charge Adjustment (ACA) unit charge of $.0017 in ISD's FERC Gas Tariffs. The proposed changes are pursuant to the Commission's regulations promulgated in Order No. 472.

ISD requests that these proposed tariff sheets become effective on October 1, 1989. ISD states that copies of its filing have been served upon its customers and the Michigan Public Service Comission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before September 12, 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 petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–21228 Filed 9–8–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM90–1–47–000]

MIGC, Inc.; Compliance Filing

September 1, 1989.

Take notice that on August 30, 1989, MIGC, Inc. ("MIGC") tendered for filing Fifty-Fourth Revised Sheet No. 32, Sixth Revised Sheet Nos. 102 and 140, and Third Revised Sheet Nos. 165, 188 and 250, all to MIGC's FERC Gas Tariff, Original Volume No. 1. These tariff sheets are proposed to become effective October 1, 1989.

MIGC states that the instant filing is being submitted to reflect Annual Charge Adjustment unit charges applicable to sales and transportation services during the fiscal year commencing October 1, 1989.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such petitions or protests should be filed on or before September 12, 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 peson wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–21229 Filed 9–8–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM90–1–18–000]

Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

September 1, 1989.

Take notice that on August 31, 1989, Texas Gas Transmission Corporation (Texas Gas) tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1, FERC Gas Tariff, Original Volume No. 2–A, and FERC Gas Tariff, Original Volume No. 3:

FERC Gas Tariff, Original Volume No. 1

Ninteenth Revised Sheet No. 10
Ninteenth Revised Sheet No. 10A

FERC Gas Tariff, Original Volume No. 2–A

Second Revised Sheet No. 10
Second Revised Sheet No. 11

FERC Gas Tariff, Original Volume No. 3

Fifth Revised Sheet No. 21

The revised tariff sheets are being filed pursuant to section 25 of the General Terms and Conditions of Texas Gas's FERC Gas Tariff, Original Volume No. 1, and section 21 of the General Terms and Conditions of Texas Gas's FERC Gas Tariff, Original Volume No.

2–A, which affords Texas Gas the right to recover the costs billed to Texas Gas by the Federal Energy Regulatory Commission via the FERC ACA Unit Charge method. That unit charge, as determined by the Commission, is $.0017/Mcf ($.0016/MMBtu converted), as set forth on Texas Gas's Annual Charges Bill for fiscal year 1989, to be effective October 1, 1989.

Texas Gas states that copies of the revised tariff sheets are being mailed to Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NW., Washington , DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such petitions or protests should be filed on before September 12, 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 petition 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. 89–21230 Filed 9–8–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ90–1–42–000]

Transwestern Pipeline Co.; Proposed Changes in FERC Gas Tariff

September 1, 1989.

Take notice that on August 31, 1989 Transwestern Pipeline Company (Transwestern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet:

68th Revised Sheet No. 5

The tariff sheet listed above is being filed pursuant to Transwestern's Purchased Gas Adjustment (PGA) provision set forth in section 19.4 of the General Terms and Conditions of Transwestern's FERC Gas Tariff, Second Revised Volume No. 1.

The Current Adjustment reflected in the instant filing represents an increase of $0.1644/dth as measured against Transwestern's Annual PGA filing in Docket No. TA89–1–42, which became effective July 1, 1989.

The instant filing also reflects a decrease in the ACA Surcharge of $0.0001/dth. The adjustment of the ACA Surcharge is determined each fiscal year pursuant to the Commission's Order No. 472. The ACA Unit Surcharge of $0.0017/dth as determined by the Commission on July 15, 1989 has been converted to a dekatherm basis of $0.0016/dth. Transwestern requests that the revised ACA Surcharge become effective October 1, 1989.

The proposed effective date for the tariff sheet listed above is October 1, 1989.

Transwestern states that copies of the filing were served on Transwestern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petition or protests should be filed on or before September 12, 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 petition to intervene. Copies of this filing are on file with Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–21231 Filed 9–8–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP88–99–004]

Transwestern Pipeline Co.; Proposed Changes in FERC Gas Tariff

August 31, 1989.

Take notice that Transwestern Pipeline Company ("Transwestern") on August 14, 1989, tendered for, as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets: to be effective October 1, 1989:

Substitute 5th Revised Sheet No. 1
Substitute 1st Revised Sheet No. 1A
Original Sheet No. 5(i)
Substitute 5th Revised Sheet No. 38
Substitute 1st Revised Sheet No. 39
Substitute 1st Revised Sheet No. 40
Substitute 1st Revised Sheet No. 41–47
Substitute 5th Revised Sheet No. 133
Substitute 5th Revised Sheet No. 134
Substitute 5th Revised Sheet No. 135
Substitute 5th Revised Sheet No. 136
Substitute 5th Revised Sheet No. 137

Transwestern states these tariff sheets are being filed to comply with the Commission's May 11, 1988 Order issued in Docket No. CP88–99–000, *et al.* ("Order"). In its Order of May 11, 1988, the Commission issued to Transwestern a Certificate of Public Convenience and Necessity authorizing it to institute an on-system and off-system interruptible sales program pursuant to Rate Schedule IS–1, subject to various conditions. On August, 14, 1989, Transwestern notified the Commission that it would accept the IS–1 Certificate as conditioned. The above-listed tariff sheets have been filed to comply with the conditions in the commission's Order.

Transwestern, herein, respectfully requests that the Commission grant any and all waivers of its rules, regulations, and orders as may be necessary so as to permit the above-listed tariff sheets to become effective on the dates requested.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 N. 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 September 8, 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. 89–21232 Filed 9–8–89; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3643–6]

Region I: Prevention of Significant Deterioration of Air Quality (PSD); Determination of Exemption; Lakes Region General Hospital, Laconia, NH

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

ACTION: Notice of final determination of exemption.

SUMMARY: The purpose of this notice is to announce that on July 14, 1989, Judd Gregg, Governor of New Hampshire, issued a final determination that the Lakes Region General Hospital oil-fired boiler project located at the Lakes Region General Hospital in Laconia, New Hampshire is exempt from EPA's PSD review requirements (40 CFR 52.21(j)–(r)). This determination was made under the March 18, 1982 PSD

delegation of authority agreement between Region I and the State of New Hampshire. The determination was issued because the institutional arrangement involving the hospital is such as to render the hospital a "nonprofit health or education" institution pursuant to section 169(1) of the Clean Air Act. (42 U.S.C. 7479(1), and 40 CFR 52.21(i)(4)(vi)). Accordingly, the installation and operation of the 500 HP boiler fired with No. 6 fuel oil (2.0% sulfur, maximum) at the Lakes Region General Hospital will not be subject to PSD review requirements.

DATES: The determination was effective July 14, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. John J. Courcier, State Air Programs Branch, U.S. Environmental Protection Agency, Region I, John F. Kennedy Federal Building, Room 2311, Boston, Massachusetts 02203 (617/565–3260) or Mr. Donald Davis, New Hampshire Air Resources Division, 64 North Main Street, Concord, New Hampshire 03302–2033 (603/271–1370).

SUPPLEMENTARY INFORMATION: This final determination of exemption was made in response to a request dated July 2, 1989 by Robert C. Abbott, Director of Risk Management and Safety, Lakes Region General Hospital.

Copies of this Final Determination and all information used in making the determination are available for public inspection at the New Hampshire Air Resources Division, 64 North Main Street, Concord, New Hampshire 03302. Copies of the determination are also available for public inspection at the U.S. Environmental Protection Agency, Region I, John F. Kennedy Federal Building, Room 2311, Boston, Massachusetts 02203.

The determination is a final action under the Clean Air Act. Under Section 307(b)(1) of the Act, judicial review of this determination is available only by the filing of a petition for review in the United States Court of Appeals for the First Circuit within 60 days from the date of publication in the **Federal Register**. Under Section 307(b)(2) of the Clean Air act, this final determination shall not be subject to later judicial review in civil or criminal proceedings for enforcement.

Dated: August 24, 1989.

Paul G. Keough,

Acting Regional Administrator, U.S. Environmental Protection Agency, Region I.

[FR Doc. 89–21270 Filed 9–8–89; 8:45 am]

BILLING CODE 6560–50–M

[FRL 3643–5]

Region I: Prevention of Significant Deterioration of Air Quality (PSD); Determination of Exemption; Mary Hitchcock Memorial Hospital, a Component of Dartmouth-Hitchcock Medical Center, Hanover, NH

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

ACTION: Notice of final determination of exemption.

SUMMARY: The purpose of this notice is to announce that on June 27, 1989, Judd Gregg, Governor of New Hampshire, issued a final determination that the relocation project of the Mary Hitchcock Memorial Hospital, a component of Dartmouth-Hitchcock Medical Center in Hanover, New Hampshire, is exempt from EPA's PSD review requirements (40 CFR 52.21(j)–(r)). This determination was made under the March 18, 1982 PSD delegation of authority agreement between Region I and the State of New Hampshire. The determination was issued because the institutional arrangement involving the hospital is such as to render the hospital a "nonprofit health or education" institution pursuant to section 169(1) of the Clean Air Act. (42 U.S.C. 7479(1), and 40 CFR 52.21(i)(4)(vi)). Accordingly, the relocation project, in particular the installation and operation of three boilers fired with No. 6 fuel oil (1.0% sulfur, maximum) and an incinerator for the disposal of non-recyclable waste and infectious waste at the Mary Hitchcock Memorial Hospital, will not be subject to PSD review requirements.

DATES: The determination was effective June 27, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. John J. Courcier, State Air Programs Branch, U.S. Environmental Protection Agency, Region I, John F. Kennedy Federal Building, Room 2311, Boston, Massachusetts 02203, (617/565–3260) or Mr. Donald Davis, New Hampshire Air Resources Division, 64 North Main Street, Concord, New Hampshire 03302–2033, (603/271–1370).

SUPPLEMENTARY INFORMATION: This final determination of exemption was made in response to a request dated June 14, 1989 by Frederick W. Nothnagel, Vice President of Facilities Development, Mary Hitchcock Memorial Hospital.

Copies of this Final Determination and all information used in making the determination are available for public inspection at the New Hampshire Air Resources Division, 64 North Main Street, Concord, New Hampshire 03302–2033. Copies of the determination are also available for public inspection at the U.S. Environmental Protection Agency, Region I, John F. Kennedy Federal Building, Room 2311, Boston, Massachusetts 02203.

The determination is a final action under the Clean Air Act. Under section 307(b)(1) of the Act, judicial review of this determination is available only by the filing of a petition for review in the United States Court of Appeals for the First Circuit within 60 days from the date of publication in the **Federal Register**. Under section 307(b)(2) of the Clean Air Act, this final determination shall not be subject to later judicial review in civil or criminal proceedings for enforcement.

Dated: August 24, 1989.

Paul G. Keough,

Acting Regional Administrator, U.S. Environmental Protection Agency, Region

[FR Doc. 89–21271 Filed 9–8–89; 8:45 am]

BILLING CODE: 6560–50–M

[FRL—3643–8]

Statistical Analysis of Ground-Water Monitoring Data at RCRA Facilities

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of guidance document..

SUMMARY: The Environmental Protection Agency (EPA) announces the availability of an interim final guidance document entitiled "Statistical Analysis of Ground-Water Monitoring Data at RCRA Facilities." This document provides guidance to RCRA facility permit applicants and writers concerning the statistical evaluation of ground-water monitoring data, pursuant to the recently promulgated requirements of 40 CFR part 264, subpart F (53 FR 39720: October 11, 1988). The hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) require owners and operators of hazardous waste facilities to utilize design features and control measures that prevent the release of hazardous waste into ground water. Further, regulated units (i.e., all surface impoundments, waste piles, land treatment units, and landfills that receive hazardous waste after July 26, 1982) are also subject to the ground-water monitoring and corrective action standards of 40 CFR part 264, subpart F. These regulations require that a statistical method and sampling

procedure approved by EPA be used to determine whether there are releases from regulated units into ground water.

DATE: EPA will accept public comments until December 8, 1989. All comments must be postmarked on or before this date.

ADDRESSES: Three copies of written comments should be submitted to the Docket Clerk, Office of Solid Waste (OS-321), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 and identified as follows: F-89-HWGWS-FFFF. Copies of the document entitled, "Statistical Analysis of Ground-Water Monitoring Data at RCRA Facilities" are available for viewing at all EPA Libraries and in the EPA RCRA Docket (#M-2417), U.S. Environmental Protection Agency, 401 M. Street, SW., Washington D.C. 20460 from 9:00 a.m. to 4:00 p.m., Monday thru Friday, excluding Federal Holidays, by appointment only. Appointments can be made by calling (202) 475-9327. Copies cost 20 cents per page. In addition, this document is available for purchase through the National Technical Information Service (NTIS), U.S. Department of Commerce, Springfield, Virginia 22161, at (703) 487-4600: Guidance Document on the Statistical Analysis of Ground-Water Monitoring Data at RCRA Facilities. (NTIS # PB89-151-047).

FOR FURTHER INFORMATION CONTACT: For general information contact: RCRA/Superfund Hotline, Office of Solid Waste (WH-563C), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, telephone (800) 424-9346, or (202) 382-3000.

For technial information contact Jim Brown, (202) 382-4658.

SUPPLEMENTARY INFORMATION: This document provides guidance to RCRA Facility permit applicants and writers concerning the statistical analysis of ground-water monitoring data at RCRA facilities. Section 1 is an introduction to the guidance; it describes the purpose and intent of the document, and emphasizes the need for site-specific considerations in implementing the subpart F regulations of 40 CFR part 264.

Section 2 provides the reader with an overview of the recently promulgated regulations concerning the statistical analysis of ground-water monitoring data (53 FR 39720: October 11, 1988). The requirements of the regulations are reviewed, and the need to consider site specific factors in evaluating data at a hazardous waste facility is emphasized.

Section 3 discusses the important hydrogeologic parameters to consider when choosing a sampling interval. The Darcy equation is used to determine the horizontal component of the average linear velocity of ground water. This parameter provides a good estimate of time of travel for most soluble constituents in ground water and may be used to detemine a sampling interval. In situations where the Darcy equation does not apply (e.g., karst and "pseudo karst" terranes), the reader is referred to recent EPA publications for information on determining an appropriate sampling interval. Example calculations are provided at the end of the section to further assist the reader.

Section 4 provides guidance on choosing an appropriate statistical method. A flowchart to guide the reader through this section, as well as procedures to test the distributional assumptions of data are presented. Finally, this section outlines procedures to test specifically for equality of variance.

Section 5 covers statistical methods that may be used to evaluate ground-water monitoring data when background wells have been sited hydraulically upgradient from the regulated unit, and a second set of wells are sited hydraulically downgradient from the regulated unit at the point of compliance. The data from these compliance wells are compared to data from the background wells to determine whether a release from a facility has occurred. Parametric and nonparametric analysis of variance, tolerance intervals, and prediction intervals are suggested methods for this type of comparison. Flowcharts, procedures and example calculations are given for each testing method.

Section 6 includes statistical procedures that are appropriate when comparing ground-water constituent concentrations to fixed concentration limits (e.g., alternate concentration limits or maximum concentration limits). The methods applicable to this type of comparison are confidence intervals and tolerance intervals. As in Section 5, flowcharts, procedures, and examples explain the calculations necessary for each testing method.

Section 7 presents the case where the level of each constituent within a single, uncontaminated well is being compared to its historic background concentrations. This is known as an intra-well comparison. In essence, the data for each constituent in each well are plotted on a time scale and inspected for obvious features such as trends or sudden changes in concentration levels. The method suggested in this section is a combined Shewhart-CUSUM control chart.

Section 8 contains a variety of special topics that are relatively short and self contained. These topics include methods to deal with data that are below the limit of analytical detection and methods to test for outliers or extreme values in the data.

Finally, the guidance presents appendices that cover general statistical considerations, a glossary of statistical terms, statistical tables, and a listing of references. These appendices provide necessary and ancillary information to aid the user in evaluating ground-water monitoring data.

Dated: August 29, 1989.

Jonathan Z. Cannon,

Acting Assistant Administrator for the Office of Solid Waste and Emergency Response.

[FR Doc. 89-21267 Filed 9-8-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3645-1]

Science Advisory Board, Environmental Engineering Committee; Open Meeting

Under the Public Law 92-463, notice is hereby given that the Science Advisory Board's Products Incomplete Combustion Subcommittee will meet September 15, 1989 from 2-5 pm Eastern Time and possibly September 22, 1989 from 12-2 pm Eastern Time by teleconference. The purpose of the meeting is to discuss proposed changes to the Subcommittee's final report, including those based on the June 20, 1989 report "THC Monitor Survey". The teleconference is open to the public, however the teleconference bridge is limited in size and requests for tie-in to the conference call will be honored in the order in which they are received.

Any member of the public wishing to hear the conference call should contact Kathleen Conway, Deputy Director, Science Advisory Board (A-101F), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 at 202/382-2552 no later than noon the day of the teleconference.

This emergency notice is requested because the decision to have such a conference call was made on August 29 and times suitable to the Subcommittee were not identified until September 1. The meetings must be held in September if the report is to be approved at the October Executive Committee meeting.

Dated: September 5, 1989.

Donald G. Barnes,

Director, Science Advisory Board.

[FR Doc. 89-21407 Filed 9-8-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3642-5]

Proposed Settlement; City of Youngstown/Republic Hose Mfg. Co.

AGENCY: U.S. Environmental Protection Agency.

ACTION: Request for public comment.

SUMMARY: In accordance with the requirements of section 122(i)(1) of the Comprehensive Environmental Response, Compensation and Liability Act, as amended (CERCLA), notice is hereby given of a proposed Settlement Under section 122(h) concerning the Republic Hose Site at 1650 Albert Street in Youngstown, Ohio. The proposed settlement requires Youngstown and Republic Hose to pay $300,000 of the approximately $450,000 of costs incurred by U.S. EPA in performing an Immediate Removal Action at the Site. The proposed settlement would resolve the cost recovery case related to response actions taken by U.S. EPA at the Site.

DATE: Comments must be provided on or before October 11, 1989.

ADDRESS: Comments should be addressed to the U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois, 60604, and should refer to: In the Matter of: City of Youngstown/Republic Hose Mfg. Co.

FOR FURTHER INFORMATION CONTACT: Peggy Q. Andrews, U.S. EPA, Office of Regional Counsel, 5CS-TUB-3, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6827.

Notice of section 122(h) Cost Recovery Settlement: In accordance with section 122(i)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1984, as amended (CERCLA), notice is hereby given that on May 19, 1989, a proposed administrative settlement was agreed to by the City of Youngstown, Ohio ("Youngstown") and Republic Hose Manufacturing Company ("Republic Hose"). The proposed settlement requires Youngstown and Republic Hose to pay $300,000 of the approximately $450,000 of costs incurred by U.S. EPA in performing an Immediate Removal Action at the Republic Hose Site located at 1650 Albert Street in Youngstown, Ohio.

U.S. EPA is entering into this agreement under the authority of sections 122(h) and 107 of CERCLA. Section 122(h) authorizes administrative settlement of a claim under section 107 where total response costs incurred by the United States for the facility concerned do not exceed $500,000 (excluding interest). Accordingly, in June of 1988, a decision was made by U.S. EPA and the Department of Justice that a complaint would not be filed in this case. On July 25, 1988, U.S. EPA and the Department of Justice determined this case to be one suitable for alternative dispute resolution ("ADR"), and on January 17, 1989, an ADR agreement was entered into between U.S. EPA and Youngstown. The mediation continued until May 19, 1989, at which time a 122(h) Consent Agreement was signed by Youngstown and Republic Hose. Under the terms of the Consent Agreement, Republic Hose will pay $5,000 within 30 days of the effective date of the Consent Agreement, and Youngstown will pay a total of two hundred and ninety five thousand ($295,000) in three installments over three years following the entering of the Consent Agreement.

The Environmental Protection Agency will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed settlement agreement.

A copy of the proposed administrative settlement agreement may be obtained in person or by mail from the Office of Regional Counsel, United States Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604. Additional background information relating to the settlement is available for review at this address.

Authority: The Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. 9601-9675.

Dated: August 15, 1989.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 89-21266 Filed 9-8-89; 8:45 am]

BILLING CODE: 6560-50-M

FEDERAL ELECTION COMMISSION

[Notice 1989-16]

Filing Dates for Texas Special Election

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for Texas special election.

SUMMARY: Texas has scheduled a special election on November 7, 1989, in the 18th Congressional District to fill the seat that was held by the late Representative Mickey Leland.

FOR FURTHER INFORMATION CONTACT: Ms. Bobby Werfel, Public Information Office, 999 E Street NW., Washington, DC 20463, Telephone: (202) 376-3120; Toll Free (800) 424-9530.

SUPPLEMENTARY INFORMATION: Principal campaign committees of candidates who participate in the Texas Special Election must file reports according to the schedule in the following charts. Party committees and PACs that make contributions or expenditures in connection with the Special Election during the coverage dates listed in the charts must file the appropriate reports. Monthly filers, however, do not file Special Pre- and Post-Election reports.

In the event that no candidate receives a majority of the vote in the Special Election, a second Special Election will be called within 5 days after the official election results are declared. If a second Special Election is necessary, filing dates for the appropriate reports will be established.

CALENDAR OF REPORTING DATES FOR TEXAS SPECIAL ELECTION 18TH CONGRESSIONAL DISTRICT

Report	Period Covered [1]	Reg./Cert. Mailing Date [2]	Filing Date
All committees involved in the 11/7/89 election must file:			
Pre-Special	07/01/89-10/18/89	10/23/89	10/26/89
Situation 1: If one candidate receives a majority of votes, all committees must file:			
Post-Special	10/19/89-11/27/89	12/07/89	12/07/89
Year-End	11/28/89-12/31/89	01/31/90	01/31/90

CALENDAR OF REPORTING DATES FOR TEXAS SPECIAL ELECTION 18TH CONGRESSIONAL DISTRICT—Continued

Report	Period Covered [1]	Reg./Cert. Mailing Date [2]	Filing Date

Situation 2: If no candidate receives a majority of the votes a run-off election will be scheduled. Committees that participate in the special run-off election will be notified of their filing requirements in a separate notice.

[1] The period begins with the close of the last report filed by the committee. If the committee has filed no previous reports, the period begins with the date of the committee's first activity.

[2] Reports sent by registered or certified mail must be postmarked by the mailing date. Otherwise, they must be received by the filing date.

Dated: September 5, 1989.

Danny L. McDonald,

Chairman.

[FR Doc. 89-21212 Filed 9-8-89; 8:45 am]

BILLING CODE 6715-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-826-DR]

Amendment To Notice of a Major Disaster Declaration; Alaska

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Alaska (FEMA-826-DR), dated May 10, 1989, and related determinations.

DATES: August 14, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

Notice

The notice of a major disaster for the State of Alaska, dated May 10, 1989, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 10, 1989:

The communities of Seldovia, St. George, and Sleetmute for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 89-21265 Filed 9-8-89; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

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, N.W., 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 communicating 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.: 224-200255-001.

Title: City of Los Angeles Terminal Agreement.

Parties: City of Los Angeles, California Stevedore and Ballast Co.

Filing Party: Mr. Raymond P. Bender, Assistant City Attorney, City of Los Angeles, Habor Division, 425 S. Palos Verdes St., P.O. Box 151, San Palos, CA 90733-0151.

Synopis: The Agreement reduces the assigned premises from 30 acres to 22.8 acres and reduces the monthly minimum guarantee from $160,000 to $121,600. The Agreement also provides for the monthly revenue sharing of wharfage, dockage, storage and demurrage. The Agreement provides for the City's right to terminate the assignment under certain conditions.

By Order of the Federal Maritime Commission.

Dated: September 6, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-21274 Filed 9-8-89; 8:45 am]

BILLING CODE 6730-01-M

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 10220. 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 40 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200282.

Title: Maryland Port Authority Terminal Agreement.

Parties: Maryland Port Authority, Polish Ocean Lines, Inc. (POL).

Synopsis: The Agreement provides POL with the lease of 15 acres at the Dundalk Marine Terminal for a term of four years. POL agrees to move at least 12,000 loaded containers through the terminal in each lease year at certain discounted base rates. The rate charges per loaded container cover all charges to POL for land rental, dockage and container wharfage. Separate charges for crane rental, ro/ro cargo, steel and non-containerized cargo are specified in the Agreement.

Agreement No.: 224-200283.

Title: Port of Tampa Terminal Agreement.

Parties: Tampa Bay International Terminals, Inc. (TBIT), Garrison Stevedoring, Inc. (Garrison).

Synopsis: The Agreement provides that Garrison will perform, for the benefit of TBIT, all marine terminal and stevedoring services at the Port of Tampa, including management and supervision of all personnel necessary for the day-to-day operational services. Garrison shall act as an independent contractor in performing its obligations and duties under this Agreement but it

shall not obligate TBIT in any manner without prior consent of TBIT. Compensation and reimbursement for services rendered shall be as specified in the Agreement.

By Order of the Federal Maritime Commission.

Dated: September 6, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-21275 Filed 9-8-89; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License Applicants; La Mar Line Corp.

Notice is given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarder and Passenger Vessel Operations, Federal Maritime Commission, Washington, DC 20573.

La Mar Line Corporation
7964 NW. 14th St., Miami, FL 33126
Officers: Ulises Perez, President/Director/Stockholder; Maria Antonia Perez, Director; Nelson Suarez, Vice President/Director/Stockholder; Antonio Elortegui, Secretary/Stockholder

Fond Express Inc.
10420 LaCienega Blvd., Inglewood, CA 90304
Officers: Ernest So, President; Winnie So, Secretary

Ecuamerica International Transport
6203 Johns Road, Suite 4, Tampa, FL 33634
Officers: Michael De La Llana, President; Susana E. De La Llana, Vice President

Fast Cargo U.S., Inc.
168-01 Rockaway Blvd., Jamaica, New York 11434
Officers: Jannette Taylor, President; Steven Farella, Gen. Manager

Super Trans Plus, Inc.
746 S. Glasgow Ave. 2/FL, Inglewood, CA 90301
Officers: David Lee, Stockholder; Bob Jan, President; Frank Chiang, Secretary; Judy Wei, Financial Officer

Ransar International, Inc.
1034 Jericho Turnpike, Smithtown, New York 11787
Officers: Fortunato C. Rana, President; Rosalina Sarigumba, Vice President

Zen Continental Company, Inc.
337 E. San Antonio Drive, Suite 110, Long Beach, CA 90807
Officer: Henry Chen, Chief Executive Officer

Christopher Chee Y Neo dba Crown International Forwarders
209 Manana Drive, Grand Prairie, TX 75050
Officer: Christopher Chee Y Neo, Sole Proprietor

Zuazu International, Inc.
476 Broadway, 5th FL, New York, NY 10013
Officers: Vincente Urrutia Nadal, President; Juan Granena Ciurana, Executive Vice President; Joaguin Puevo Giminez, Vice President

Simtex Ocean Service, Inc.
559 Saginaw St., Calumet City, IL 60409
Officer: Luella Hunter, President

Integrated Traffic Systems, Inc.
One Pierce Place, Suite 135C, Itasca, IL 60143
Officers: Clayton W. Dabbert, President; Christine Hedge, Vice President/Secretary; Dale T. Gomez, Chairman of Board (C.E.O.)

Morex Shipping Corporation
400 S. Points Drive, Suite 409, Miami, FL 33139
Officer: Ramon S. Moro, President

By the Federal Maritime Commission.

Dated: September 6, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-21273 Filed 9-8-89; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder Licenses; Reissuance of Licenses; SCAC (Texas) Inc.

Notice is hereby given that the following ocean freight forwarder license has been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR part 510.

License No.	Name/address	Date reissued
2556	SCAC (Texas) Inc., P.O. Box 60953 AMF, 15734 Lee Road, Houston, TX 77205.	Aug. 17, 1989.

Robert G. Drew,

Director, Bureau of Domestic Regulation.

[FR Doc. 89-21272 Filed 9-8-89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

September 5, 1989.

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR § 1320.9, "to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following reports, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

DATE: Comments must be received by September 21, 1989.

ADDRESS: Comments, which should refer to the OMB Docket number, should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551, or delivered to room B-2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B-1122 between 8:45 a.m. and 5:15 p.m. except as provided in § 261(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.6(a).

A copy of the comments may also be submitted to the OMB Desk Officer for the Board: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the request for clearance (SF 83), supporting statement, and other documents that will be placed into OMB's public docket files upon approval may be requested from the agency clearance officer, whose name appears below. Federal Reserve Board Clearance Officer—Frederick J. Schroeder—

Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3822).

Proposal to approve under OMB delegated authority the extension, without revision, of the following reports:

1. *Report title:* Consolidated Financial Statements for Bank Holding Companies; Parent Company Only Financial Statements for Bank Holding Companies

Agencies form numbers: FR Y–9C, FR Y–9LP, FR Y–9SP.

OMB Docket number: 7100–0128.

Reporters: Bank holding companies.

Report	Number of respondents	Frequency	Average hours per response
FR Y–9C and Y–9LP:			
For bank holding companies with total consolidated assets of $150 million or more	935	Quarterly	25.25
For bank holding companies with consolidated assets of less than $150 million but which have more than one subsidiary bank.	449	Quarterly	14.25
FR Y–9SP	4,501	Semiannually	3

No significant effect on small businesses is affected.

General description of report: These reports are required by law [12 U.S.C. 1844(b) and (c)] and are not given confidential treatment.

These reports are the source of information for the Federal Reserve's surveillance function in its ongoing monitoring of the financial condition of bank holding companies.

2. *Report title:* Combined Financial Statement of Nonbank Subsidiaries of Bank Holding Companies; Annual Supplement to the Combined Financial Statement of Nonbank Subsidiaries of Bank Holding Companies.

Agency form number: FR Y–11Q, FR Y–11AS.

OMB Docket number: 7100–0244.

Reporters: Bank holding companies.

Annual reporting hours: 4,380.

Report	Number of respondents	Frequency	Average hours per response
FR Y–11Q	292	Quarterly	2.5
FR Y–11AS	292	Annually	5.0

No significant effect on small businesses is expected.

General description of report: These reports are required by law [12 U.S.C. § 1844(c)] and are not given confidential treatment.

As part of the Federal Reserve System's surveillance function, these reports collect financial data on combined nonbank subsidiaries of bank holding companies with total consolidated assets of $1 billion or more, and on bank holding companies with total consolidated assets of at least $150 million but less than $1 billion and that have material nonbanking activities.

Proposal to approve under OMB delegated authority the implementation of the following report:

Report title: Report of Medium-Term Note Issuance.

Agency form number: FR 2600.

OMB Docket number: 7100–0245.

Freqency: Monthly or quarterly or semiannually.

Reporters: U.S. corporations.

Annual reporting hours: 49.

Estimated average hours per response: 0.083.

Number of respondents: 182.

Small businesses are not affected.

General description of report: This information collection is voluntary [12 U.S.C. 225a and 353] and is given confidential treatment [5 U.S.C. 552(b)(4)].

The report will collect monthly balances of corporate medium-term note issues. Medium-term notes are interest-bearing noncallable corporate obligations with a maturity greater than 270 days but generally less than 10 years. The data will be used to improve the estimates of corporate securities issues issued and outstanding.

Board of Governors of the Federal Reserve System, September 5, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89–21252 Filed 9–8–89; 8:45 am]

BILLING CODE 6210–01–M

A.B.N. Stichting; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a) of the Board's Regulation Y (12 CFR 225.23(a)) 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.

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 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.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 25, 1989.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *A.B.N. Stichting,* Amsterdam, The Netherlands, and Algemene Bank Nederland N.V., Amsterdam, The Netherlands; to engage *de novo* through its subsidiary, ABN Capital Markets Corporation, New York, New York, in (i) providing advice in conduction with merger, acquisition/divestiture and financial transactions f/r nonaffiliated financial and nonfinancial institutions; (ii) providing fairness opinions in connection with merger, acquisition and similar transactions for nonaffiliated financial and nonfinancial institutions; (iii) providing advice regarding the structuring of and arranging for loan syndications, interest rate "swap", interest rate "cap" and similar transactions; (iv) providing valuations of nonaffiliated financial and nonfinancial institutions. The Board has previously determined by Order that the above activities are permissible nonbanking activities under section 4(c)(8) of the Bank Holding Company Act; (v) offering combined investment advice and securities brokerage services, as previously approved by the Board, to retail and institutional customers; (vi) engaging in investment advisory activities and securities brokerage activities on a separate basis pursuant to §§ 225.25(b)(4) and 225.25(b)(15), respectively, and (vii) underwriting and dealing in government obligations and money market instruments pursuant to § 225.25(b)(16) of the Board's Regulation Y. These activities will be conducted in the United States and abroad.

Board of Governors of the Federal Reserve System, September 5, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-21253 Filed 9-8-89; 8:45 am]

BILLING CODE 6210-01-M

Guaranty Bancshares Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 29, 1989.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Guaranty Bancshares Corporation,* Shamokin, Pennsylvania; to acquire 80 percent of the voting shares of Guaranty Bank of Princeton (in organization), Princeton, New Jersey.

B. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Home Credit Corporation,* Salt Lake City, Utah; to become a bank holding company by acquiring 100 percent of the voting shares of Home Credit Bank, Salt Lake City, Utah, a *de novo* bank which will assume the assets and liabilities of Home Credit Financial, Salt Lake City, Utah, a Utah industrial loan corporation currently controlled by Home Credit Corporation.

Board of Governors of the Federal Reserve System, September 5, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-21254 Filed 9-8-89; 8:45 am]

BILLING CODE 6210-01-M

Dan R. Moore; Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they 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 notice or to the offices of the Board of Governors. Comments must be received not later than September 25, 1989.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Dan R. Moore,* Matewan, West Virginia, and James H. Harless, Gilbert, West Virginia; to acquire over 25 percent of the voting shares of Matewan BancShares, Inc., Matewan, West Virginia, and thereby indirectly acquire The Matewan National Bank, Matewan, West Virginia.

Board of Governors of the Federal Reserve System, September 5, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-21255 Filed 9-8-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-89-2046]

Submission of Proposed Information Collection to the Office of Management and Budget

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).

Dated: September 5, 1989.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Recertification of family income and composition.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: Homeowners will submit these forms to the mortgagees to determine their continued eligibility for assistance and the amount of assistance the homeowner will receive. Mortgagees will use the form to report statistical and general program data to the Department.

Form Number: HUD–93101 and 93101–A.

Respondents: Individuals or households, and businesses or other for-profit.

Frequency of Submission: On occasion, monthly, and annually.

Reporting Burden:

	Number of respondents	x ⅛	Frequency of response	x	Hours per response	=	Burden hours
HUD–93101	150,000		1.25		1.00		187,500
HUD–93101–A	962		12		.17		1,962

Total Estimated Burden Hours: 189,462.

Status: Extension.

Contact: Florence Brooks, HUD, (202) 755–7330 and John Allison, OMB, (202) 395–6880.

Dated: September 5, 1989.

[FR Doc. 89–21295 Filed 9–8–89; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. N–89–2047]

Submission of Proposed Information Collection to the Office of Management and Budget

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 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 a 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 number 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).

Dated: September 5, 1989.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Performance Funding System: Formal Review Process, Energy Conservation Savings, Audit Responsibilities, Definition of Responsible Insurance Company (FR–2504)

Office: Public and Indian Housing

Description of the need for the information and its proposed use: Public Housing Authorities (PHAs) and Indian Housing Authorities (IHAs) must submit documentation for approval of a nonprofit insurance entity created by PHAs/IHAs. They may apply for increased operating subsidy payments due to: (1) sharing of energy rate reductions, (2) non-HUD financing of energy conservation, (3) revision of allowable expense levels, or (4) units lost through combining of units into larger units.

Form Number: None

Respondents: State or Local Governments

Frequency of Submission: Annually

Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Section							
965.105(e)(1)	8		1		5		40
990.107(c)(4) and (g), 990.110(f)	200		1		8		1,600
990.110(c)(1)(i) and 990.110(c)(4)	100		1		2		200
990.110(e)(3)	720		1		4		2,880
990.105(c)(5)(ii)(b)	2,500		1		1		2,500
990.108(e)	15		1		1		15
Recordkeeping Burden							
990.107(c)(4) and (g), 990.110(f)	200		1		2		400

Total Estimated Burden Hours: 7,235
Status: New
Contact: Theodore R. Daniels, HUD, (202) 755–8145, John Allison, OMB, (202) 395–6880

Dated: September 5, 1989.

[FR Doc. 89–21296 Filed 9–8–89; 8:45 am]
BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–070–09–4630–10–H603]

Montana; Area Closure, Headwaters Resource Area; Butte District, MT

AGENCY: Bureau of Land Management, Butte District Office.

ACTION: Emergency area closure on public lands.

SUMMARY: Notice is hereby given that effective immediately all public lands in the Limestone Hills Area, west of the River Road in Sections 1, 2, 11, 12, 13, 14, and 23, T. 6, N., R. 1 E., and Section 35, T. 7 N., R. 1 E., P.M.M. are closed to all motorized vehicle uses. This area is located about 1 mile north of Townsend, Montana. The purpose of this closure is to allow for the rehabilitation of the area burned by the Indian Creek Fire and to prevent the spread of noxious weeds.

Authority for this closure is 43 CFR 8341.2. The closure will remain in effect until further notice.

FOR FURTHER INFORMATION CONTACT: Gary Leppart, Headwaters Resource Area Manager, P.O. Box 3388, Butte, MT 59702.

Dated: August 31, 1989.

Orval L. Hadley,
Acting District Manager.

[FR Doc. 89–21257 Filed 9–8–89; 8:45 am]
BILLING CODE 4310–DN–M

[MT–070–09–4050–91; Designation Order MT–075–8901]

Montana; Off-Road Vehicle Designation, Headwaters Resource Area, Butte District, MT

AGENCY: Bureau of Land Management, Butte District Office, Interior.

ACTION: Off-road Vehicle Designation Decision.

SUMMARY: Final notice (supersedes FR Notice of October 28, 1988, Page 43775) is hereby given that effective immediately all public lands in the Jimmys Gulch area (1,524 acres), north of Confederate Gulch Road in Sections 26, 27, and 35, T. 10 N., R. 2 E., and Sections 3, 4, and 9, T. 9 N., R. 2 E., P.M.M. are permanently closed to all yearlong motorized vehicle uses with the exception that a yearlong open route will be established on a portion of the Jimmys Gulch Road pending an easement acquisition. The area is located about 20 miles north of Townsend, Montana. The purpose of this closure is to reduce further soil erosion, inhibit the spread of noxious weeds, enhance elk security, minimize visitor safety risks, provide equitable public access, and reduce user conflicts.

A public meeting and comment period were provided and all responses received were considered prior to making this designation.

This decision is consistent with the Headwaters Resource Management Plan and is authorized in 43 CFR 8342. This designation will remain in effect until rescinded or modified by the authorized official. An appeal of this decision may be filed within 30 days of this notice with the Interior Board of Land Appeals.

FOR FURTHER INFORMATION CONTACT: Gary Leppart, Headwaters Resource Area Manager, P.O. Box 3388, Butte, MT 59702.

Dated: August 31, 1989.

Orval L. Hadley,
Acting District Manager.

[FR Doc. 89–21258 Filed 9–8–89; 8:45 am]
BILLING CODE 4310–DN–M

[CA–065–09–3110–10–DTNA]

Realty Action; Exchange; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, exchange of public and private lands in Kern County, CA 23833, CA 23836, CA 24307, CA 24454.

SUMMARY: The following public lands in Kern County have been examined and determined suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716):

CA 23833, Selected public lands:

San Bernadino Meridian, California

T. 11 N., R. 10 W.,
Sec. 8, S½SE¼

Containing 80 acres of public land, more or less.

In exchange for these lands, the United States will acquire the following private lands in Kern County from Sigmund and Elizabeth Lichter.

CA 23833 offered lands:

Mount Diablo Meridian, California

T. 31 S., R. 38 E.,
Sec. 31, Parcel 1 of Parcel Map 2187, in the City of California City, County of Kern, State of California, as filed June 14, 1974 in Book 10, Page 108 of Parcel Maps, in the Kern County Recorder's Office, and Parcel 4 of Parcel Map 2200, in the City of California City, County of Kern, State of California, as filed in Book 10, Page 110 of Parcel Maps, in the Kern County Recorder's Office. Containing 81.65 acres of non-federal lands, more or less.

CA 23836, Selected public lands:

San Bernadino Meridian, California

T. 11 N., R. 10 W.,
Sec. 8, W½SW¼.

Containing 80 acres of public land, more or less.

In exchange for these lands, the United States will acquire the following private lands in Kern County from Marc Batz.

CA 23836, offered lands:

Mount Diablo Meridian, California

T. 31 S., R. 38 E.,
Sec. 31, Parcel 2 of Parcel Map 2187, in the City of California City, County of Kern,

State of California, as filed June 14, 1974 in Book 10 Page 108 of Parcel Maps, in the Kern County Recorder's Office. Parcel 2 of Parcel Map 2200, in the City of California City, County of Kern, as filed June 14, 1974 in Book 10 Page 110 of Parcel Maps, in the Kern County Recorder's Office. Containing 81.87 acres of non-federal lands, more or less.

CA 24307, Selected public lands:

San Bernadino Merdian, California

T. 11 N., R. 10 W.,
Sec. 8, S½N½SE¼.

Containing 40 acres of public land, more or less.

In exchange for these lands, the United States will acquire the following private lands in Kern County from Wojtek Jaskiewicz.

CA 24307, offered lands:

Mount Diablo Meridian, California

T. 31S., R. 38E.,
Sec. 31, Parcel 1 of Parcel Map 2199, in the City of California City, County of Kern, State of California, as filed June 14, 1974 in Book 10 Page 109 of Parcel Maps, in the Kern County Recorder's Office.

Containing 38.67 acres of non-federal lands, more or less.

CA 24454, Selected public lands:

San Bernadino Meridian, California

T. 11N., R. 10 W.,
Sec. 8, N½NE¼SE¼,NE¼NW¼SE¼.

Containing 30 acres of public land, more or less.

In exchange for these lands, the United States will acquire the following private lands in Kern County from Jim and Gale McMahon.

CA 24454, offered lands:

Mount Diablo Meridian, California

T. 31 S., R 38 E.,
Sec. 31, Parcels 1, 2 and 4 of Parcel Map 3403, in the City of California City, County of Kern, State of California, as filed June 22, 1976, in Book 16, Page 55 of Parcel Maps, in the Kern County Recorder's Office.

Containing 30.38 acres of non-federal lands, more or less.

SUPPLEMENTARY INFORMATION: The purpose of the exchanges is to acquire non-federal lands within the designated Desert Tortoise Research Natural Area. The designated area encompasses lands which have historically supported the highest and most stable population of tortoise within its range.

This Notice is issued to provide supplementary information to Notice of Realty Action CA 23082, published in Volume 54, Number 4, of the Federal Register, January 6, 1989. The segregative effect will end upon issuance of patent or two years from the date of first publication, whichever occurs first.

The values of the lands to be exchanged are approximately equal; equalization of values required by law will be achieved by acreage adjustments or by cash payments in amounts not to exceed 25 percent of the fair market value of the selected lands.

Lands transferred out of federal ownership will be subject to the following reservations, terms and conditions:

1. Reservations to the United States: (a). Right of way for ditches and canals, pursuant to the Act of August 30, 1890 (43 U.S.C. 945).

2. Subject to: (a). Restrictions that may be imposed by Kern County in accordance with floodplain regulations established under Kern County Ordinance G–4707, adopted on March 15, 1988. (Applies to 100-year flood zones shown on Federal Insurance Rate Map 060075 1625B as affecting the selected public lands in exchange CA 23836), (b). Public easements in favor of Kern County for road and utility purposes, (c). Such rights as I & M Sheep Company has to graze the land until July 31, 1991, in accordance with section 15 Taylor Grazing Act lease No. 6550.

Private lands to be acquired by the United States will be subject to easements and mineral reservations noted in the preliminary title reports.

The exchanges are scheduled to be completed in February of 1990.

FOR FURTHER INFORMATION CONTACT: Tom Gey, Ridgecrest Resource Area (619) 375–7125. Information relating to these exchanges is available for review at the Ridgecrest Resource Area Office, 112 East Dolphin Street, Ridgecrest, California 93555.

DATES: On or before October 26, 1989, interested parties may submit comments to the District Manager, California Desert District Office, 1695 Spruce Street, Riverside, California 92507. Objections will be reviewed by the State Director, who may sustain, vacate, or modify this realty action. In the absence of objections, this realty action will become the final determination of the Department of the Interior.

Dated: August 17, 1989.

H.W. Riecken,

Acting, District Manager.

[FR Doc. 89–21292 Filed 9–8–89; 8:45 am]

BILLING CODE 4310–40–M

National Park Service

Chattahoochee River National Recreation Area Advisory Commission; Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of Advisory Commission Meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Commission Act that a meeting of the Chattahoochee River National Recreation Area Advisory Commission will be held at 2:00 p.m. at the following location and date.

DATE: October 4, 1989.

ADDRESS: The Chattahoochee River National Recreation Area, Headquarters Building, at the Island Ford Unit in North Fulton County.

FOR FURTHER INFORMATION CONTACT: Warren D. Beach, Superintendent, Chattahoochee River National Recreation Area, 1978 Island Ford Parkway, Dunwoody, Georgia 30350. Telephone (404) 394–7912.

SUPPLEMENTARY INFORMATION: The purpose of the Chattahoochee River National Recreation Area Advisory Commission is to consult and advise the Secretary of the Interior regarding the management and operation of the area, protection of resources within the area, and the priority of land to be required within the area. The members of the Advisory Commission are as follows:

Mr. J. Neal Shepard, Jr.
Mr. Robert A. Meadows
Mrs. Joy Bauer
Mr. Benjamin H. West
Mr. Howard D. Zeller
Mr. Larry B. Thompson
Mrs. Lillian Webb
Mr. David O. Eldridge
Mr. Robert Kerr
Mr. H. Edwin Schultz
Ms. Evelyn H. Hopkins
Mr. Michael Bennett
Mr. James O. Watson, Jr.

The meeting will be a forum to share information on the Chattahoochee River National Recreation Area and discuss current issues.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited. Any member of the public may file with the Commission a written statement concerning the matters to be discussed. Written statements may also be submitted to the Superintendent at the address above. Minutes of the meeting will be available at Park Headquarters for public inspection approximately 4 weeks after the meeting.

Dated: September 1, 1989.

Robert M. Baker,

Regional Director, Southeast Region.

[FR Doc. 89–21299 Filed 9–8–89; 8:45 am]

BILLING CODE 4310–70–M

Delta Region Preservation Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Delta Region Preservation Commission will be held at 7:00 p.m., on October 11, 1989, at the University of New Orleans Student Center, New Orleans, Louisiana.

The Delta Region Preservation Commission was established pursuant to section 907 of Public Law 95–625 (16 U.S.C. 230f), as amended, to advise the Secretary of the Interior in the selection of sites for inclusion in Jean Lafitte National Historical Park and Preserve, and in the implementation and development of a general management plan and of a comprehensive interpretive program of the natural, historic, and cultural resources of the Region.

The matters to be discussed at this meeting include:

—Environmental Education Center
—Water Management Plan
—General Management Plan Revisions
—1990 Budget
—Old Business
—New Business

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come-first-served basis. Any member of the public may file a written statement concerning the matters to be discussed with the Superintendent, Jean Lafitte National Historical Park and Preserve.

Persons wishing further information concerning this meeting, or who wish to submit written statements may contact M. Ann Belkov, Superintendent, Jean Lafitte National Historical Park and Preserve, U.S. Customs House, 423 Canal Street, Room 210, New Orleans, Louisiana 70130–2341, telephone 504/589–3882. Minutes of the meeting will be available for public inspection four weeks after the meeting at the office of Jean Lafitte National Historical Park and Preserve.

Dated: August 30, 1989.

Richard D. Marks,

Acting Regional Director, Southwest Region.

[FR Doc. 89–21300 Filed 9–8–89; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL DEVELOPMENT CORPORATION AGENCY

Agency for International Development

Advisory Committee on Voluntary Foreign Aid; Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of a meeting of the Advisory Committee on Voluntary Foreign Aid (ACVFA) on Tuesday and Wednesday September 19–20, 1989. The topic to be discussed is "The Shifting Level and Composition of Public and Private Resources for International Development Activities."

Date: September 19–20, 1989.

Time: Tuesday, September 19, 1:30 p.m.—6:00 p.m., Wednesday, September 20, 9:00 a.m.–1:00 p.m.

Place: The National Press Club, 14th and F Streets, NW., Washington, DC 20045.

The meeting is free and open to the public. However, notification by September 14 through the advisory committee headquarters is required.

Persons wishing to attend the meeting must call Melissa Nuwaysir, (703) 875–4407, or write, not later than September 14 to: The Advisory Committee on Voluntary Foreign Aid, Room 310, SA–8, Agency International Development, Washington, DC 20523–0808.

Dated: August 31, 1989.

Sally H. Montgomery,

Deputy Assistant Administrator, Private and Voluntary Cooperation Food for Peace and Voluntary Assistance.

[FR Doc. 89–21297 Filed 9–8–89; 8:45 am]

BILLING CODE 6116–01–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31471]

Farley Inc.; Control Exemption; Chattahoochee Valley Railway Co.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission, under 49 U.S.C. 10505, exempts Farly Inc. from the requirements of 49 U.S.C. 11343, *et seq.*, to control indirectly the Chattahoochee Valley Railway Company, subject to standard labor protective conditions.

DATES: This exemption is effective on September 21, 1989. Petitions for reconsideration must be filed by October 6, 1989.

ADDRESSES: Send pleadings referring to Finance Docket No. 31471 to:

Office of the Secretary, Case Control Branch, Attn: Finance Docket No. 31471, Interstate Commerce Commission, Washington, DC 20423

Michael F. Morrone, Keller and Heckman, 1150 17th Street, NW., Washington, DC 20036

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245.

[TDD for hearing impaired: (202) 275–1721]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4347/4359. (Assistance for the hearing impaired is available through TDD services (202) 275–1721.)

Decided: September 5, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips.

Noreta R. McGee,

Secretary

[FR Doc. 89–21264 Filed 9–8–89; 8:45 am]

BILLING CODE 7035–01–M

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Advisory Committee on Actuarial Examinations; Meeting

Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet in Room 3112, Internal Revenue Service Building, 1111 Constitution Avenue NW., Washington, DC, on October 12, 1989, beginning at 8:30 a.m.

The purpose of the meeting is to discuss topics and questions which may be recommended for inclusion on future Joint Board examinations in actuarial mathematics and methodology referred to in Title 29 U.S. Code, section 1242(a)(1)(B).

A determination as required by section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) has been made that the subject of the meeting

falls within the exceptions to exceptions to the open meeting requirement set forth in Title 5 U.S. Code, section 552b(c)(9)(B), and that the public interest requires that such meeting be closed to public participation.

Dated: September 5, 1989.

Leslie S. Shapiro,

Advisory Committee Management Officer, Joint Board for the Enrollment of Actuaries.

[FR Doc. 89-21209 Filed 9-8-89; 8:45 am]

BILLING CODE 4810-25-M

JUDICIAL CONFERENCE OF THE UNITED STATES

Advisory Committee on Bankruptcy Rules, Meeting

AGENCY: Advisory Committee on Bankruptcy Rules, Judicial Conference of the United States.

ACTION: Notice of open meeting.

SUMMARY: There will be a two-day meeting of the Judicial Conference Advisory Committee on Bankruptcy Rules to complete work on the Official Forms, which includes revision and renumbering. Rule 9009 of the Bankruptcy Rules provides that the Official Forms be promulgated by the Judicial Conference of the United States. The meeting will be open to public observation.

DATE: The meetiong will be held on October 18, 1989, beginning at 9:00 a.m.

ADDRESS: The meeting will be held at the Administrative Office of the United States Courts, 811 Vermont Avenue NW., Conference Room 638, Washington, DC.

FOR FURTHER INFORMATION CONTACT: James E. Macklin, Jr., Secretary, Commitee on Rules of Practice and Procedure, Administrative Office of the United States Courts, Washington, DC 20544, Telephone: (202) 633-6021.

Dated: August 29, 1989.

James E. Macklin, Jr.,

Secretary, Committee on Rules of Practice and Procedure.

[FR Doc. 89-21220 Filed 9-8-89; 8:45 am]

BILLING CODE 2210-01-M

Committee on Criminal Rules; Meeting

AGENCY: Advisory Committee on the Federal Rules of Criminal Procedure, Judicial Conference of the United States.

ACTION: Notice of open meeting.

SUMMARY: There will be a two-day meeting of the Judicial Conference Committee on Criminal Rules to consider proposed amendments to the Federal Rules of Criminal Procedure under the provisions of Chapter 131 of Title 28, United States Code. The meeting will be open to public observation.

DATE: The meeting will be held on November 16 and 17, 1989, beginning at 9:00 a.m.

ADDRESS: The meeting will be held at the Administrative Office of the United States Courts, 811 Vermont Avenue NW., Conference Room 638, Washington, DC.

FOR FURTHER INFORMATION CONTACT: James E. Macklin, Jr., Secretary, Commitee on Rules of Practice and Procedure, Administrative Office of the United States Courts, Washington, DC 20544, Telephone: (202) 633-6021.

Dated: September 28, 1989.

James E. Macklin, Jr.,

Secretary, Committee on Rules of Practice and Procedure.

[FR Doc. 89-21221 Filed 9-8-89; 8:45 am]

BILLING CODE 2210-01-M

Advisory Committee on Civil Rules, Meeting

AGENCY: Advisory Committee on the Federal Rules of Civil Procedure, Judicial Conference of the United States.

ACTION: Notice of open meeting.

SUMMARY: There will be a three-day meeting of the Judicial Conference Advisory Committee on Civil Rules to consider proposed amendments to the Federal Rules of Civil Procedure pursuant to Chapter 131 of Title 28, United States Code. The meeting will be open to public observation.

DATE: The meeting will be held on November 16, 17 and 18, 1989, beginning at 9:00 a.m.

ADDRESS: The meeting will be held in the Clark Room at the Federal Judicial Center, Dolley Madison House, 1520 H Street NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: James E. Macklin, Jr., Secretary, Committee on Rules of Practice and Procedure, Administrative Office of the United States Courts, Washington, DC 20544, Telephone: (202) 633-6021.

Dated: September 28, 1989.

James E. Macklin, Jr.,

Secretary, Committee on Rules of Practice and Procedure.

[FR Doc. 89-21222 Filed 9-8-89; 8:45 am]

BILLING CODE 2210-01-M

DEPARTMENT OF JUSTICE

Antitrust Division

National Cooperative Research Act of 1984; American Iron and Steel Institute Direct Steelmaking Project and Steel Technology Corp.

Notice is hereby given that, on August 21, 1989, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), American Iron and Steel Institute ("AISI") and Steel Technology Corporation filed a written notification simultaneously with the Attorney General and the Federal Trade Commission of a project entitled: "AISI Direct Steelmaking Project." The notification discloses (1) the identities of the parties to the project and to Steel Technology Corporation and (2) the nature and objectives of the project and of Steel Technology Corporation. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties to the project and to Steel Technology Corporation and their general areas of planned activities are given below.

The parties to the project are Department of Energy, American Iron and Steel Institute (AISI), Steel Technology Corporation, and the following member companies of AISI: Acme Steel Company; Armco Inc.; Atlantic Steel Company; Avesta Stainless Inc.; Berg Steel Pipe Corporation; Bethlehem Steel Corporation; California Steel Industries, Inc.; Citisteel USA, Inc.; Cleveland-Cliffs Inc.; Copperweld Corporation; A. Finkl & Sons Co.; Geneva Steel Company; Georgetown Industries, Inc.; Gulf States Steel, Inc.; M.A. Hanna Company; Harsco Corporation; Hi Specialty America; Inland Steel Industries, Inc.; Earle M. Jorgensen Company; Laclede Steel Company; Lone Star Steel Group, Lone Star Technologies, Inc.; LTV Steel, Inc.; Lukens Inc.; McLouth Steel Products Corporation; National Steel Corporation; North Star Steel Company; Ocean State Steel, Inc.; Oglebay Norton Company; Raritan River Steel Company; Rouge Steel Company; Sandvik Inc.; Sharon Tube Company; Shenango Incorporated; Stony Creek Steel, Inc.; The Timken Company; USS, a Division of USX Corporation; Valley-Vulcan Mold Company; Warren Consolidated Industries, Inc.; Weirton Steel Corporation; Wheatland Tube Company; Wheeling-Pittsburgh Steel Corporation.

The purpose of the project is to develop a coal-based continuous in-bath smelting process for the direct and energy-efficient production of liquid steel. The project will consist of laboratory studies, pilot-scale research and development and full-scale plant trials at existing steelmaking facilities. At the conclusion of the experimental work, an analysis will be made of the feasibility of commercializing a coal-based, continuous direct steelmaking process in the United States. The project will be conducted under the auspices of the Department of Energy's Steel Initiative Program.

In conjunction with the Direct Steelmaking Project and as required by the Steel Initiative Program, AISI and its members have established a holding company, Steel Technology Corporation, for the purpose of holding title to, protecting, licensing and administering intellectual property developed under the Direct Steelmaking Project. Steel Technology Corporation will conduct, on behalf of the participants in the project, such activities as patenting, licensing, accounting, recordkeeping, and funds distributing relating to inventions arising out of the project.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 89-21259 Filed 9-8-89; 8:45 am]

BILLING CODE 4410-01-M

National Cooperative Research Act of 1984; Portland Cement Association

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 et seq. ("the Act"), the Portland Cement Association ("PCA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission on August 16, 1989, disclosing that there has been a change in the membership of PCA. Specifically, Blue Circle West Inc. should now be listed as BCW Inc. Also, Cemtech, Inc. has become a participating associate effective July 15, 1989. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Accordingly, at present the members of the PCA are those companies listed below:

United States

Aetna Cement Corporation
Alamo Cement Company
Alaska Basic Industries
Ash Grove Cement Company
Ash Grove Cement West, Inc.
Blue Circle Atlantic, Inc.
Blue Circle, Inc.
BCW Inc.
Calaveras Cement Company
CalMat Co.
Capitol Aggregates, Inc.
Continental Cement Company Inc.
Coplay Cement Company
Davenport Cement Company
Dragon Products Company
Dundee Cement Company
Glens Falls Cement Company, Inc.
Hawaiian Cement
Hercules Cement Company
Ideal Basic Industries, Inc.
Independent Cement Corporation
Lafarge Corporation
Lehigh Portland Cement Company
LoneStar-Falcon
Lone Star Industries, Inc.
Lone Star Northwest
Medusa Cement Corporation
Missouri Portland Cement Company
The Monarch Cement Company
National Cement Company, Inc.
National Cement Company of California, Inc.
Northwestern States Portland Cement Co.
Phoenix Cement Company
RC Cement Co., Inc.
Rinker Materials Corporation
River Cement Company
RMC Lonestar
Rochester Portland Cement Corporation
St. Marys Peerless Cement Company
St. Marys Wisconsin Inc.
Santee Portland Cement Corp.
Signal Mountain Cement Company
The South Dakota Cement Plant
Southwestern Portland Cement Company
Tarmac-LoneStar, Inc.
Tilbury Cement Company

Canada

Federal White Cement Ltd.
Ideal Cement Company Ltd.
Inland Cement Limited
Lafarge Canada Inc.
Lake Ontario Cement Limited
North Star Cement Limited
St. Lawrence Cement Inc.
St. Marys Cement Corporation
Tilbury Cement Limited

Mexico

Instituto Mexicano del Cemento y del Concreto (IMCYC)
Cementos Acapulco, S.A.
Cementos Apasco, S.A.
Cementos de Chihauahua, S.A.
Cementos Mexicanos, S.A.
Cementos Moctezuma, S.A.
Cooperative de Cementos Curz Azul
Cooperative de Cementos Hidalgo

Affiliate Members

Cement and Concrete Promotion Council of Texas
Florida Concrete and Products Association
Mississippi Concrete Industries Association
North Central Cement Promotion Association
Northern California Cement Promotion Group
Northwest Concrete Promotion Group
Rocky Mountain Cement Promotion Council
South Central Cement Promotion Association
Southern California Cement Group

In addition, the following equipment suppliers are involved as "Participating Associates," together with PCA members, in the activities of the Manufacturing Process Subcommittee of PCA's General Technical Committee:

Baker-Dolomite (DBCA)
C-E Raymond
Cemtech, Inc.
Claudius Peters, Inc.
F. L. Smidth and Company
Holderbank Consulting Ltd.
Humboldt Wedag Company
Magotteaux-Slegten Companies
Polysius Corp.
The Fuller Company
W.R. Grace & Company

On January 7, 1985, PCA filed its original notification pursuant to section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the **Federal Register** pursuant to section 6(b) of the Act on February 5, 1985, 50 FR 5015. On March 14, 1985, August 13, 1985, January 3, 1986, February 14, 1986, May 30, 1986, July 10, 1986, December 31, 1986, February 3, 1987, April 17, 1985, June 3, 1987, July 29, 1987, August 6, 1987, October 9, 1987, February 16, 1988, March 9, 1988, March 11, 1988, July 7, 1988, August 9, 1988, August 23, 1988, January 23, 1989, February 24, 1989, march 13, 1989, May 25, 1989, and July 20, 1989, PCA filed additional written notifications. The Department published notices in the **Federal Register** in response to these additional notifications on April 10, 1985 (50 FR 14175), September 16, 1985 (50 FR 37594), February 4, 1986 (51 FR 4440), March 12, 1986 (51 FR 8573), June 27, 1986 (51 FR 23479), August 14, 1986 (51 FR 29173), February 3, 1987 (52 FR 3356), March 4, 1987 (52 FR 6635), May 14, 1987 (52 FR 18295), July 10, 1987 (52 FR 28183), August 26, 1987 (52 FR 32185), November 17, 1986 (52 FR 43953), March 28, 1988 (53 FR 9999), August 4, 1988 (53 FR 29397), September 15, 1988 (53 FR 35935), September 28, 1988 (53 FR 37883),

February 23, 1989 (54 FR 7894), March 20, 1989 (54 FR 11455), April 25, 1989 (54 FR 17835), June 28, 1989 (54 FR 27220), and August 23, 1989 (54 FR 35092), respectively.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 89-21260 Filed 9-8-89; 8:45 am]

BILLING CODE 4410-01-M

National Cooperative Research Act of 1984; Forecast Update of U.S. Transportation Fuel Quality; Southwest Research Institute

Notice is hereby given that, on August 15, 1989, pursuant to section 6(a) of the National Cooperative Research act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Southwest Research Institute ("SwRI") filed a written notification simultaneously with the Attorney General and the Federal Trade Commission of a project entitled "Forecast Update of U.S. Transportation Fuel Quality". The notification discloses (1) the identities of the parties to the project and (2) the nature and objective of the project. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the act, the identities of the parties to the project and its general areas of planned activities are given below:

The parties to the project are:

1. Burlington Northern Railroad Co. (effective April 1, 1989).
2. Texaco, Inc.(effective April 1, 1989).
3. Toyota Motor Corporation (effective April 1, 1989).
4. Euron S.p.A. (effective April 1, 1989).

The purpose of the project is to provide a forecast of future fuel quality (gasoline, diesel and jet fuel) that will be a useful planning tool in the automotive, fuels and transportation industries. The major tasks involve: (1) gathering new information from multiple sources that relates to fuel quality; (2) evaluating the new information and interpreting its potential effects on future fuel quality; (3) considering in-depth those factors which may result in changes to the previous forecast; and (4) reporting forecasts of fuel properties.

Membership in this group research project remains open, and the parties intend to file additional written notification disclosing all changes in membership of this project.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 89-21261 Filed 9-8-89; 8:45 am]

BILLING CODE 4410-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-269, 50-270 and 50-287]

Duke Power Co.; Environmental Assessment and Finding of no Significant Impact

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR-38, DPR-47, and DPR-55 issued to Duke Power Company (the licensee) for operation of the Oconee Nuclear Station, Units 1, 2 and 3, located in Oconee County, South Carolina.

Environmental Assessment

Identification of Proposed Action

The proposed amendments would revise the provisions in the Technical Specifications (TS) to allow a one-time outage time of 10 days for inoperability of power circuit breaker (PCB) 9.

The proposed action is in accordance with the licensee's application for amendments dated June 9, 1989.

The Need for the Proposed Action

The proposed changes to the TS are required to allow replacement of PCB-9 with a breaker of higher fault current interruption capability.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revisions to the TS. The proposed revision would allow the licensee to replace PCB-9 which would require that the overhead emergency power path be inoperable for 10 days. Although the extension of the inoperable period may slightly increase the probability of accidents, the consequences of the accidents are within the bounds of those analyzed in the FES for operation. After the modification, the probability of accidents will be reduced due to increased reliability. Consequently, no changes are being made in the types of any effluents that may be released offsite and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential nonradiological impacts, the proposed changes to the TS involve systems which are not located within the restricted area as defined in 10 CFR part 20. These changes do not affect nonradiological plant effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendments.

The Notice of Consideration of Issuance of Amendments and Opportunity for Hearing in connection with this action was published in the **Federal Register** on July 12, 1989 (54 FR 29405). No request for hearing or petition for leave to intervene was filed following this notice.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendments. This would not reduce environmental impacts of plant operation and would prevent implementation of the modification which would provide increased reliability of the overhead emergency power path.

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 Oconee Nuclear Station, Units 1, 2 and 3, dated March 1972.

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 amendments.

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 this action, see the application for amendments dated June 9, 1989, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691.

Dated at Rockville, Maryland, this 1st day of Sept. 1989.

For the Nuclear Regulatory Commission.

Lawrence P. Crocker,

Acting Director, Project Directorate II-3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89-21277 Filed 9-8-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-369 and 50-370]

Duke Power Co.; Issuance of Environmental Assessment and Finding of no Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF-9 and NPF-17 issued to Duke Power Company (the licensee), for operation of the McGuire Nuclear Station, Units 1 and 2, located in Mecklenburg County, North Carolina.

Environmental assessment

Identification of Proposed Action

A planned modification to the McGuire Nuclear Station will add new areas to the station for use in holding, processing and reduction of liquid and solid radwaste materials. As a result of the modification, a new Heating, Ventilation and Air Conditioning (HVAC) system will be added to provide ventilation services for the new area and some areas previously serviced by the Auxiliary Building Filtered Ventilation Exhaust (ABFVE) system. This will require a change to existing ABFVE system flowrates given in the Technical Specifications (TS) because the reduction in the area served by the ABFVE system will result in lower ABFVE system flowrates to the Unit 1 and 2 Vents. Presently, the flowrates listed in TS 4.7.7 are 54,000 CFM +/− 10% for Unit 1 and 43,000 CFM +/− 10% for Unit 2. Upon completion of the modification, these values will be reduced to 45,700 CFM +/− 10% for Unit 1 and 40,500 CFM +/− 10% for Unit 2,

The modification will also relocate an existing gaseous effluent release point, and relocate an existing radiation monitor (EMF 53). Relocating the release point requires a change to TS Figure 5.1-3 that identifies the location of the existing McGuire gaseous release points. A more legible copy of Figure 5.1-3 would also be substituted. Also, administrative changes to several TS tables are proposed to rename the "Contaminated Parts Warehouse Ventilation System" to the "Waste Handling Ventilation System."

The proposed amendments would change the McGuire TS consistent with the above planned modifications. The above proposed changes will affect TS 4.7.7, "Auxiliary Building Filtered Ventilation Exhaust System—Surveillance Reqirements;" Table 3.3-13 (Item 8), "Radioactive Gaseous Effluent Monitoring Instrumentation—Contaminated Parts Warehouse Ventilation System;" Table 4.3-9 (Item 8), "Radioactive Gaseous Effluent Monitoring Instrumentation Surveillance Requirements—Contaminated Parts Warehouse Ventilation System;" Table 4.11-2 (Item 4b), "Radioactive Gaseous Waste Sampling and Analysis Program—Contaminated Parts Warehouse;" and Figure 5.1-3, "Site Boundary for Gaseous Effluents."

The Need for the Proposed Action

The changes to the TS are needed to reflect station modifications to improve the handling and processing of radioactive waste and to provide improved housing and ventilation systems for waste handling and processing areas.

Environmental Impacts of the Proposed Action

A proposed modification to the facility will achieve further improvements in the processing, storage and reduction of solid and liquid contaminated materials to be disposed of as low-level radioactive waste and in the decontamination of reusable materials. A new high-density waste shredder and compactor will reduce solid radwaste disposable volume and associated requirements for temporary holding area space. A new laundry dry cleaning system using a re-usable dry cleaning solvent will reduce waste water by replacing the existing laundry decontamination facility that uses conventional water wash machines. New decontamination equipment will replace existing equipment that uses aggressive cleaning chemicals that are not compatible with materials of construction or with the process media in the radwaste system. The new decontamination equipment will also be more effective in the removal of oil, grease, paint and adhesive residues from surfaces; and unlike existing equipment, can be used to decontaminate electrical equipment.

The equipment will be housed in a new addition to the north end of the Auxiliary Service Building. This new addition will also provide space for temporary radwaste storage, handling and shipping; and will provide additional space for health physics offices and the chemistry laboratory. The existing Waste Storage Building is being modified to be an enclosed structure adjoining the Auxiliary Service Building, with direct access provided between the two.

Enclosing the Waste Storage Building provides for the addition of an HVAC system to service the radwaste areas and new building areas. This will ensure that potential airborne contamination in these areas will be collected, monitored, filtered and exhausted 68 feet above grade level. The new release point is through a vent stack located 60 feet from the existing location. The new stack provides for improved atmospheric disperson of the gaseous effluent because it is higher than the existing release point and is more favorably located with respect to nearby structures. Existing radiation monitor EMF 53 will be relocated to monitor all exhaust gases for the new release point and will continue to terminate releases automatically if significant radiation levels are sensed. Since the new HVAC system will service some areas presently serviced by the ABFVE, changes to the TS are needed to reflect reduced ABFVE system flowrates. TS changes are also needed to reflect the new elevated gaseous release point and changes in structure terminology.

The NRC has reviewed the proposed facility modification and finds no significant adverse environmental impact. Moreover, the proposed changes would represent significant improvements in environmental impacts associated with plant operation. Nonradiological environmental impacts would be improved by the new waste solidification equipment which eliminates the use of volatile chemicals for the waste solidification media and by new decontamination equipment no longer dependent upon aggressive cleaning chemicals. Radiological environmental impacts would be improved as noted above by reducing the disposable volume of solid and liquid radioactive waste and through improvements in the ventilation systems for associated buildings. The new ventilation systems and the existing ABFVE system with adjusted flowrate would provide a suitable environment for workers to maintain occupational radiological exposures within the limits of 10 CFR part 20 and would be consistent with maintaining occupational radiological exposure as low as is reasonably achievable. Moreover, the proposed modifications and TS changes would not result in a significant increase in individual or cumulative occupational exposure. The gaseous curie released to unrestricted

areas and associated offsite doses during normal operation or after postulated accidents would not be increased by the proposed facility modifications or the associated TS changes. The modifications and TS changes also would not change the type of radioactivity released to unrestricted areas.

Accordingly, the Commission concludes that this proposed action would result in no significant adverse environmental impact.

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 amendments. This would not reduce environmental impacts of plant operation and would preclude improvements in the processing, storage and reduction of solid and liquid contaminated materials to be disposed of as low-level radioactive waste.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the "Final Environmental Statement Relating to Operation of the William B. McGuire Nuclear Station, Units 1 and 2," dated April 1976 or its addendum dated January 1981.

Agencies and Persons Consulted

The NRC staff has 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 amendments.

Based on the foregoing environmental assessment, we conclude that the proposed action will not have a significant adverse effect on the quality of the human environment.

For further details with respect to this action, see the application for amendments dated May 11, 1989 and supplemental letter of June 14, 1989. These documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

Dated at Rockville, Maryland, this 31st day of August 1989.

For the Nuclear Regulatory Commission.

David B. Matthews,

Director, Project Directorate II-3, Division of Reactor Projects—I/II Office of Nuclear Reactor Regulation.

[FR Doc. 89-21278 Filed 9-8-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-224]

Environmental Assessment and Finding of No Significant Impact Regarding Proposed Order Authorizing Dismantling of the Reactor and Disposition of Component Parts University of California, Berkeley

The Nuclear Regulatory Commission is considering issuance of an Order authorizing the University of California, Berkeley (UCB) to dismantle their TRIGA research reactor facility located on the licensee's campus in Berkeley, California and to dispose of the reactor components in accordance with the application dated January 8, 1988, as supplemented on January 31, 1989 and April 14, 1989.

Environmental Assessment

Identification of Proposed Action: By application dated January 8, 1988, as supplemented, UCB requested authorization to decontaminate and dismantle the TRIGA research reactor, to dispose of its components parts in accordance with the proposed dismantling plan, and to terminate Facility Operating License No. R-101. The UCB TRIGA was shutdown in December 1987, and has not operated since then. Following reactor shutdown the fuel was removed from the core and shipped as directed by the Department of Energy in accordance with DOE, NRC, and DOT requirements.

Opportunity for hearing was afforded by a "Notice of Proposed Issuance of Orders Authorizing Disposition of Component Parts and Terminating Facility License" published in the **Federal Register** on March 10, 1988 (53 FR 7823).

The City of Berkeley filed a "Petition To Intervene in License Amendment Proceeding, Request For Hearings And Further Relief." The city and the licensee held discussion, arrived at a settlement agreement and filed a "Joint Motion For Dismissal Of Hearing Procedure" with the Atomic Safety and Licensing Board. The Board issued an Order on January 5, 1989 to dismiss the proceeding.

Need for Proposed Action: In order to prepare the facility for unrestricted access and use, the dismantling and decontamination activities proposed by UCB must be accomplished.

Environmental Impact of the Proposed Action: All decontamination will be performed by trained personnel in accordance with previously reviewed procedures and will be overseen by experienced health physics staff. Solid and liquid waste will be removed from the facility and managed in accordance with NRC requirements. The staff has calculated that the collective dose equivalent to the staff and public for the project will be less than 8 person-rem.

These conclusions were based on the fact that all proposed operations are carefully planned and controlled, all contaminated components are removed, packaged, and shipped offsite, and that the radiological control procedures ensure that releases of radioactive wastes from the facility are within the limits of 10 CFR part 20 and are as low as reasonably achievable (ALARA).

Based on the review of the specific proposed activities associated with the dismantling and decontamination of the UCB facility, the staff has determined that there will be no significant increase in the amounts of effluents that may be released offsite, and no significant increase in individual or cumulative occupational or population radiation exposure.

The staff has also determined that the proposed activities will not result in any significant impacts on air, water, land, or biota in the area.

Alternative Use of Resources: The only alternative to the proposed dismantling and decontamination activities is to maintain the facility as a restricted area. This approach would include monitoring and reporting for the duration of the safe storage period. However, the UCB intends to use the area for other academic purposes.

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 action 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 detailed information with respect to this proposed action, see the application for dismantling, decontamination and license termination dated January 8, 1988, as supplemented and the Safety Evaluation prepared by the staff. These documents

are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555.

Dated at Rockville, Maryland this 5th day of September 1989.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactor, Decommissioning and Environmental Project Directorate Division of Reactor Projects III, IV, V and Special Projects Office of Nucear Reactor Regulation.

[FR Doc. 89-21279 Filed 9-8-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-320]

GPU Nuclear Corp; 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. DPR-23 to General Public Utilities Nuclear Corporation (GPUN or the licensee), for Three Mile Island Nuclear Generating Station, Unit No. 2 (TMI-2) located in Dauphin County, Pennsylvania.

Environmental Assessement

Identification of Proposed Action

The proposed amendment would revise the Appendix A Technical Specifications (TS) relating to the disposal of the Accident Generated Water (AGW). The proposed action is in response to the licensee's application dated February 25, 1987 and revised April 13, 1987.

The Need for the Proposed Action

The NRC staff, in response to the licensee's application for a change in the technical specifications to allow the disposal of the AGW, prepared Supplement 2 to the Programmatic Environmental Impact Statement (PEIS) related to decontamination and disposal of radioactive wastes resulting from the March 28, 1979 accident at TMI-2. Final Supplement 2 to the PEIS, issued in June 1987, evaluated the licensee's proposal and a number of alternatives for the disposal of AGW.

Subsequent to the issuance of Final Supplement 2 the licensee has modified its plans for pretreatment and for the packaging and shipping of the evaporator bottoms to the commerical low level waste disposal site near Richland, Washington. Since the current proposal is different than that evaluated in Final Supplement 2 the staff has evaluated the impacts associated with this change and has determined that implementation of the licensee's plan would result in impacts different than those reported for the licensee's proposal in Supplement 2 to the PEIS.

Environmental Impacts of the Proposed Action

The licensee's original proposal involved feeding the water, which was to be pretreated by ion exchange, to a modified commerically available evaporator. The majority of the liquid would be released to the atmosphere and the residue (evaporator bottoms) would be mixed with Portland cement and the slurry poured into containers for solidification. The solid waste would then be transported to a commerical NRC-licensed low level waste disposal site, near Richland, Washington. The total solidified volume was expected to be between 27,000 and 46,000 ft ^{3}. Approximately 80 to 250 shipments between TMI-2 and Richland, Washington would be required. The number of injuries and fatalities due to trucking accidents estimated for the shipping campaign ranged from 0.5 to 1.6 and from 0.04 to 1.3 respectively.

No occupational exposure to the truck crews resulting from the shipping of the evaporator bottoms was expected. No routine radiological dose to the public was calculated due to the low specific activity of the solidified waste and the self shielding characteristics of the Portland cement binder. Likewise no radiation exposure to the public in the event of a trucking accident was expected since dispersal of the solidified evaporator bottoms was unlikely. The total cost of shipping the solidified waste was estimated to be between $410,000 and $690,000.

The licensee's current proposal is to still evaporate the AGW in a commerically available evaporator. However, the evaporator may be used in place of ion exchange for pretreatment. The solid waste stream may contain radionuclides that were expected to be shipped offsite in spent ion exchange resin liners. For the purposes of this assessment the maximum concentration permissible in class A waste was assumed for determining dose. Additionally the evaporator bottoms will, not be mixed with a binder and solidified. Instead the bottoms will be pelletized, dried and the pellets packaged in 55 gallon drums and shipped to Richland, Washington. The packaging and shipment of the dry pelletized waste will be in conformance with all regulations governing shipment of low level wastes. The number of shipments is expected to be 14. The number of injuries and fatalities due to trucking accidents for the shipping campaign is estimated at 0.09 and 0.007 repectively. For the entire shipping campaign the dose of the truck crews was estimated at 3.5 person-rem and the estimated dose to the general public along the shipping route (1.3 million people) is 3.6 person-rem.

There is also a small probability that a shipping accident may be severe enough to result in the breach of a waste container and release of some of the waste. To determine the risk of radiation exposure from a damaged waste container, the staff used a model that estimates the population dose by multiplying accident frequences (the expected number of accidents) by accident consequences. Using these methodology the staff estimated that a dose of about 0.16 person-rem would result from accidents during shipment of all the AGW waste. The shipping cost of the dry pelletized waste is estimated at $70,000.

Based on the reduced level of injuries and fatalities associated with the reduced number of shipments, the small estimated dose to the general population along the truck route and the low level of truck crew exposure the staff concludes that there are no significant adverse environmental impacts associated with the proposed action. Furthermore, the staff recognizes that the licensee's proposal would result in a significant decrease in the amount of waste to be disposed and a significant reduction in the overall cost of shipping.

Alternatives to the Proposed Action.

Since the staff concluded that there are no significant environmental effects that would result from the proposed action, any alternative with equal or greater environmental impacts need not be evaluated. The principal alternative to the licensee's current proposal would be the licensee's original proposal which was to solidify the wastes prior to shipment. Implementation of this alternative would result in increased cost, increase waste, and increased potential for transportation related accidents without a significant reduction in radiation dose to either the public or the truck crews.

Alternative Use of Resources.

This action does not involve the use of any resources not previously considered in Supplement 2 to the PEIS dated June 1987.

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 further supplement the environmental impact statements 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 February 25, 1987 revised April 13, 1987, the staff's Final Supplement 2 to the PEIS dated June 1987, and the licensee's Technical Evaluation Report dated October 7, 1988, which are all available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the State Library of Pennsylvania Government Publications Section, Education Building, Walnut Street and Commonwealth Avenue, Harrisburg, Pennsylvania 17126.

Dated at Rockville, Maryland, this 31st day of August 1989.

For the Nuclear Regulatory Commission.

John F. Stolz, Director,

Project Directorate I-4 Division of Reactor Projects—I/II Office of Nuclear Reactor Regulation.

[FR Doc. 89-21213 Filed 9-8-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-454 and 50-455]

Commonwealth Edison Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (Commission) is considering issuance of amendment to Facility Operating License Nos. NPR-37 and NPF-66, issued to the Commonwealth Edison (the licensee), for operation of the Byron Station, Units 1 and 2 located in Ogle County, Illinois.

The amendments would change the Technical Specifications to reflect the use of VANTAGE 5 fuel.

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 regulation

By October 1, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interst may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practices for Domestic Licensing Proceedings" in 10 CFR part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, Gelman Building, 2120 L Street NW., Washington, DC by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Paul C. Shemanski: 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 General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Michael Miller, Esq., 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 request for hearing will not be entertained absent a determination by the Commission, the presiding officer to the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)-(v) and 2.714(d).

If a request for a hearing if received, the Commission's staff may issue the amendment 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 amendment dated July 31, 1989, which is available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Streeet NW., Washington, DC 20555, and at the Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61101.

Dated at Rockville, Maryland, this 1st day of September 1989.

For the Nuclear Regulatory Commission.

Leonard N. Olshan,

Project Manager, Project Directorate III–2, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 89–21280 Filed 9–8–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–341]

Detroit Edison Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 35 to Facility Operating License No. NPF–43 issued to Detroit Edison Company (the licensee), which revised the Technical Specifications for operation of Fermi-2, located in Monroe County, Michigan.

The amendment is effective as of the date of issuance.

The amendment revises the TS to reflect the modifications made to the Automatic Depressurization System (ADS). The ADS will be modified in accordance with TMI Action Plan II.K.3.18 of NUREG–0737.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on July 13, 1989 (54 FR 29622). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human behavior environment.

For further details with respect to the action, see (1) the application for amendment dated April 3, 1989, (2) Amendment No. 35 to License No. NPF–43, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the Local Public Document Room. A copy of items (2), (3), and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—III, IV, V, and Special Projects.

Dated at Rockville, Maryland, this 30th day of August.

For the Nuclear Regulatory Commission.

John F. Stang,

Project Manager, Project Directorate III–1, Division of Reactor Projects—III, IV, V, and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89–21281 Filed 9–8–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–341]

Detroit Edison Co., Wolverine Power Supply Cooperative, Inc.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 36 to Facility Operating License No. NPF–43 issued to Detroit Edison Company (the licensee), which revised the Technical Specifications for operation of Fermi–2, located in Monroe County, Michigan.

The amendment is effective as of the date of issuance.

The amendment revises the Technical Specification (TS) relating to the Source Range Monitors (SRM) to permit complete core off-loading during the first refueling outage. The proposed amendment also increases the minimum signal-to-noise ratio required for a reduced SRM minimum count rate requirement and eliminates a related TS provision which is no longer needed.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on July 11, 1989 (54 FR 29117). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human behavior environment.

For further details with respect to the action, see (1) the application for amendment dated April 3, 1989, (2) Amendment No. _____ to License No. NPF–43, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, and at the Local Public Document Room. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects III, IV, V and Special Projects.

Dated at Rockville, Maryland, this 30th day of August 1989.

For the Nuclear Regulatory Commission

John F. Stang,

Project Manager, Project Directorate III–1, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89–21282 Filed 9–8–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–213]

Connecticut Yankee Atomic Power Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendment to Facility Operating License No. DPR–61 and issued to Connecticut Yankee Atomic Power Company (CYAPCO/licensee) for operation of the Haddam Neck Plant located in Middlesex County, Connecticut.

The proposed amendment would provide revised Technical Specifications to reflect changes associated with the Haddam Neck Plant fire detection/suppression system upgrades in support of the new switchgear building. These changes consist of the installation of additional fire detectors, an increase in the minimum number of these detectors required to be operable, relocation of hose stations, and the addition of the new fire detection and suppression systems associated with the new switchgear building.

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 October 10, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "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 pre-hearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the 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, the Gelman Building, 2120 L Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petition 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 John F. Stolz: 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 Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499 (attorney for the licensee).

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of 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 section, see the application for amendment dated July 31, 1989, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555, and at the Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Dated at Rockville, Maryland, this 31st day of August, 1989.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I-4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89-21214 Filed 9-8-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-213]

Connecticut Yankee Atomic Power Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendment to Facility Operating License No. DPR-61 and issued to Connecticut Yankee Atomic Power Company (CYAPCO/licensee) for operation of the Haddam Neck Plant located in Middlesex County, Connecticut.

During the upcoming 1989 refueling outage, CYAPCO will upgrade the reactor protection system (RPS) and the nuclear instrumentation system (NIS) by making advanced technology, hardware changes. These changes will improve RPS and NIS reliability and redundancy. The proposed amendment would change the Technical Specifications to reflect modifications to be made to upgrade the RPS and the NIS.

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 October 10, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "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 an 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 for the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the 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, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–800–325–6000 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addresssed to John F. Stolz: 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 Gerald Garfield, Esquire, Day, Berry & Howard, Counselers at Law, City Place, Hartford, Connecticut 06103–3499 (attorney for licensee).

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of 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 amendment dated July 28, 1989, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Dated at Rockville, Maryland, this 31st day of August, 1989.

For the Nuclear Regulatory Commission,

John F. Stolz,

Director, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89–21215 Filed 9–8–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–213]

Connecticut Yankee Atomic Power Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendment to Facility Operating License No. DPR–61 and issued to Connecticut Yankee Atomic Power Company (CYAPCO/licensee) for operation of the Haddam Neck Plant located in Middlesex County, Connecticut.

The proposed amendment would upgrade the current custom Technical Specification (TS) format to the Westinghouse Standard-Format Technical Specifications (WSTS). The NRC staff and Connecticut Yankee Power Company (CYAPCO) agreed that the proposed amendment would represent an interim step before CYAPCO addresses a full WSTS conversion. All sections of the current custom TS will be re-formatted and upgraded except for Sections 3.6, "Core Cooling Systems," 3.7, "Minimum Water Volume and Boron Concentration in the Refueling Water Storage Tank," 3.12, "Station Service Power," 4.3, "Core Cooling Systems-Periodic Testing" and 4.5, "Emergency Power System Periodic Testing." Sections 3.6, 3.7, 3.12, 4.3 and 4.5 will be re-formatted under separate amendment requests. CYAPCO has stated that the current TS requirements will be maintained, that the proposed amendment will not change the facility as described in the Licensing Basis Documents and no changes will be made to the Final Safety Analysis Reprot (FSAR). Furthermore, CYAPCO has stated that the proposed changes will result in additional limitations, restrictions or controls to conform to the WSTS

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 October 10, 1989, the license may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "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 intervne or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the 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, the Gelman Building, 2120 L Street, NW. Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–800–325–6000 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John F. Stolz: 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 Gerald Garfield, Esquire, Day, Berry & Howard, Counselers at Law, City Place, Hartford, Connecticut 06103–3499.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

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 amendment dated October 26, 1988, as supplemented March 6, June 2 and 23, July 28 and August 4, 1989, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. 20555, and at the Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Dated at Rockville, Maryland, this 31st day of August, 1989.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–4, Division of Reactor Projects—I/II Office of Nuclear Reactor Regulation.

[FR Doc. 89–21216 Filed 9–8–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–413 and 50–414 License Nos. NPF–35 and NPF–52 EA 89–46]

Duke Power Co. (Catawba Units 1 and 2); Order Imposing Civil Monetary Penalty

Duke Power Company, Charlotte, North Carolina (licensee) is the holder of Operating License Nos. NPF–35 and NPF–52 (licenses) issued by the Nuclear Regulatory Commission (Commission or NRC) on January 17, 1985 and May 15, 1986, respectively. The licenses authorize the licensee to operate Catawba Units 1 and 2 in accordance with the conditions specified therein.

II

NRC inspection of the licensee's activities under the license was conducted on November 27, 1988—February 4, 1989. The results of this inspection indicated that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the licensee by letter dated May 19, 1989. The Notice stated the nature of the violations, the provisions of the NRC's requirements that the licensee had violated, and the amount of the civil penalty proposed civil penalty and requested that the civil penalty be partially mitigated. In addition, the licensee asserted that Violation B should be categorized as a Severity Level IV instead of a Severity Level III violation.

III

After consideration of the licensee's response and the statement of fact, explanation, and argument for partial mitigation of Violation A and recategorization of Violation B contained therein, the Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support (DEDS) has determined, as set forth in the Appendix to this Order, that the penalty proposed for Violation A designated in the Notice of Violation and Proposed Imposition of the Civil Penalty should be imposed, and that Violation B was properly categorized.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *It Is Hereby Ordered* That:

The licensee pay a civil penalty in the amount of Seventy-Five Thousand Dollars ($75,000) within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

V

The licensee may request a hearing within 30 days of the date of this Order. A request for a hearing shall be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555, with copies to the Assistant General Counsel for Hearings and Enforcement, at the same address, the Regional Administrator, Region II, 101 Marietta Street, NW., Atlanta, Georgia 30323, and a copy to the NRC Resident Inspector at Catawba.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the licensee fails to request a hearing within 30 days of the date of this Order, the provisions to this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be whether on the basis of Violation A set forth in the Notice of Violation and Proposed Imposition of Civil Penalty referenced in section II above, which the licensee has admitted, the Order to pay a Seventy-Five Thousand Dollar civil penalty should be sustained.

Dated at Rockville, Maryland this 31st day of August 1989.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support.

Appendix—Evaluations and Conclusions

On May 19, 1989, a Notice of Violation and Proposed Imposition of Civil Penalty was issued for violations identified during a routine NRC inspection. The Notice cited two Severity Level III violations, and proposed a civil penalty for Violation A. Duke Power Company (DPC) responded to the Notice on June 16, 1989. In its response, the licensee requested mitigation of the proposed Civil Penalty and a reduction in severity level of Violation B. The NRC's evaluation and conclusions regarding DPC's arguments are as follows:

Restatement of Violation

Violation A

Technical Specification 3.6.5.6 requires in Modes 1 through 4 that two independent Containment Air Return and Hydrogen Skimmer Systems (VX) be OPERABLE. With one Containment Air Return and Hydrogen Skimmer System (VX) inoperable, the inoperable system shall be restored to OPERABLE status within 72 hours or the unit is to be in the least HOT STANDBY within the next 6 hours, and in COLD SHUTDOWN within the following 30 hours.

Contrary to the above, during a period of 42 days from February 19, 1988 to April 1, 1988, Unit 2 operated in Modes 1 through 4 with one of the two independent Containment Air Return and Hydrogen Skimmer Systems (VX) inoperable. During this period, both trains of VX were required to be operable.

Proposed Civil Penalty—$75,000

Summary of Licensee's Response

Duke Power Company admits the violation occurred. However, the licensee maintains that escalation of the base civil penalty to $75.000 was not warranted and proposes that the civil penalty be mitigated to $25,000.

The licensee's response addresses the following three mitigation factors and other reasons for mitigation as summarized below.

Identification and Reporting. The licensee maintains that the NRC characterization that the post modification test should have been capable of detecting this unique problem is in error. The licensee contends that their Post Modification Testing and Independent Verification Programs work together in detecting problems, and that the performance test (the VX test), used as the post modification test in this situation, worked properly in evaluating VX operability. The impact of the "sneak-path" established by the wiring error was not fully understood for the VX performance test until lengthy and detailed tests were performed recreating the original miswired condition.

Corrective Action to Prevent Recurrence. The Notice stated, "the base penalty for Violation A was increased by 50 percent becasue initial corrective actions were narrowly focused on correcting the improperly installed electrical wiring and failed to address the broader problem of inadequate PMT."

The licensee's response states that the 50 percent escalation of the civil penalty was inappropriate for two reasons:

—A major effort was required to understand the reason for the failure of the VX Periodic Test to catch the unique error. The comprehensive aspect of that review and the revision of LER 414/88–33 that reported those findings showed initiative on their part to ensure this situation would not recur. The issues of licensee initiative and comprehensive action are both factors for mitigation in this category.

—The improvement made to the PMT process through the TOPFORM program have come about subsequent to this modification and as a result no other similar violations have occurred. Further, the additional "lessons learned" approach taken shows "exstensive" corrective action in PMT to prevent recurrence.

The licensee contends that rather than a 50 percent escalation of the base penalty, a 50 percent reduction should be applied since the actions taken in regard to PMT and those that are ongoing have been complete and timely in preventing recurrence.

Past Performance. The licensee's reply contends that with no similar problems in the past two years and an overall SALP 2 rating, which is clearly "adequate," at least a 50 percent reduction in the base civil penalty should be applied.

Other Reasons for Mitigating the Civil Penalty. The licensee's response argues that the issue of safety significance must play a part in establishing a final level of the civil penalty. The licensee's response states that in the Enforcement Conference it was shown through analysis that equipment qualification profiles were not exceed and the damper could be reopened within 30 minutes as demonstrated in a drill. The licensee also argues that the "B" train of VX being out of service for a total of 7 hours during the 42 days that "A" train was unknowingly inoperable was relatively insignificant in that the probability of a LOCA event having a "one train response" from the VX system was low.

NRC's Evaluation of Licensee's Response

Identification and Reporting

The Licensee's Post Modification Testing and Independent Verification Programs failed to detect a significant VX system operability problem due to a control circuit wiring error prior to placing the reactor in a mode that required the VX system to be operable. Regardless of the failure of the Independent Verification Program to detect the wiring error during the design modification process, an adequate post modification test should have identified the error. The performance test chosen by the licensee as the post modification test was inadequate for this situation because it did not verify operability of that portion of the VX control circuit that would be activated by the Solid State Protection System (SSPS) during an actual emergency, even though the modification was to the control circuit. The error was discovered during reactor operation by performance of the SSPS logic test, which verifies the slave relay actuation of the VX control circuit. Clearly, the licensee's post modification test should have identified the installation error prior to reactor startup, and the NRC, therefore, does not consider this factor as adequate to justify mitigation.

Corrective Action to Prevent Recurrence

In evaluating this event in terms of corrective actions, it was noted that immediate corrective actions on April 1, 1988, were to correct the wiring error, retest the damper in accordance with the original post modification test and declare the system operable. Although the VX damper inoperability and wiring error had been detected by a Technical Specification (TS) required SSPS surveillance test, once the wiring error had been corrected, this test was not repeated prior to declaring the system operable. Instead the same test which had originally failed to detect the wiring error in January 1988 was used to determine operability. Not only did the licensee rely on a test (VX functional) that had already proven itself inadequate, but the system was returned to service without performing the failed TS required SSPS surveillance test that initially identified the deficiency. This, in terms of corrective action, is both unacceptable and narrow in focus.

Substantial changes have subsequently been made in the Post-Modification Test Program and full implementation is in progress. As presented in Duke's meeting with the NRC at Region II on August 15, 1989, the changes include focusing responsibility on the "system expert," verifying that the design basis has not been compromised, and verifying that the system is functionally operable after modification. The new procedures were first used in April, 1989 for S/G PORV modification, but full development is still in progress, including additional training of system experts. However, while these are extensive and appropriate corrective actions, these actions were not sufficiently timely to warrant mitigation. The licensee's June 1, 1989 response to this enforcement action continued to take the narrow view of post modification test requirements. Therefore, the NRC considers the 50 percent escalation of the civil penalty based on this factor warranted.

Past Performance

With regard to the licensee's contention that a base civil penalty be mitigated 100 percent for a SALP 1 rating, 50 percent for a SALP 2 rating, and 0 percent for a SALP 3 rating, the NRC does not believe that application of such a rigid formula serves to appropriately explain the need to improve performance. The Enforcement Policy clearly allows application of broad discretion in this area by allowing the base civil penalty to be either escalated or mitigated by up to 100 percent. Application of discretion (in either direction) can only be taken after due consideration of the many facts that make up each case.

The NRC recognizes that the licensee's general past performance has been adequate as evidenced by an overall SALP 2 rating in all functional areas. However, upon examination of the details in several of the last SALP's functional areas (Operations, Maintenance and Surveillance, and Safety Assessment) that are related to the violations cited here, it was noted that the licensee has experienced past problems with the proper classification and reporting of safety component failures and significant events in a timely manner. Other specific concerns also addressed by the last SALP included the adequacy of maintenance and modification retesting and the need to improve the support provided by the Compliance and Design Engineering groups in determining technical specification compliance. Although these concerns were judged not to be significant enough to warrant a category 3 SALP rating, they were indicative of a need for further improvement. While the licensee's overall past performance was adequate, the staff has determined that the past performance was not such as to merit mitigation in this case.

Other Reasons for Mitigating the Civil Penalty

Once the Severity Level is determined in accordance with the Enforcement Policy (Policy), the base civil penalty is established in Table IB of the Policy. The escalation and mitigation factors are then considered to determine what adjustments, if any, to the base civil penalty are warranted. Safety significance is not an escalation or mitigation factor but a determinant of the severity level. In this case, the NRC appropriately considered safety significance in establishing the severity level of the violation. Specifically, the licensee's Post Modification Testing Program did not ensure that a technical specification required safety system train was operable prior to placing the reactor in a mode where that system was required to be operable. Such program errors are considered significant because they could be applied to any safety system.

Restatement of Violation

Violation B

10 CFR 50.73(a)(2) requires the submittal of a Licensee Event Report within 30 days after discovery of any operation or condition prohibited by the plant's Technical Specifications.

Contrary to the above, on September 14, 1988, the licensee determined that Catawba Unit 2 had previously operated for 42 days in a condition prohibited by the plant's Technical Specifications because train A of the Containment Air Return and Hydrogen Skimmer (VX) System had been inoperable and a Licensee Event Report was not submitted until January 27, 1989.

Summary of Licensee's Response

Duke Power Company admits the violation. In the response, however, the licensee contends that as they interpret the enforcement policy a Severity Level III should not have been imposed in this case and that the violation should have been characterized as a Severity Level IV. The response states that because of the complexity of the circuit as a result of the wiring swap and the time required to understand the effects, an unusual amount of time was taken to report the problem.

NRC Evaluation of Response to Violation B

As stated in the NRC letter of May 19, 1989, Violation B concerned the excessive amount of time that it took to report this event. It is not acceptable to take 10 months to evaluate an event to determine reportability. The NRC was

particularly concerned that after the licensee correctly determined that the system was previously inoperable, it took an additional 4 months to issue the LER. This represents a significant programmatic weakness with the licensee's event evaluation and reporting system. The staff recognizes that the Enforcement Policy provides an example at a Severity Level IV for a violation involving the failure to submit an LER. However, the examples in the Supplement are just that. In accordance with the Enforcement Policy they are neither controlling nor exhaustive. Under the circumstances of this case the staff concluded that the delay in submitting this report represented a significant regulatory concern therefore justifying a Severity Level III categorization. After review of the licensee's response, which provided no additional information not already considered, the NRC determined that there is insufficient cause to reduce the severity level of Violation B.

[FR Doc. 89-21217 Filed 9-8-89; 8:45 am]
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[Docket No. 50-220]

Niagara Mohawk Power Corp, et. al. (Nine Mile Point Nuclear Station Unit 1); Exemption

I

Niagara Mohawk Power Corporation, et. al. (the licensee) is the holder of Facility Operating License No. DPR-63, which authorizes operation of the Nine Mile Point Nuclear Station Unit No. 1 at a steady-state power level not in excess of 1850 megawatts thermal. The facility is a boiling water reactor located at the licensee's site in the town of Scriba, New York. The license provides, among other things, that it is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

II

Appendix J to 10 CFR part 50 requires that primary reactor containments shall meet certain containment leakage test requirements. Among these are the requirements that containment isolation valves receive local leak rate tests (Type C) and the results of all of the Type C tests are to be added to the results of the Type B tests and the combined leakage rate shall be less than $0.60L_a$.

III

By letter dated May 6, 1988, the staff sent to the licensee a Safety Evaluation (SE) concerning a review of a portion of the licensee's containment leakage rate testing program. One conclusion of that SE was that Appendix J to 10 CFR Part 50 requires Type C tests to be periodically performed on the four containment isolation valves in the shutdown cooling system return and suction lines.

Consequently, by letter dated November 22, 1988, the licensee requested a temporary exemption from certain requirements of Appendix J to 10 CFR part 50. Specifically, the licensee requested a temporary exemption from the requirement to perform Type C testing of containment isolation valves 38-01, -02, -12 and -13 in the shutdown cooling system return and suction lines and from the requirement to include the leakage rates of these valves in the sum of all Type B and C leakage rates for comparison to the acceptance criterion ($0.60\ L_a$) of Appendix J. The requested exemption is for the period up to and including the next plant refueling outage, currently scheduled for 1990.

IV

In the past, the licensee had not included the subject valves in the Type C testing program. The licensee did not consider them to be containment isolation valves under design basis accident situations. However, as stated above, the staff has recently determined that these valves must be Type C tested.

A recent attempt was made to perform a local leakage rate test on the shutdown cooling system isolation valves. However, since these valves were not originally designed to meet Appendix J leakage rate testing requirements and had not been locally leakage rate tested in the past, the valves were found to exhibit leakage rates greater than that allowed by Appendix J. The licensee has determined that these valves cannot be made sufficiently leak-tight to meet Appendix J leakage criteria.

In order to meet the Appendix J requirements the licensee will have to either replace existing shutdown cooling system suction and return line isolation valves or provide the valves with a seal-water system fluid inventory sufficient to assure the sealing function for at least thirty days at an accident pressure of 1.1 Pa. In either case major system changes may be necessary in addition to procurement of any replacement or new equipment. As a result the licensee requested additional time until the next refueling outage to design, procure, install, test, operate and demonstrate the new system.

The following information was provided by the licensee in support of the exemption request.

The shutdown cooling system isolation valves are normally closed even during design basis accident conditions. The shutdown cooling system forms a closed loop with the reactor recirculation system. As a result, if a break inside the containment occurs, leakage will be contained in a closed system. If a break outside the containment occurs, the existing shutdown cooling isolation valves will reduce leakage from the reactor coolant system to the extent that the core will remain covered and fuel damage will not occur. During a water test performed on these valves in 1988, leakage was found to be minor (1.321 gallons/minute).

The shutdown cooling system was recently checked for excessive leakage and was tested for system integrity to be able to contain radioactive materials following an accident.

The shutdown cooling system isolation valves are closed during normal operation. The system is only placed in operation when the plant is in a shutdown condition. These isolation valves are always initially closed prior to, during, and after LOCA.

For a LOCA at NMP-1, the decay heat is removed from the containment by the containment spray system. Even if fission products were released to the reactor coolant, the shutdown cooling system would only recirculate the radionuclides through a closed loop back to the reactor coolant system. The containment spray system will reduce pressure and temperature inside the containment. The rapid depressurization of the containment will reduce leakage through the isolation valves.

The four isolation valves have process system control valves for backup system isolation; thus minimizing any intra-system leakage. Any leakage from the closed loop will be within the secondary containment where it will be treated before release.

The solid wedge valves used as the inner isolation valves have the unique characteristic whereby the accident pressure itself will assist their leakage tightness.

Based on the above information, the staff finds that plant operation without Type C testing of the subject valves, and consequently, without adding the result of these Type C tests into the summation leakages for comparison to the $0.60L_a$ acceptance criterion, during the period until the next refueling outage will not present an undue risk to the public health and safety, considering the mitigating features of the system described above. After the next refueling outage is complete, the plant

will be brought into compliance with Appendix J.

V

On the basis of the above evaluation, the staff concludes that the requested temporary exemption from the Type C testing requirements of Appendix J to 10 CFR Part 50 for shutdown cooling isolation valves 38–01, –02, –12, and –13 and consequently, the omission of the results of these Type C tests from the summation of leakages for comparison to the 0.60 L_a acceptance criterion, is justified for the period up to and including the next refueling outage for Nine Mile Point, Unit 1.

Accordingly, the Commission has determined pursuant to 10 CFR 50.12(a), that (1) this exemption as described in section IV is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security, and (2) special circumstances are present for this exemption in that the exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts as described below to comply with the regulation since the staff's position was sent to them on May 6, 1988.

The licensee has demonstrated a good faith effort through continuous cooperation with the NRC staff while resolution of this issue was finalized. Although the staff issued its Safety Evaluation on May 6, 1988, further discussions and meetings were required to clarify the issues and separate correspondence dated November 9, 1988 was sent to the licensee to finalize the staff's position. The licensee was cooperative in working through the resolution with the staff and also performed a test, which the staff indicated would be acceptable in its May 6, 1988 Safety Evaluation. However, the test as discussed previously did not produce acceptable results due to physical constraints. Because major system changes may be necessary in addition to procurement of any replacement or new equipment, not granting the exemption would result in an extension of the current outage without significant safety improvements. Therefore, the Commission hereby grants the exemption request identified in section IV above.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the quality of the human environment 54 FR 26279.

Dated at Rockville, Maryland, this 29th day of August 1989.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89–21218 Filed 9–8–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–282 and 50–306]

Northern States Power Co., Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment Nos. 89 and 82 Facility to Operating License Nos. DPR–42 and DPR–60 issued to Northern States Power Company (licensee) which revised the Technical Specifications for operation of the Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2 located in Goodhue County, Minnesota.

The amendment is effective as of the date of issuance.

The amendment revised the Technical Specifications by modifying the pressure-temperature limits taking into consideration the irradiation effects of the embrittlement of the reactor vessel material up to 20 effective full power years. Other modifications are administrative in nature serving to clarify the existing requirements.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on June 8, 1989 (54 FR 24609). No request for a hearing or petition for leave to intevene was filed following this notice.

The Commission has prepared an Environemntal Assessment related to the action and has determined not to prepare an enviromental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendent will not have a signficiant effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendment dated January 12, 1989, (2) Amendment Nos. 89 and 82 to Facility Operating License Nos. DRP–42 and DPR–60, (3) the Commission's related Safety Evaluation and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, and at the Technology and Science Department, Minneapolis Public Library, 200 Nicollet Mall, Minneapolis, Minnesota 55401. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects III, IV, V and Special Projects.

Dated at Rockville, Maryland this August 28, 1989.

For the Nuclear Regulatory Commission.

Dominic C. DiIanni

Project Manager, Project Directorate III–1, Division of Reactor Projects III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89–21283 Filed 9–8–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–282 and 50–306]

Northern States Power Co., Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2; Issuance of Amendments to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment Nos. 90 and 83 to Facility Operating License Nos. DPR–42 and DPR–60 issued to Northern States Power Company (licensee) which revised the Technical Specifications for operation of the Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2 located in Goodhue County, Minnesota.

The amendment is effective as of the date of issuance.

The amendment revised the Technical Specification by permitting the irradiation of the fuel assemblies with enrichment up to 4.25 weight percent (w/o) Uranium^{-235} and the storage of such assemblies prior to and subsequent to loading the assemblies in the reactors at the Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for

Hearing in connection with this action was published in the **Federal Register** on June 27, 1989 (54 FR 27083). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendments dated April 6, 1989, (2) Amendment Nos. 90 and 83 to Facility Operating License Nos. DPR–42 and DPR–60, (3) the Commission's related Safety Evaluation and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, and at the Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects III, IV, V & Special Projects.

Dated at Rockville, Maryland this August 28, 1989.

For the Nuclear Regulatory Commission.

Dominic C. DiIanni,

Project Manager, Project Directorate—III–1, Division of Reactor Projects—III, IV, V & Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89–2184 Filed 9–8–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 030–13036; License No. 45–17606–01; EA 88–287]

Rappahannock General Hospital, Order Imposing Civil Monetary Penalty

I

Rappahannock General Hospital, Kilmarnock, Virginia (licensee), is the holder of License No. 45–17606–01 issued by the Nuclear Regulatory Commission (Commission or NRC), which authorizes the medical use of byproduct material in accordance with the conditions specified in the license. The license was issued September 20, 1977, most recently renewed on July 11, 1988, and is due to expire on July 31, 1993.

II

An NRC safety inspection of the licensee's activities under this license was conducted on January 13, 1987. During the inspection, the NRC inspector noted a number of discrepancies in the minutes of the Radiation Safety Committee meeting for September 13, 1986. Among other things, it appeared that the date on the meeting minutes had been altered. A subsequent investigation conducted by the NRC Office of Investigations (OI) disclosed that the minutes of the September 13, 1986 meeting had been fabricated and were presented to the inspector as representing an actual meeting when in fact no such meeting was held. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the licensee by letter dated May 17, 1989. The Notice stated the nature of the violation, the provisions of the Nuclear Regulatory Commission's requirements that the licensee had violated, and the amount of the civil penalty proposed for the violation. The licensee responded to the Notice by letter dated May 24, 1989. In this response, the licensee denied the violation and requested the withdrawal of the violation and retraction of the civil penalty.

III

After consideration of the licensee's response and the statements of fact, explanation and argument for withdrawal of the violation and civil penalty contained therein, the Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support has determined as set forth in the Appendix to this Order, that the violation occurred as stated, and that the penalty proposed for the violation designated in the Notice should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *It is hereby ordered, That:*

The licensee pay a civil penalty in the amount of Two Thousand Five Hundred Dollars ($2,500) within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

The licensee may request a hearing within 30 days of the date of this Order. A request for a hearing shall be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555, with a copy to the Assistant General Counsel for Hearings and Enforcement, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and the Regional Administrator, U.S. NRC, Region II, 101 Marietta Street NW., Suite 2900, Atlanta, Georgia 30323.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing, as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee was in violation of the Commission's requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalty referenced in Section II above, and

(b) Whether, on the basis of such violation, this Order should be sustained.

Dated at Rockville, Maryland, this 30th day of August 1989.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support.

Appendix—Evaluations and Conclusion

On May 17, 1989, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for a violation identified during an NRC inspection and investigation. Rappahannock General Hospital (licensee) responded to the Notice on May 24, 1989. In its response, the licensee denied the violation and requested retraction of the civil penalty. The NRC's evaluation and conclusion regarding the licensee's arguments are as follows:

I. Restatement of Violation

License Condition 16 of NRC License No. 45–17606–01 requires the licensee to possess and use licensed material in accordance with statements, representations, and procedures contained in the letter dated October 23, 1981, and the license application dated July 20, 1982.

Item 7 of license application requires the licensee to follow Appendix B of Regulatory Guide 10.8 (Rev. 1). Appendix B of Regulatory Guide 10.8 requires the Radiation Safety Committee (Medical Isotopes Committee) to meet not less than once in each calendar quarter and to maintain written records of all committee meetings, actions, recommendations, and decisions.

Contrary to the above, on or before January 13, 1987, a written record was fabricated to document a Radiation Safety Committee meeting that, in fact, did not take place; and on January 13, 1987, this fabricated record was presented to an NRC inspector for review.

II. Summary of Licensee Response

The licensee denied that a written record was fabricated to document that a Radiation Safety Committee (RSC) meeting took place in 1986 and that the record was presented to the NRC inspector with the intent to defraud. The licensee stated that it could find no other copy of the 1985 RSC minutes, and, because the body of the minutes states 1985, the 1985 minutes were filed in that manner. The licensee stated that its Administrator had the "impression" that the inspector had been authorized to look through the licensee's file cabinets and may have found the document there, and that the claim that the document was presented to the inspector to defraud does not agree with the facts. The licensee acknowledged that required quarter RSC meetings were not held during the two-year period ending in January 1987, and indicated that it was not reasonable to believe that a licensee representative would have offered documentation to indicate that one meeting out of this period was held in the hope of making the situation appear any better when its officers and employees admitted all along that there were no such meetings. The licensee acknowledged that it was odd that the document reviewed by the inspector had two items deleted with white correction fluid ("whited out"), and that contradictory dates appeared on the document.

III. NRC Evaluation of Licensee Response

During the NRC inspection conducted on January 13, 1987, the inspectors requested that the nuclear medicine physician and/or the chief nuclear medicine technologist produce the minutes of the most recent RSC meeting. During the investigation conducted by the NRC Office of Investigations (OI), one inspector testified that, after a brief absence, the nuclear medicine physician provided him with a document purported to be a copy of the requested minutes. The document contained alterations and discrepancies, including a discrepancy in the date of the meeting and a deletion of the name of one of the attendees. Contrary to the statement in the licensee's response, the inspectors did not find the document in the licensee's files.

The licensee indicated both during the Enforcement Conference held in the NRC Region II office on March 10, 1989, and in its May 24, 1989, response that the document which was purported to be a copy of the requested minutes appears to have been altered. The OI investigation did not conclusively establish who actually altered the September 13, 1985, minutes to represent that a meeting had been held on September 13, 1986. However, a review of the pertinent records clearly established that an RSC meeting was convened on September 13, 1985, rather than September 13, 1986, as indicated in the minutes, and that the altered document was proffered to the NRC inspector. Based upon this evidence, NRC has concluded that an individual affiliated with the hospital altered or directed the alteration of a copy of the minutes for the September 13, 1985 RSC meeting, and, when the inspector requested to see the minutes of the most recent RSC meeting held, the altered document was presented to the inspector as the official minutes of a September 13, 1986 meeting that was, in fact, not held.

NRC Conclusion

The NRC staff has carefully reviewed the licensee's response and has concluded that the violation occurred as stated in the Notice and that the licensee has not provided an adequate basis for withdrawal of the violation or retraction of the civil penalty. Therefore, the civil penalty in the amount of $2,500 should be imposed.

[FR Doc. 89-21285 Filed 9-8-89; 8:45 am]
BILLING CODE 7590-01-M

DEPARTMENT OF STATE

[Public Notice CM-8/1304]

Shipping Coordinating Committee; Subcommittee on Ocean Dumping; Meeting

The Subcommittee on Ocean Dumping of the Shipping Coordinating Committee will hold an open meeting on October 19, 1989 to review agenda items and preliminary U.S. positions for the Twelfth Consultative Meeting of Contracting Parties to the London Dumping Convention.

The meeting will be held at 10:00 a.m. at the Environmental Protection Agency, Fairchild Building, 499 South Capitol Street, SW., Washington D.C. 20003 in the Conference Room of the Office of Marine and Estuarine Protection, on the 8th floor. Members of the public are invited and are free to attend up to the seating capacity of the room.

For further information, please contact Dr. Al Wastler, Office of Marine Protection, Telephone (202) 475-6741.

Dated: August 24, 1989

Thomas J. Wajda,

Chairman, Shipping Coordinating Committee.

[FR Doc. 89-21293 Filed 9-8-89; 8:45 am]
BILLING CODE 4710-09-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[GD 89-070]

National Offshore Safety Advisory Committee; Request for Applications

AGENCY: Coast Guard, DOT.

ACTION: Request for applications.

SUMMARY: The U.S. Coast Guard is seeking applicants to fill one vacancy on the National Offshore Safety Advisory Committee (NOSAC). The committee acts in advisory capacity to the Commandant of the Coast Guard on matters relating to the offshore mineral and energy industry.

The vacancy is for an individual representing a company engaged in the production of petroleum. It is expected that the member would serve for a term of no more than three years.

To achieve the balance of membership required by the Federal Advisory Committee Act, the Coast Guard is especially interested in receiving applications from minorities and women.

DATE: Applications should be received not later than October 11, 1989.

ADDRESS: Persons interested in applying should write to Commandant (G-MP-2), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001 or call (202) 267-1406.

FOR FURTHER INFORMATION CONTACT: Mr. Gene Hammel, Executive Director, National Offshore Safety Advisory Committee, U.S. Coast Guard Headquarters (G-MP-2), 2100 Second Street SW., Washington, DC 20593-0001, (202) 267-1406.

Dated: August 31, 1989.

M.J. Schiro,

Captain, U.S. Coast Guard, Safety, Security and Environmental Protection.

[FR Doc. 89-21235 Filed 9-8-89; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

Air Traffic Control Tower, Martha's Vineyard, MA; Commissioning

Notice is hereby given that on October 1, 1989, the airport traffic control tower at Martha's Vineyard Airport, Martha's Vineyard, Massachusetts, will be commissioned. Tower hours of operation will be published in the Airport-Facility Directory. The designated facility identification for the airport control tower will be: Vineyard Tower.

Communications to the tower should be directed to: Midwest ATC, Martha's Vineyard Airport, RFD, Box 880, Vineyard Haven, Massachusetts 02568.

(49 U.S.C. 1348 and 1354(a); 49 U.S.C. 106(g) (Revised Pub. L. 97-449 (January 12, 1983)))

Issued in Burlington, Massachusetts, on August 29, 1989.

James I. Lucas,

Manager, Air Traffic Division, New England Region.

[FR Doc. 89-21247 Filed 9-8-89; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Intention to Prepare an Environmental Impact Statement and Conduct a Public Scoping Meeting for Road Reconstruction; Cody Yellowstone National Park, WY

ACTION: Notice is hereby given that the Federal Highway Administration (FHWA) intends to prepare an Environmental Impact Statement (EIS) for proposed road reconstruction in the Cody—Yellowstone National Park Vicinity of northwestern Wyoming. The EIS will be prepared in cooperation with the Wyoming State Highway Department (WSHD) and the U.S. Forest Services (USFS).

SUMMARY: The proposed highway reconstruction project will consist of reconstruction of the existing U.S. Highway 14/16/20 beginning at the east entrance to Yellowstone National Park and extending eastward 27.5 miles along the North Fork of the Shoshone River to the east boundary of the Shoshone National Forest. The purpose of this proposal is to provide a modern two lane road with emergency parking shoulders. Line and grade will be adjusted to improve sight distance and safety of the roadway. All bridges will be replaced.

Alternatives to be considered in the EIS will include the no action alternative and various alignment and design alternatives. The development of these specific alternatives is an ongoing process that will incorporate features brought forth during public scoping in addition to those identified by project engineers as preliminary road design activities progress.

Scoping Process: A public scoping meeting addressing the proposed project will be held in Cody at the City Council Chambers at 7:00 PM on October 4, 1989. Written Scoping comments are due by November 3, 1989, at the address provided below.

EIS Schedule: The draft EIS (DEIS) is expected to be completed by February 20, 1990, at which time its availability will be announced in the **Federal Register** and public comments will again be solicited. A public hearing will be held after the draft EIS has been made available for public and agency review. Public notice will be given of the time and place for the hearing. Final EIS availability will be in May, 1990.

FOR FURTHER INFORMATION CONTACT: C.P. Damon, Operations Supervisor, P.O. Box 1127, Cheyenne, WY 82003, Telephone (307) 772-2101.

Issued on August 31, 1989.

Frederick A. Behrens, P.E.,

Division Administrator, Cheyenne, Wyoming.

[FR Doc. 89-21224 Filed 9-8-89; 8:45 am]

BILLING CODE 4910-22-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 174
Monday, September 11, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:08 p.m. on Tuesday, September 5, 1989, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following matters:

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 47,338
First Service Bank for Savings, Leominster, Massachusetts
Case No. FL-89-001
First Gibraltar Bank, FSB, Houston, Texas

Application of Stockman's Bank of Commerce, Elk Grove, California, a proposed new bank in organization to be located at 9663 Stockton Boulevard, Elk Grove, California, for Federal deposit insurance and for consent to merge with California Livestock Production Credit Association, Elk Grove, California, a noninsured production credit association.

Application of the First Bremen Bank, Bremen, Ohio, for consent to purchase certain assets of and to assume the liability to pay deposits made in the West Fair, Lancaster, Ohio, Branch of Citizens Federal Bank, a Federal Savings Bank, Miami Florida, a savings association; for consent to participate in the foregoing purchase and assumption transaction deemed a "conversion transaction" as contemplated in the Financial Institutions Reform, Recovery, and Enforcement Act of 1989; and for consent to establish a branch at the location of the West Fair, Lancaster, Ohio, Branch of Citizens Federal Bank, a Federal Savings Bank.

Matters relating to the possible failure of certain insured banks.

A memorandum regarding the Corporation's liquidation activities.

A personnel matter.

In calling the meeting, the Board determined, on motion of Director C. C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, and Director M. Danny Wall (Director of the Office of Thrift Supervision), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: September 6, 1989.
Federal Deposit Insurance Corporation.
Robert E. Feldman,
Deputy Executive Secretary.
[FR Doc. 89-21379 Filed 9-7-89; 10:51 am]
BILLING CODE 6714-01-17

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Amendment to Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 54 FR 36094, August 31, 1989.

PREVIOUSLY ANNOUNCED DATE OF MEETING: September 11, 1989.

CHANGE: Delete the following item from the closed meeting agenda:

2. Consideration of Contract Award for Outside Audit Services.

CONTACT PERSON FOR MORE INFORMATION: David F. Harris, (202) 268-4800.

David F. Harris,
Secretary.
[FR Doc. 89-21436 Filed 9-7-89; 3:21 pm]
BILLING CODE 7710-12-M

U.S. COMMISSION ON CIVIL RIGHTS

September 5, 1989.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 54, page 37401, September 8, 1989.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: Friday, September 15, 1989, 9:00 a.m.-5:00 p.m.

CHANGES IN THE MEETING: Remove item V. from the agenda and renumber remaining items sequentially.

CONTACT PERSON FOR FURTHER INFORMATION: Barbara Brooks, Press and Communications Division, (202) 376-8312.

Melvin L. Jenkins,
Acting Staff Director.
[FR Doc. 89-21488 Filed 9-8-89; 10:45 am]
BILLING CODE 6335-01-M

Corrections

Federal Register
Vol. 54, No. 174
Monday, September 11, 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.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 763

[OPTS-62036G; FRL-3476-2]

Asbestos; Manufacture, Importation, Processing, and Distribution in Commerce Prohibitions

Correction

In rule document 89-16262 beginning on page 29460 in the issue of July 12, 1989, make the following corrections:

1. On page 29462, in the first column, in the 16th line, "*State 3*" should read "*Stage 3*".

2. On page 29483, in the second column, in the first complete paragraph, in the first line, "control" should read "continue".

3. On page 29497, in the 2nd column, in the 12th line from the bottom of the page, "EAP" should read "EPA".

4. On the same page, in 3rd column, in the 11th line from the bottom of the page, "10 ^{4}" should read "10 $^{-4}$".

5. On page 29502, in the second column, in the 6th line "environmental" should read "environment".

6. On page 29504, in the second column, in the first complete paragraph, in the eighth line, "consumers" should read "consumer".

7. On the same page, in the same column, in number (33), in the first line, "EED" should read "ETD".

§ 763.173 [Corrected]

8. On page 29511, in the third column, in § 763.173(b)(7) and (8), in the first line, "agency" should read "Agency".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 133

[Docket No. 85P-0584]

Cheeses: Amendment of Standards of Identity to Permit Use of Antimycotics on the Exterior of Bulk Cheeses During Curing and Aging and to Update the Formats of Several Standards

Correction

In a correction to rule document 89-18225 appearing on page 35756 in the issue of Tuesday, August 29, 1989, make the following correction:

In correction 5, in the third line, "colon" should read "semicolon".

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

RIN 1216-AA82

Occupational Exposure to Formaldehyde

Correction

In rule document 89-20245 appearing on page 35639 in the issue of Tuesday, August 29, 1989, make the following correction:

In the 1st column, in the **SUMMARY**, in the 11th line, "December 18, 1988" should read "December 13, 1988".

BILLING CODE 1505-01-D

federal register

Monday
September 11, 1989

Part II

Environmental Protection Agency

40 CFR Part 60

Standards of Performance for New Stationary Sources; Polymeric Coating of Supporting Substrates; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-3528-7]

RIN 2060-AB67

Standards of Performance for New Stationary Sources; Polymeric Coating of Supporting Substrates

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Standards of performance for new, modified, and reconstructed facilities that perform polymeric coating of supporting substrates were proposed in the Federal Register on April 30, 1987 (52 FR 15906). This action promulgates final standards for this industry. These standards implement Section 111 of the Clean Air Act and are based on the Administrator's determination that emissions from the industrial surface coating of fabric cause, or contribute significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare. The intended effect of these standards is to require all new, modified, and reconstructed facilities that perform polymeric coating of supporting substrates to control emissions of volatile organic compounds (VOC) to the level achievable by the best demonstrated system of continuous emission reduction, considering costs, nonair quality health and environmental impacts, and energy requirements.

DATES: *Effective Date:* September 11, 1989.

These standards apply to affected facilities for which construction, reconstruction, or modification commenced after April 30, 1987.

Under section 307(b)(1) of the Clean Air Act, judicial review of the actions taken by this notice is available only by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this rule. Under section 307(b)(2) of the Clean Air Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

ADDRESSES: *Background Information Document.* The background information document (BID) for the promulgated standards may be obtained from the U.S. EPA Library (MD-35), Research Triangle Park, North Carolina 27711, telephone number (919) 541-2777. Please refer to "Polymeric Coating of Supporting Substrates—Background Information for Promulgated Standards" (EPA-450/3-85-022b). The BID contains: (1) A summary of all the public comments made on the proposed standards and the Administrator's response to the comments; (2) a summary of the changes made to the standards since proposal; and (3) the final Environmental Impact Statement, which summarizes the impacts of the standards.

Docket. A docket, number A-83-42, containing information considered by EPA in development of the promulgated standards, is available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section (LE-131), South Conference Center, Room 4, Waterside Mall, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For policy questions—Mr. Doug Bell at telephone number (919) 541-5568 or Ms. Laura Butler (541-5267) Standards Development Branch, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; for technical questions—Mr. James C. Berry (541-5606) or Mr. Robert Blaszczak (541-5408), Chemicals and Petroleum Branch, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:

I. The Standards

Standards of performance for new sources established under section 111 of the Clean Air Act reflect:

> * * * application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, any nonair quality health and environmental impacts and energy requirements) the Administrator determines has been adequately demonstrated (section 111(a)(1)).

For convenience, this will be referred to as "best demonstrated technology" or "BDT."

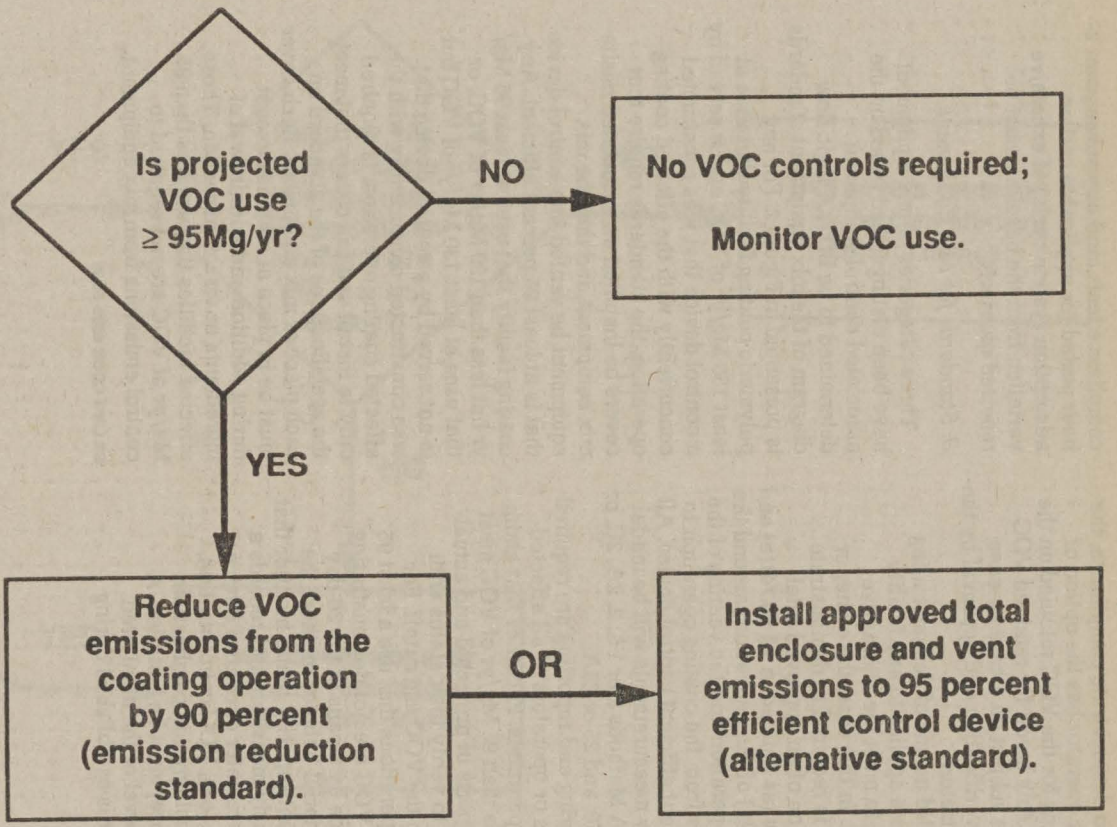
The source category to be regulated is the polymeric coating of supporting substrates. "Polymeric coating of supporting substrates" is defined as a web-coating that applies an elastomer or other polymeric material onto a supporting substrate. Typical substrates include: Woven, knit, and nonwoven textiles, fiberglass, yarn; and cord. Examples of polymeric coatings are natural and synthetic rubber, urethane, polyvinyl chloride, acrylic, epoxy, silicone, phenolic, and nitrocellulose.

The promulgated standards apply to each affected facility, which is defined as each new, modified, or reconstructed coating operation and the associated coating mix preparation equipment (mix equipment) used to prepare the coating for the operation. A coating operation consists of the application/flashoff area(s) and drying oven(s). Mix equipment is defined as the vessels in which ingredients are blended to prepare polymeric coatings. Only onsite mix equipment is considered a part of the affected facility.

A. Standards for Coating Operations

The standards for coating operations are based on BDT, which is defined as a 90 percent efficient emission reduction system composed of an emission capture system and control device. The standards require either: (1) A minimum 90 percent reduction of VOC emissions from the coating operation (emission reduction standard), or (2) the installation of an approved total enclosure (as defined in §§ 60.741(a) and 60.743(b)(1) of the regulation) and venting emissions to a 95 percent efficient control device (alternative standard). Once a coating operation becomes subject to the standards (VOC use exceeds 95 megagrams per year [Mg/yr]), emission control would be required even if VOC use falls below 95 Mg/yr at some future time. A logic flow diagram of the coating operations standards is presented in Figure 1.

BILLING CODE 6560-50-M



COATING OPERATION STANDARDS

Figure 1. Logic flow diagram for polymeric coating NSPS.

BILLING CODE 6560-50-C

Demonstration of compliance with the standards varies with the type of control system in use and the particular standard that applies. For example, compliance with the emission reduction standard can be demonstrated by the use of EPA Methods 1 or 1A; 2, 2A, 2C, or 2D; 3; 4; 18; and 25 or 25A to measure all the gaseous emissions, including fugitive emissions from the affected coating operation, and all emissions entering and exiting the control device. These data are used to calculate the capture efficiency of the system and the efficiency of the control device. The product of these two values yields the overall efficiency of the control system. This type of compliance demonstration is available for all facilities, regardless of the type of control device.

A second means of demonstrating compliance may be used if a VOC recovery system is used and controls only a single coating operation. This demonstration involves a liquid material balance based on VOC contained in the coatings applied at the coating applicator and of the VOC recovered by the control device. The liquid-liquid material balance may be performed either for each nominal 1-month period every month, or for a single period of 3 to 7 days followed by continuous monitoring. For the latter option, the owner or operator must select the number of days (between 3 and 7) that reflect the plant's typical coating practices and provide data that are representative of normal operating conditions. If a liquid material balance is used to demonstrate compliance, the owner or operator has the option of accounting for the VOC retained on the product. Any credit for retained VOC would be subject on a case-by-case basis to verification and approval by the Administrator.

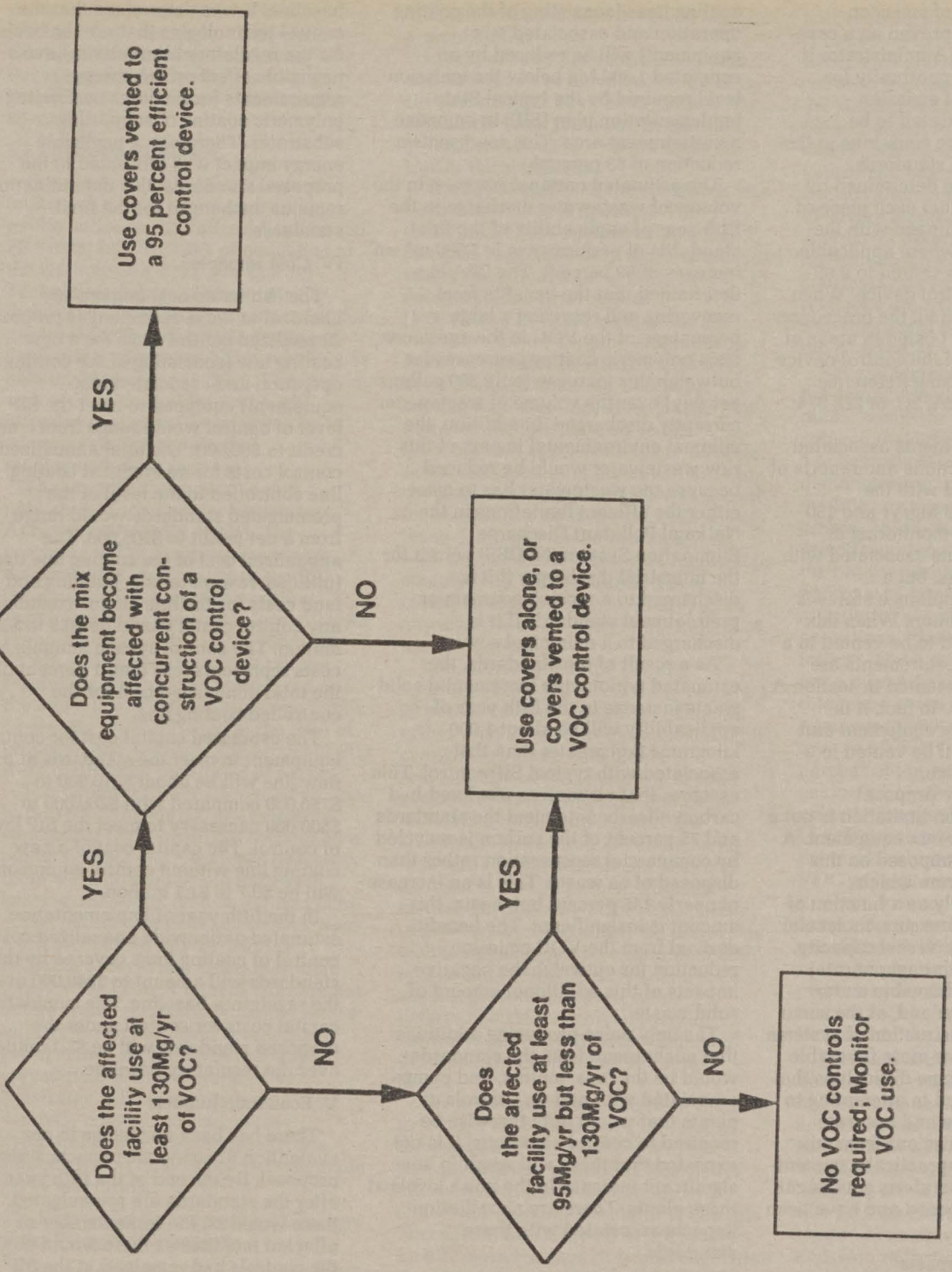
The third means of demonstrating compliance applies to any facility choosing to meet the alternative standard. In this case, the owner or operator is required to demonstrate installation of an approved total enclosure (as defined in §§ 60.741(a) and 60.743(b)(1) of the regulation) around the coating operation and the venting of the emissions from the coating operation to a 95 percent efficient control device. All efficiency measurements will be made using EPA Methods 1 or 1A; 2, 2A, 2C, or 2D; 3; 4; 18; and 25 or 25A.

Monitoring and reporting are required of owners or operators of all affected coating operations. Facilities that claim to use less than 95 Mg/yr of VOC must submit reports of projected and actual VOC use to verify their status with respect to the VOC use cutoff. For coating operations that use a least 95 Mg/yr of VOC are not demonstrating compliance by means of the 30-day liquid material balance method, the requirements specify that a monitor that continuously measures and records a critical parameter of control device operation (e.g., VOC concentration, thermal incineration combustion temperature) must be installed. A baseline level of the monitored parameter is established during compliance tests, and any subsequent 3-hour period (or applicable carbon adsorption system cycle) of excessive variation from the baseline must be reported quarterly.

B. Standards for Mix Equipment

Three categories of mix equipment have been distinguished based on the associated control equipment determined to be BDT. A logic flow diagram of the mix equipment standards is presented in Figure 2. For any polymeric coating facility that uses at least 130 Mg/yr of VOC and is served by a control device that was constructed concurrently with the affected coating operation, the standards require that covers be installed on associated onsite mix equipment and that the mix equipment be vented to a control device that is at least 95 percent efficient. Any coating facility that uses at least 95 Mg/yr but less than 130 Mg/yr of VOC, or that uses at least 130 Mg/yr of VOC but is not served by a control device that was constructed concurrently with the affected coating operation, is required only to install and use covers that meet the specifications of the standard on each piece of mix equipment. Each cover must be in place at all times except during addition and withdrawal of ingredients or visual inspection. Those affected facilities that use less than 95 Mg/yr of VOC are not required to control emissions from mix equipment.

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MIX EQUIPMENT STANDARDS

Figure 2. Logic flow diagram for polymeric coating NSPS.

BILLING CODE 6560-50-C

Equivalent means of emission limitation may be approved on a case-by-case basis by the Administrator if, after notice and an opportunity for hearing, the means of emission limitation is demonstrated to be equivalent in reducing emissions to the level required by the standards.

Compliance will be determined by inspection to verify that each piece of mix equipment is equipped with the required cover and, where applicable, that the equipment is vented to a 95 percent efficient control device. When only covers are required, the procedures for their use must be posted in areas of use. The efficiency of the control device will be determined using Reference Methods 1 or 1A; 2, 2A, 2C, or 2D; 3; 4; 18; and 25 or 25A.

Other than requirements associated with VOC use projections and reports of actual use associated with the applicable cutoffs (95 Mg/yr and 130 Mg/yr), there are no monitoring or reporting requirements associated with mix equipment covers, but a determination of compliance status is made at every inspection. When mix equipment is required to be vented to a control device, the requirements are identical to those presented in section A for coating operation. In fact, it is expected that the mix equipment and coating operation will be vented to a common control device.

As discussed in the proposal preamble, an emission limitation is not a feasible standard for mix equipment. A mass emission limit imposed on this type of equipment (from which emissions vary widely as a function of temperature, vapor pressure, molecular weight of the solvent, vessel capacity, operating time, and throughput rate) could not both be achievable under worst-case conditions and, at the same time, require the construction of systems that reflect BDT under more favorable conditions. The extreme difficulties that would be encountered in attempting to obtain representative and accurate measurements of emissions from mix equipment render impractical a percent-reduction format. Therefore, equipment standards were proposed and have been promulgated.

II. Environmental Impacts

Because it is expected that facilities will choose to comply with the coating operation standards by means of the alternative standard, and thus achieve at least 93 percent overall control, the environmental impacts have not changed since proposal. In the fifth year after the standards become applicable, nationwide VOC emissions from new, modified, or reconstructed polymeric coating lines (consisting of the coating operation and associated mix equipment) will be reduced by an estimated 1,300 Mg below the emission level required by the typical State implementation plan (SIP) in an ozone nonattainment area. This represents a reduction of 83 percent.

The estimated national increase in the volume of wastewater discharge in the fifth year of applicability of the final standards of performance is 5,300 m^3, an increase of 69 percent. The EPA has determined that the benefits from recovering and recycling a large percentage of the VOC in the emissions from polymeric coating processes far outweigh this increase (only 300 gallons per day) over the volume of wastewater currently discharged. In addition, the minimal environmental impact of this raw wastewater would be reduced because the wastewater has to meet either the effluent limitations in the National Pollutant Discharge Elimination System (NPDES) permit for the industrial discharger if it is discharged to a receiving stream or pretreatment standards if it is discharged to a municipal sewer.

As a result of the standards, the estimated nationwide incremental solid waste increase in the fifth year of applicability will be about 1,000 kilograms (kg) greater than that associated with typical SIP control. This assumes that all sources use fixed-bed carbon adsorbers to meet the standards and 75 percent of the carbon is recycled by commercial regeneration rather than disposed of as waste. This is an increase of nearly 145 percent but, again, this amount is insignificant. The benefits derived from the VOC emission reduction far outweigh the negative impacts of this additional amount of solid waste.

The only noise-producing additions that might result from the standards would be the fans, motors, and pumps associated with add-on controls at plants that would not otherwise be required to control emissions. It is not expected that these will result in any significant increase in the noise levels at these plants. There are no radiation impacts associated with these standards.

III. Energy Impacts

The energy impacts remain unchanged from those reported at proposal. In the fifth year after this NSPS becomes applicable, nationwide energy consumption by plants performing polymeric coating of supporting substrates will increase by 15 terajoules (TJ) compared with energy consumption determined from the current regulatory baseline. It was determined that the control technologies that are the basis for the regulatory alternatives have a negligible effect on the energy requirements for facilities performing polymeric coating of supporting substrates. Therefore, a negligible energy impact was attributed to the proposed standards; this determination remains unchanged for the final standards.

IV. Cost Impacts

The estimated cost impacts are identical to those estimated at proposal. Annualized control costs for a new coating line (consisting of the coating operation and associated mix equipment) equipped to meet the SIP level of control would range from a net credit to $66,000. The total annualized control costs for an identical coating line controlled to the level of the promulgated standards would range from a net credit to $105,000. The annualized cost of the coating line itself (utilities, raw materials, building and land costs for the line alone, excluding any control costs) would be $0.9 to $11.2 million. The control system annualized costs represents less than 1 percent of the total annualized cost for the controlled coating line.

The estimated capital cost for control equipment to meet the standards at a new line will be about $310,000 to $750,000 compared with $260,000 to $500,000 necessary to meet the SIP level of control. The capital cost of a new coating line without control equipment will be $0.7 to $1.1 million.

In the fifth year of implementation, the estimated nationwide annualized cost of control of coating lines covered by the standards will amount to $340,000 over the regulatory baseline. The cumulative capital costs for control under the proposed standards will be $3.1 million over the regulatory baseline.

V. Economic Impacts

There has been no change in our evaluation of economic impacts since proposal. By the end of the fifth year after the standards are promulgated, there would be the same number of affected facilities as there would be if the controls had remained at the SIP level. No significant retail price change attributable to the standards is expected because there would be no significant increase in annualized cost. No adverse impacts on capital availability, competition, employment, productivity, or small businesses are expected as a result of the standards.

The environmental, energy, and economic impacts are discussed in

greater detail in the BID for the promulgated standards, "Polymeric Coating of Supporting Substrates—Background Information for Promulgated Standards" (EPA–450/3–85–022b).

VI. Public Participation

Prior to proposal of the standards, interested parties were advised by public notice in the **Federal Register** (50 FR 31025) July 31, 1985, of a meeting of the National Air Pollution Control Techniques Advisory Committee to discuss the standards recommended for proposal for the polymeric coating of supporting substrates. This meeting was held on September 18, 1985. The meeting was open to the public, and each attendee was given an opportunity to comment on the standards recommended for proposal.

The proposed standards were published in the **Federal Register** on April 30, 1987 (52 FR 15906). The preamble to the proposed standards discussed the availability of the BID ("Polymeric Coating of Supporting Substrates—Background Information for Proposed Standards" [EPA–450/3–85–022a]), which describes in detail the regulatory alternatives considered and the impacts of those alternatives. Public comments were solicited at the time of proposal, and copies of the proposal BID were distributed to interested parties.

The opportunity for interested persons to present data, views, or arguments concerning the proposed standards at a public hearing was provided. However, there were no requests to hold such a hearing; therefore, no hearing was held.

The public comment period was from April 30, 1987, to July 14, 1987. In addition, several late comments were received by EPA. A total of 24 comment letters were received concerning issues relative to the proposed standards of performance for facilities that apply polymeric coatings to supporting substrates. All comments have been carefully considered and, where determined to be appropriate by the Administrator, changes have been made to the standards.

VII. Significant Comments and Changes to the Proposed Standards

Comments on the proposed standards were received from industry, one State air pollution control agency, and two trade associations. A detailed discussion of these comments and responses can be found in the promulgation BID, which is referred to in the **ADDRESSES** section of this preamble. The summary of comments and responses in the BID serves as the basis for the revisions that have been made to the standards between proposal and promulgation.

In response to the public comments and as a result of reevaluation by EPA, several changes have been made to the standards since proposal. In addition, several revisions have been made to clarify the standards.

The applicability of the standards has been modified and clarified. The definition of mix equipment has been changed to include only those vessels in which the actual mixing takes place. On paragraph has been added (§ 60.740(c)(2)) to state explicitly the exclusion for the graphic arts industry from the standards. Definitions have been changed to clarify that paper coating facilities (including plastic film and metallic foil coaters), leather finishers that apply coatings to discrete skins, and coaters of metal coil are not covered. An exemption also was added for waterborne coatings because use of these coatings may be incompatible with the control technologies required to comply with the standards. These revisions are not expected to result in any significant changes in the impact of the standards.

The standards for the coating operation have been revised to require a 90 percent overall emission reduction rather than 93 percent as proposed. This change was made based on a reevaluation of the feasibility of total enclosures in this industry and of the test data available to support the standards. In general, EPA concluded that while facilities that can use total enclosures and 95 percent efficient control devices may achieve 93 percent or greater overall control, the use of this technology may not be available if EPA-prescribed total enclosures cannot be used in existing plants. It was determined that 90 percent overall control is universally achievable, and the standards have been set at this level.

The standards also have been revised to include an alternative standard, i.e., the use of a total enclosure and 95 percent efficient control device, as an alternative to the 90 percent overall emission reduction standard. While this alternative was allowed at proposal as an alternative means of compliance with the emission reduction standard, EPA has now decided to include it as an alternative standard in order to clarify the intent of the rule. This change is not a revision to the substance of the proposed rule.

The standards for mix equipment have been changed to provide allowances for opening the covers during periods of legitimate need such as when adding ingredients, withdrawing samples, transferring the contents, or making visual inspection when such activities cannot be carried out with the cover in place. In addition, the standards for mix equipment have been changed to require covers that meet specified requirements rather than vapor-tight covers equipped with conservation vents as proposed. The use of covers alone is also allowed on mix equipment associated with coating operations where there is no concurrent construction of a control device. These revisions are not expected to result in any significant changes in the impacts of the standards.

Several changes have been made in the compliance provisions. Although no public comment was received on the subject, the definition for total enclosure has been clarified, and requirements for demonstrating that a capture system qualifies as a total enclosure have been added. These changes were made to provide guidance to industry regarding the requirements to gain automatic approval of total enclosures to meet the alternative standard for coating operations. The key requirements are as follow: (1) All sources of VOC emissions are a minimum of four equivalent diameters away from natural draft openings (NDO's); (2) the cumulative area of all NDO's is no greater than 5 percent of the surface area of the enclosure; (3) the average inward face velocity across the NDO's is a minimum of 3,600 meters per hour (m/h), and demonstrably inward at all times; (4) all VOC gas sreams from the enclosure are directed to a control device; and (5) all access doors and windows not considered NDO's are closed during routine operation of the process. A procedure for determining the average inward face velocity across the NDO's is included in the regulation.

The final coating operation standards have been revised to clarify that the use of certain equipment, i.e., a total enclosure and a 95 percent efficient control device, are available as an alternate standard to the 90 percent emission reduction standard. In other words, the owner or operator may choose to comply with either the emission reduction standard or the alternative standard. In addition, the compliance provisions for coating operations meeting the emission reduction standard have been revised to clarify that owners or operators may demonstrate compliance by any of the applicable methods. The option of performing a one-time short-term (3- to 7-day) material balance followed by continuous monitoring was added as an optional compliance method. This

option may be attractive at facilities that cannot or do not, want to conduct the continuous detailed monthly measurements that are required for the other liquid material balance option.

Other minor revisions to the compliance provisions have been made. One portion of the gaseous emissions test compliance method (§§ 60.743(a)(1)(ii) and (a)(2)(ii)) that was unclear and subject to interpretation has been deleted in favor of the alternative standard previously discussed. A paragraph has been added to provide for the use of control devices other than carbon adsorbers, incinerators, and condensers (§ 60.743(e)).

Minor changes have been made to the section on monitoring (§ 60.744). Wording has been added to specify clearly that monitors must be in place and operating during all performance tests. The monitors required for carbon adsorbers are now required to measure the "concentration level of organic compounds" instead of the VOC concentration in parts per million by volume. Although many monitors give readings in terms of parts per million by volume, the revision is intended to reflect the fact that EPA has not developed performance specifications or other quality assurance procedures to ensure the accuracy of such monitors. However, units are available that are sufficiently precise to allow assessment of operation and maintenance practices by comparing monitoring data with the baseline value established during the performance test. The accuracy requirements for temperature monitors have been changed to be consistent with other VOC control regulations.

The performance testing and monitoring provisions for fixed-bed carbon adsorption systems have been revised to represent more accurately the performance of multibed systems. This revision was an indirect result of a public comment concerning the performance of fixed-bed carbon adsorbers. Performance tests are the direct means of determining the compliance status of an affected facility and serve as the basis for legal enforcement actions against noncomplying sources. In contrast, the monitoring devices required by these standards serve only as indicators of control device performance to aid enforcement agencies in targeting inspections and performance tests toward potential violaters. The revised procedures will ensure that the performance test runs and monitoring averaging periods will parallel the adsorption cycles of all the individual adsorber vessels or the system's complete sequential rotation through the adsorption cycles of all the vessels. Use of a testing or monitoring period that does not correspond to an integral number of adsorber vessel cycles or system rotations could bias the results slightly in either direction. Efficiencies would be biased high if the test run or monitoring period did not include the elevated emissions typical at the beginning and end of a vessel's adsorption cycle; efficiencies would be biased low if the period included a disproportionate number of these emission peaks.

The revised carbon adsorption system performance testing provisions include separate requirements for systems with a single common exhaust stack and for systems with individual stacks for each adsorber vessel. The Agency believes that a common exhaust stack allows simpler performance testing that is more representative of the entire system's performance but has included provisions for individual exhaust stacks because this is currently the more typical configuration.

For adsorption systems with a common exhaust stack serving all the adsorber vessels, the entire system must be tested. Three test runs are required; each run must correspond to one or more complete rotations through the sequential adsorption cycles of all the adsorber vessels.

For adsorption systems with individual exhaust stacks, each adsorber vessel must be tested individually. Three test runs are required for each vessel; each run must correspond to one or more complete adsorption cycles. A procedure has been added to the compliance provisions for computing a system efficiency from the individual adsorber vessel efficiencies.

The final adsorber monitoring provisions parallel the final performance testing provisions. Again, separate provisions apply to systems with a common exhaust stack and those with individual stacks. No increase in monitoring costs is anticipated.

For adsorption systems with a common exhaust stack, a monitoring device must be installed on the common exhaust stack and one also may be installed on the common inlet duct. The owner or operator must report each occurrence when the average emission level or system efficiency (depending on whether the outlet only, or the inlet and outlet gas streams are monitored) over three successive system rotations varies outside the specified range.

For adsorption systems with individual vessel exhaust stacks, a monitoring device must be installed on each individual exhaust stack, and a monitoring device also may be installed on the common inlet duct or on each individual inlet duct. Each adsorber vessel must be monitored for a minimum of one complete adsorption cycle per day. A 3-day rolling average emission level or efficiency for each vessel (depending on whether the outlet only, or the inlet and outlet gas streams are monitored) must be computed each day from the daily averages, and these 3-day rolling averages must be reported when they vary outside the specified ranges.

Other changes have been made to the sections on alternate means of emission limitation, reporting and recordkeeping requirements, and definitions and symbols. For the most part these changes correct or clarify the sections and are dealt with in the comments and responses that follow. All references in the final standards have been changed from cubic meters to megagrams to be consistent with the mass reporting basis typically used by industry and enforcing agencies. It is now specified that monitoring data recorded during performance tests and instances when actual annual VOC use exceeds the applicable cutoff must be reported. Periods when monitors or control devices are not operational during process operations must also be reported. If no excessive variations of the monitored parameters specified in § 60.747(d)(1)–(6) have occurred, a seminannual statement certifying this fact is required.

The major comments and responses are summarized in this preamble. Most of the comment letters contained multiple comments. The comments have been divided into the following areas: selection of the source category, affected facility, selection of BDT and emission limits, control costs, test methods and monitoring, and wording of the regulation. All comments and responses are included in the promulgation BID.

A. Selection of the Source Category

Commenters questioned the applicability of the proposed polymeric coating standards to the leather finishing, graphic arts, and paper coating industries. One commenter said that leather finishing does not meet the applications criteria established in the proposed standards because leather is not handled as a continuous substrate. The commenter stated that leather-like materials (bonded leather fiber products and artificial leathers) can be coated in continuous form and would, therefore, meet the proposed standards'

applicability criteria. Other commenters stated that it was unclear if the standard included graphic arts and paper coating industries (including plastic and metallic foil coating).

The EPA agrees that leather, when used as a general term for discrete hides or skins, is not a continuous substrate and that leather finishing was not intended to be covered under the standards. Therefore, leather finishing has been excluded from the list of web coating operations in the final standards. Leather-like materials, such as urethane-coated and bonded leather fiber products are, however, covered by the standards. The graphic arts and paper coating industries were not intended to be included in the proposed polymeric coating standards. Language has been added to the final standards to make these exclusions clear.

Other commenters requested that EPA establish a separate subcategory in the standards for textile coating operations. The commenters cited product and operational variability as factors limiting this industry's ability to comply with the proposed standards. Specific technical comments related to this issue and EPA's responses are discussed in Section C. After fully considering the points raised by the commenters, EPA has decided not to create a separate subcategory or standard for the textile coating industry. However, EPA has adjusted the overall level of the coating operation standard downward to 90 percent in response to the concerns raised by the commenters. The EPA believes that this level of control is universally achievable by the polymeric coating industry, including textile coaters.

B. Affected Facility

One commenter asked for clarification of how the determination of affected facility is made for coating operations that share mix equipment. The commenter presented an example of a new coating operation served by an existing central mix room and asked whether existing coating operations served by the common mix equipment would also become affected facilities.

The affected facility is defined as "each coating operation and any onsite coating mix preparation equipment used to prepare coating for the coating operation." In the case presented by the commenter, the existing coating operations would not become subject to the standards because they are not part of the affected facility that includes the new coating operation. However, the existing mix equipment that serves the new coating operation would become subject to the standards. The only way that an existing coating operation would come under the standards would be if the potentially affected facility of which it is a part (i.e., the coating operation with associated mix equipment) were to be modified or reconstructed.

Other commenters noted that it is not always possible to dedicate a limited number of pieces of mix equipment to a given affected coating line and were concerned that entire mix rooms would become affected if a new coating operation is added.

The commenters have interpreted the proposed regulation correctly. However, EPA has revised the regulation to reduce the burden on plants subject to the mix equipment standards. In most cases, venting mix equipment emissions to a control device is judged to be cost effective whether one piece or an entire mix room becomes affected. When a new coating operation is constructed, a new control device would be necessary to control its emissions. This control device could readily be designed to accommodate emissions from the associated mix equipment that becomes affected when the coating operation is constructed. Under this scenario, the venting of mix equipment emissions to a control device is cost effective.

The hypothetical scenario of concern is that mix equipment could become affected by the standards through modification or reconstruction of a coating operation that uses an existing control device. Although it is considered unlikely, it is possible that the existing control device would have insufficient capacity in reserve to handle all or part of the mix equipment emissions. This would result in a requirement to install a separate control device for these emissions; such separate control of mix equipment emissions is not cost effective. Because it is possible that mix equipment at some modified or reconstructed facilities could not be controlled by existing control devices, the standards have been revised to require use of covers alone if a coating operation is modified or reconstructed without concurrent construction of a control device. Concurrent construction is defined in the final regulation as the period of time in which construction of an emission control device serving an affected facility is commenced or completed, beginning 6 months prior to the date that construction of the affected facility commences and ending 2 years after the date that construction of the affected facility is completed. This period is designated because it is consistent with the normal planning and purchase cycles for equipment of this type. The 2-year period also coincides with the period for which records required under these standards must be retained.

C. Selection of BDT and Emission Limits

1. Control of Coating Operation. Commenters questioned the overall control efficiency of 93 percent required of coating operations under the proposed standards. The commenters addressed both the degree of capture and the carbon adsorber efficiency required to comply with the standards. One commenter questioned the practicality of capturing virtually 100 percent of vapors at all times and joined other commenters in expressing concern that the need for workers to access equipment for feeding raw materials and retrieving products also makes compliance with a requirement for 100 percent capture difficult. The commenter suggested that, with diligent attention to the equipment, a control device efficiency of 95 percent and a capture efficiency of 80 percent could be attained, for an overall efficiency of 76 percent. Another commenter stated that the 98 percent capture efficiency that would be required to obtain an overall efficiency of 93 percent has not been demonstrated relative to the design factors assumed in the economic analysis.

Other commenters believed that the 95 percent efficiency ascribed to carbon adsorption is based on insufficient data from the polymeric coating industry. The 95 percent efficiency was based on test data that included only one polymeric coating operation that used a single solvent. According to the commenters, these data cannot adequately demonstrate a control technology for an entire industry that uses a multitude of solvents and coating formulations. A commenter said that the recovery efficiencies are biased because they rely on data obtained with gas analyzers only under the most favorable short-term operating conditions.

The EPA has determined that the final standards for coating operations are attainable. The following discussion of support for this conclusion addresses: (a) Capture efficiency, (b) control device efficiency, (c) overall control efficiency, and (d) VOC recovery.

a. Capture efficiency. In response to comments, EPA has reevaluated the feasibility of total enclosures in the polymeric coating industry. The term "total enclosure" is defined in § 60.741(a) as a structure that is constructed around a source of VOC emissions so that all VOC emissions are collected and exhausted through a stack or duct. With a total enclosure, there will be no fugitive emissions, only stack

emissions. The drying oven itself may be part of the total enclosure. A total enclosure must satisfy all of the design and operational requirements as defined in the promulgated regulation (§ 60.743(b)(1)) or be demonstrated to be equivalent to these requirements to the Administrator's satisfaction.

To evaluate the comments, information requests were sent to three facilities that had indicated that enclosures were in use, and plant visits were made to three facilities that had indicated that they were batch operations and needed frequent access to the coating equipment during operation. An expert in industrial ventilation and a vendor of local ventilation systems were contacted. Using the data gathered and standard ventilation principles and guidelines, EPA reached the conclusions discussed below.

As a result of its investigation, EPA has concluded that most facilities would be able to install and properly use a total enclosure around an affected coating operation. Even at facilities with extensive access requirements, local ventilation systems (hoods or other partial enclosures) can be constructed that will achieve a very high capture efficiency while affording necessary access. In most cases, the local ventilation system could be used in conjunction with a larger enclosure (up to room-size) to meet the specifications for a total enclosure.

However, there remains the possibility that some facilities may not be able to install an enclosure that meets the specifications. For instance, at an existing facility adding a new coating operation or modifying/reconstructing an existing coating operation, space constraints might not allow construction of any enclosure large enough for personnel to work within during operation. If the same facility could not install a small total enclosure immediately around the application/flashoff area because of access requirements, the use of a total enclosure would not be feasible for that facility. One of the facilities visited during the investigation of this issue would probably encounter these constraints.

Because there may be facilities at which a total enclosure is not feasible, EPA investigated capture systems that fell short of the requirements for a total enclosure and concluded that a capture efficiency of 95 percent can be achieved even without a total enclosure through the use of a well-designed local ventilation system. Although the actual percentage varies from facility to facility, about 90 percent of the VOC emissions from a coating operation are generated within the drying oven. Because proper design, operation and maintenance assure a high capture efficiency of drying ovens, only 50 percent of the emissions generated in the application/flashoff area must be captured to achieve a total capture efficiency of 95 percent. Even if only 80 percent of VOC emissions from the coating operation are generated in the drying oven, only 75 percent of the application/flashoff area emissions must be captured to achieve 95 percent overall capture. The EPA has concluded that these capture efficiencies can be achieved in a cost-effective manner with a well-designed local ventilation system (hood or other partial enclosures).

b. Control device efficiency. The EPA thoroughly reviewed available information and test data for carbon adsorbers to address the commenters' concerns that carbon adsorption may not be able to reduce VOC emissions by 95 percent for the polymeric coating industry. Carbon adsorption has been used for the last 50 years by many industries to recover a wide variety of solvents. With the experience gained from extensive application under very diverse conditions, the technology has matured to the point that an adequately designed, operated, and maintained system can readily attain an efficiency of 95 percent or higher on a continuous basis. This fact has been demonstrated across many industries with many different solvents and solvent blends. The efficiency of a carbon adsorption system is determined by its design and operating parameters and the composition of the solvent-laden airstream (SLA) vented to it, not by the process equipment that generates the exhaust stream. Thus, it is reasonable to expect the attainment of similar efficiencies through the application of this technology in the polymeric coating industry.

Data indicating the efficiency of carbon adsorption in this and related web coating industries were discussed in the proposal BID. Those data as well as data received after proposal from a polymeric coating plant support control efficiencies capable of meeting the standards. The EPA also has recently concluded an extensive study of the ability of carbon adsorbers to operate continuously at an efficiency of at least 95 percent. This report addresses many of the problems cited by commenters that could be faced by a batch operator, such as situations where multiple lines are ducted to a carbon adsorption system or where the SLA contains varying blends of solvents and other VOC, resulting in short-term variations in flow rate or inlet concentrations.

The report fully addresses these concerns and is discussed more thoroughly in the promulgation BID. The report indicates that these concerns would not significantly affect the efficiency of a properly designed and operated carbon adsorption system. The presence of low inlet concentrations or minor variations in outlet concentrations should not pose a major problem for a facility attempting to show compliance with the coating operation standard. Performance test and monitoring data are averaged over adsorber system cycles, so short-term inlet variations will not greatly affect the long-term average. If the bed is properly designed and regenerated, a constant outlet concentration can be attained such that greater than 95 percent removal is achieved for the entire range of inlet concentrations. Furthermore, by diverting or shutting off the airflow from idle equipment, inlet concentrations can be consistently maintained at higher levels to ensure the desired removal efficiency.

c. Overall control efficiency. An overall control efficiency of 93 percent has been demonstrated by a 4-week liquid material balance at a plant in the pressure sensitive tapes and labels (PSTL) industry that is equipped with a "total building air evacuation system," which was assumed to be a total enclosure for purposes of proposal analyses. The performance of this PSTL plant is considered representative of the control efficiency attainable in the polymeric coating industry because of the many similarities in the two industries. In both, coatings with a similar range of solvent contents are applied with the same types of applicators to continuous substrates and dried in the same types of drying ovens. Capture and control systems for emissions of VOC are very similar. The production at the PSTL plant during the test period was characterized by many short runs of many different products using a variety of solvents, as is often the case at polymeric coating plants.

Since proposal of the polymeric coating standards, EPA received liquid material balance data from a member of the industry (Grace) who coats textile printing blankets. This operation consists of two coating lines in a room-type enclosure. The EPA concluded that these data, which show 93 percent overall recovery based on a 3-day liquid material balance, substantiate, along with the PSTL data, that emission capture and reduction systems are capable of achieving 93 percent control.

The EPA, however, has reevaluated the proposed standards in light of industry comments (particularly issues related to batch operations and design and use of total enclosures). Although the polymeric coating standards require demonstration of an overall level of control, the BDT for the standards is discussed typically in terms of the capture system and control device efficiencies. The product of these efficiencies yields the overall level of control. The control device component of BDT has been demonstrated to be a minimum efficiency of 95 percent for this industry. Therefore, the important variable in evaluating the overall level of control that can be achieved by BDT is the efficiency associated with capture component.

Any change in the assumed level of capture efficiency should be evaluated considering that: (1) The two data points at 93 percent overall efficiency (PSTL and Grace) are associated with unknown capture and control device efficiencies and (2) neither capture system demonstrated complete consistency with EPA's total enclosure criteria. It is quite possible (and perhaps probable) that capture efficiency at these plants was less than the 98 percent minimum previously ascribed to a total enclosure. Therefore, to conclude that capture efficiency was 98 percent, based on an assumed control device efficiency of 95 percent (i.e., 0.98 capture $\times$ 0.95 control $=$0.93 overall control efficiency) may be oversimplification. Another way to estimate capture efficiency of these two facilities is to assume the control device efficiency was higher (i.e., 98 percent) instead of the minimum 95 percent. If so, the 93 percent overall control could have resulted with only a 95 percent efficient capture device.

To ensure the selection of achievable standards for the entire industry, the overall level of control required should be based on the minimum efficiencies of the two components of BDT. The EPA has concluded that control devices are at least 95 percent efficient, even while acknowledging that they are capable of, and often achieve, much higher efficiencies. Although EPA believes that total enclosures achieve essentially 100 percent or total capture, it has not been adequately demonstrated that all segments of this diverse industry can install and operate total enclosures that meet EPA's specifications. It is, therefore, reasonable to allow for this variability when setting the capture system efficiency component of BDT for this industry. Based on these considerations, EPA has adjusted the standards downward from 93 percent to 90 percent overall control (i.e., 0.95 capture $\times$ 0.95 control $=$0.90 overall control efficiency). The promulgated standards recognize that strict adherence to EPA's total enclosure criteria may be neither universally achievable nor required to meet the standards but would still allow use of the alternative standard for those sources that can meet the total enclosure specifications. The EPA believes that this will be an attractive alternative for that majority of plants for which a total enclosure is feasible. Because the compliance test provisions associated with a total enclosure are simpler and less expensive to carry out than a capture efficiency test, there is continuing incentive for sources to install total enclosures.

In conclusion, the standards have been established at an overall control level of 90 percent, with BDT defined as a 90 percent efficient emission reduction system that is composed of an emission capture system and control device. The option of using a total enclosure as the emission capture system is allowed where feasible and is attractive to the source because it simplifies the performance test. This change to the standards takes into account concerns about variability in measurement technique, operating parameters, worker access requirements, etc. The revised standards remain cost effective despite a lower emission reduction. This option potentially results in a projected decrease in nationwide VOC reduction over 5 years compared to the standards as proposed (964 Mg compared to 1,060 Mg). However, because of the use of total enclosures or control devices that achieve more than 95 percent efficiency, facilities will actually achieve emission reductions greater than 90 percent.

d. VOC recovery. The type of solvent used and VOC generated is a key design criterion in any carbon adsorption system. The adsorption characteristics of each compound are assessed using data on their physical properties, and the system is designed to accommodate these properties. While adsorbers can be designed to recover a blend of solvents and other VOC successfully, changes in the characteristics of a feed stream (i.e., the introduction of varying solvent blends due to a batch process and cure volatiles) can affect both adsorption and desorption cycles. If the system cannot accommodate the new SLA stream, it is possible that the working capacity of the bed could decrease below design conditions or that costs of increased steam requirements or carbon bed replacement due to excessive fouling could lead to poor performance or excessive costs of operation.

The operator's responsibilities under these conditions are to design the system to accommodate worst-case VOC composition conditions and to monitor the adsorber outlet streams adequately to assure that the beds are not operated after breakthrough. It is advantageous to standardize solvent blends and minimize the number of "incompatible" solvents likely to be ducted to the control device simultaneously. There may be cases where these measures are impossible and carbon adsorber performance cannot be continuously maintained at 95 percent efficiency at reasonable cost; in these cases, carbon adsorption is not the appropriate control technology. Incineration is often selected, because it can control a wide variety of VOC with relative ease.

A preliminary cost analysis shows that, when compared to baseline control assuming use of an incinerator, a 98 percent efficient incinerator can cost-effectively control emissions from a coating operation equipped with a total enclosure. Incinerators were not considered cost effective at proposal, because they were considered a more stringent regulatory alternative, and the incremental cost compared to a carbon adsorber at 93 percent overall control was considered unreasonable. However, if conditions at a new or modified line prohibit the use of carbon adsorption, these same conditions would prohibit the use of carbon adsorption under baseline regulations. Therefore, the cost of incineration under the NSPS should more logically be compared to the cost of incineration under baseline regulations. The cost effectiveness of control is reasonable in all cases when analyzed using these assumptions.

A commenter presented data that, according to the commenter, indicated that only under ideal conditions could the plant (Grace) recover 93 percent of the VOC applied at the coating operation and that, on a day-to-day basis, recovering 93 percent is very unlikely. Over a 3-day continuous run, the operation achieved 93 percent recovery based on a liquid-liquid material balance. The average recovery efficiency over a month for this operation, also calculated using a liquid liquid material balance was 88 percent. The commenter stated that even though 93 percent is theoretically possible, 85 percent is the maximum practical recovery rate.

Followup contacts were made with the commenter to determine the

differences between the "ideal" conditions during the 3-day run when a 93 percent overall efficiency was measured and the "typical" operation during the remainder of the month when a monthly average of 85 percent was measured. The two major differences noted by the commenter were (1) More careful measurements were taken during the 3-day run and (2) there was a shorter carbon bed adsorption time during the 3-day run. The commenter emphasized the extensive effort and extreme care used in obtaining measurements for the 3-day material balance. The adsorption time was decreased to 75 percent of the normal adsorption time during the 3-day run to ensure that breakthrough would not occur. The commenter noted that this reduction in adsorption cycle time was not cost effective because of the increased steam requirements for desorption. However, the commenter added that the difference in cycle time would probably not have a significant effect on performance because the original cycled length is "very conservative." The commenter stated that the plant would prefer to use breakthrough monitors instead of timers to control adsorption/desorption cycles however, a reliable monitor has not been found.

Although it is not possible to determine quantitatively the cause of the difference between the two data sets because separate control and capture efficiency are not provided in either case, comparison of the short-term and long-term performance data indicates that the measured differences may largely be due to accounting for mix room losses, retained VOC in the web, and waste VOC in the short-term calculations. These losses were not taken into account in the monthly efficiency calculations. When the short-term efficiency is recalculated without accounting for these losses, the value is consistent with the typical monthly efficiencies reported by the source. Thus, it is reasonable to expect that, if these types of losses were taken into account during the long-term measurements, the measured overall efficiency would approximate the short-term results. This indicates that short-term data may be reasonably representative of long-term performance if measured on the same basis. Furthermore, the short-term measurement techniques reflect the control system's efficiency in accordance with the procedures required for a liquid material balance in the final regulation. Thus, EPA believes that rather than discredit the level of the standards, these test data support the standards.

The information from the commenter does indicate that performing a monthly material balance in some cases (i.e., when multiple coatings are used) may require more resources than are reasonable to spend on compliance demonstrations. However, alternative methods of demonstrating compliance with the standards are available such as the alternative standard, gas-phase test, and short-term (3- to 7-day) liquid material balance. In any case, the monthly liquid material balance compliance provision has limited applicability and would not be an appropriate compliance method for the situation described by the commenter because multiple emission sources are ducted to the same control device.

A commenter recommended adding a requirement for 90 percent control for facilities using less than 110 m^3/yr of VOC if the incremental cost effectiveness is less than $1,100/Mg. The commenter stated that 90 percent control appears to be cost effective below 110 m^3/yr of VOC and suggested evaluating this option by using model operation(s) below 95 m^3/yr of VOC usage.

With the decision to reduce the overall level of control required by the standards from 93 to 90 percent, EPA reevaluated the VOC use cutoff level for this industry. This analysis focused on the same basic question as that raised by the commenter, e.g., would cost-effective control be possible for facilities that qualify for the lower cutoff level. As discussed in the promulgation BID, cost effective control of such facilities at a 90 percent (or lower) overall control level is theoretically possible. However, it is expected that the environmental impact of the change would be relatively small. According to the economic impact analysis conducted at proposal, it is expected that growth in this industry will occur in lines with annual VOC usage greater than 95 Mg/yr (110 m^3/yr). Therefore, the promulgation of a lower VOC use cutoff will not affect the costs and emission reductions projected as a result of the standards, and the cutoff level has been retained as proposed. Furthermore, it is expected that most facilities will choose to comply with the alternative standard, thus achieving at least 93 percent overall control. For these facilities, the analysis that determined the proposed cutoff is still applicable. In any case, EPA will reconsider the cutoff level at the 4-year review of the standards if additional data indicate that there is an environmental benefit to use of a lower cutoff.

Commenters believed that EPA's model plants do not adequately reflect the diversity in the polymeric coating industry and disagreed with several assumptions used in the analysis. The model plants are based on operations that use one solvent on one substrate and use equipment dedicated to one method of coating. However, according to the comments, coating operations use several solvents or solvent blends; substrates of several types, thicknesses, and widths; and various impregnating and coating head configurations. Also, because of the specialized properties of coated fabrics, long, efficient runs are rare, and batch processing is typical. Thus, models that base control efficiency only on size and solvent use fail to consider adequately major differences in process operations that affect both efficiencies and costs.

A commenter questioned the following assumptions that were used in the analysis: (1) Characterizing magnetic tape coating operations as similar to polymeric coating operations; (2) including a model plant controlled by an air-atmosphere condenser, a control device that has not been demonstrated for the polymeric coating industry, while not considering an inert-atmosphere condenser; and (3) setting the solvent concentration in the oven exhaust and control device inlet stream at 25 percent of the lower explosion limit (LEL), a level that, according to the commenter, is unsafe for oven operating and does not account for the lower concentrations in the air from solvent storage tanks, mixers, and flashoff areas, which would reduce control efficiency by lowering the overall inlet stream concentration.

The EPA believes that the range of practices typical in the polymeric coating industry have been adequately considered in the development of the standards and that the standards are achievable over the range of practices expected to occur. Based on contacts with and visits to a large number of polymeric coating plants over the course of standards development, four different types of "model lines" were developed to represent the diverse segments of the industry. To account for the range of sizes typically found in each sector of the industry, the impacts of the regulatory alternatives were analyzed for two or three annual VOC use rates within each type of model facility. In all, a total of nine different combinations of facility type and size were analyzed. In the judgment of EPA, these model plants cover the range of variables that affect VOC emissions, and these variables

have been given proper consideration in the development of the standards. In fact, after proposal EPA visited and requested detailed process information from representative plants in order to learn more about enclosure design and capture efficiency parameters as well as batch operations. This information confirmed the validity of EPA's approach.

The responses to the comments that questioned EPA's assumptions are as follows:

1. Although there are differences between the magnetic tape and polymeric coating operations, the basic configuration of unwind station, application/flashoff area, drying oven, and rewind station is common to both. Also, the VOC content of the coatings, the types of solvents, coating application techniques, and the mix equipment is often similar. As a result, the SLA streams generated by the processes are similar in composition, as are the applicable control technologies.

2. At least one air-atmosphere condenser has been used on a polymeric coating operation. A representative of the plant indicated that no major difficulties with the system had been encountered. However, it is unlikely that this control technology will be used at polymeric plants that are controlling mix equipment emissions as well as coating operation emissions because the operation of a fine-tuned, closed-loop condenser can be adversely affected by the moist, intermittent airflow from mix equipment. The use of an inert-atmosphere condenser was not analyzed because use of this system is incompatible with a process where oxygen in the application/flashoff area is essential for worker access.

3. The assumption that the SLA stream at the inlet of the control device has a concentration as high as 25 percent of the LEL is justified. The standards contain no requirement that emissions from solvent storage tanks be ducted to a control device. In any case, a more dilute SLA stream could be used as makeup air in the drying oven. Good design should ensure that emissions from mix equipment are ducted to the control device at a concentration of 25 percent or less of the LEL. In addition, the airflow from this source is quite small in comparison to that from the drying oven, so a reduced concentration would have little effect on the overall concentration of the inlet SLA stream. The air containing the emissions from the application/flashoff area is expected to be used as makeup air for the drying oven, not ducted directly to the control device. Drying ovens in this and other industries are operated safely at a concentration of 25 percent of the LEL. In fact, ovens equipped with appropriate safety features are allowed to operate at up to 50 percent of the LEL.

One commenter stated that there is no best demonstrated technology for a coating operation that uses both aqueous and organic solvent coating systems, nor is there a provision for handling this type of operation where a common mixer is used.

The commenter is correct. Use of the proposed control technologies may be incompatible with the use of waterborne coatings. Therefore, an exemption for waterborne coatings has been added in § 60.740, Applicability and Designation of Affected Facility, to specify that the coating operation or mix equipment may be vented directly to the atmosphere while waterborne coatings are used. A definition of waterborne coatings has been developed that sets the minimum water content (5 percent by weight of the volatile fraction) necessary to be considered a waterborne coating. Because "waterborne" coatings may actually contain organic solvent and generate VOC emissions, the exemption for their use provides a VOC content ceiling of 9 percent weight of the volatile fraction. This ceiling was developed based on a "worst-case" baseline coating that is 85 percent solvent (15 percent solids) by volume. The level specified in the exemption is equivalent to a 90 percent VOC reduction for this coating. The VOC in waterborne coatings is not to be included in the annual VOC usage rate when determining if a facility is below the VOC use cutoff. However, the amount of VOC in waterborne coatings reported by the industry is negligible (0 to 2 percent by weight) of coating applied, and the impact of this exclusion is expected to be minor.

2. Control of Coating Mix Preparation Equipment. A commenter recommended that coating mix preparation equipment include only mixers and not mills, holding tanks, or other equipment. The commenter observed that the only coating mix preparation equipment considered in developing the standards and demonstrating the feasibility of the standards was the mix tank. The feasibility of the proposed standard for mills, holding tanks, and other equipment, which are included in the definition for coating mix preparation equipment, was not considered. At the commenter's plant, portable containers are used to transport coating from the mixing area to subsequent coating preparation and application areas. These portable containers appear to be included in the definition as "holding tanks," but, according to the commenter, there is no feasible or practical way for these portable containers to comply with the requirement that all VOC emissions be vented to a control device. The commenter also questioned the feasibility of (1) Capturing and venting all VOC emissions from mills to a control device at a concentration range within which the control device is efficient or (2) installing a vapor-tight cover equipped with a conservation vent. The commenter said that only equipment that was specifically addressed in the development of the standard should be included in the definition of coating mix preparation equipment. The commenter recommended that "coating mix preparation equipment" be defined as "mix tanks in which solvent and polymer are blended to prepare polymeric coating formulations."

The final rule requires that only affected mixing vessels be covered and vented to a 95 percent efficient control device. The definition of "coating mix preparation equipment" has been changed to "all mixing vessels in which solvent and other materials are blended to prepare polymeric coatings."

Only mixing vessels were considered in the analysis of the cost and cost effectiveness of mix equipment control because essentially all mixing area emissions that were intended to be regulated are generated from the mixers. Mills in this industry are most frequently operated using dry ingredients alone and are often tightly sealed to contain the ingredients. Emissions from holding tanks are negligible compared to those from the mixers because both breathing and working losses are minimized. Breathing losses are minimized because holding tanks are generally located indoors at relatively constant temperatures and because the vessels typically are covered during storage to minimize coating composition changes through solvent loss and contamination. Working losses due to the filling of vessels are minimized because holding tanks typically are cleaned between uses; a clean, dry vessel does not have any vapor in the air space to be displaced as the coating is introduced. Emissions during the cleaning process are not regulated because of the inherent difficulties of control. Nevertheless, mills, holding tanks, and other equipment had been included in the proposed rule because it was determined that the controls mandated for the mixers could be easily applied to such equipment.

However, based on a reexamination of the information gathered during the development of the standards and on

the information presented by the commenter, EPA has decided that the standards should be applied only to mixers because they are the primary source of mix room emissions and the costs of controlling emissions from mills were not demonstrated. The EPA also agrees with the commenter that it is infeasible to duct emissions from portable equipment to a controld device. However, during the actual mixing process, these portable containers are stationary, and ducting emissions to a control device is feasible. Thus, portable tanks, including holding tanks, are required to be covered and vented during those times that they are in use as mixing vessels. Covers alone are required when these tasks are in transit or at nonmixing locations.

Commenters questioned the technical feasibility of capturing and venting all VOC emissions from coating mix preparation equipment. One commenter noted that the need for access to the mixers makes sealed covers impractical. Also, according to the commenter, the total enclosure of and ducting emissions from all transfers from mixers to transfer containers, strainers, coaters, and other mixers is not feasible. Another commenter focused on the portable containers or "change cans" used specifically in the printing blanket industry for high-viscosity coatings that cannot readily be pumped beyond the shortest distances. According to the commenter, the change cans are generally covered during storage, movement, and mixing but because they are portable, cannot be ducted to a control device. Some VOC emissions from these containers are inevitable when covers are necessarily removed between the steps of the process.

A commenter pointed out that companies frequently use different sizes of mix equipment ranging from 5-gallon pails to 500-gallon portable tanks. Some are totally enclosed, while others are virtually impossible to enclose well enough to meet the proposed standard. The commenter maintained that companies would find it impossible to capture all emissions from mix equipment because of the nature of the process, cleanups, color changes, short runs, container handling, etc. The commenter also questioned the validity of EPA's contention that coating operations that apply urethane coatings, which are purchased premixed, do not use mix equipment. According to the commenter, all such operations use mix equipment either to adjust the specific properties of a batch of coating or to obtain the proper coating consistency.

A commenter pointed out that, while the proposal preamble states that BDT for mix equipment is the use of covers vented to a control device and that the format for the standard is an equipment format, the proposed standard does not mention equipment. The commenter stated that the requirement that all VOC emissions be captured and vented makes the proposed standard a performance standard, requiring a 100 percent capture efficiency. The commenter recommended that the performance standard language be deleted and that the standard (§ 60.742(a)(2) at proposal) be restated as an equipment standard.

The format of the standards for mix equipment was intended to be an equipment standard. But, as noted by the commenters, the use of the term "all" in the proposed standard implies 100 percent-capture, which has not been demonstrated in the polymeric coating industry. The standards for mixing vessels that serve coating operations that use at least 130 Mg/yr of VOC (and are associated with a coating operation with concurrent construction of a control device) have been revised to reflect actual workplace conditions. These mixing vessels are required to be covered during mixing and vented to a 95-percent efficient control device. The mixing vessles must be covered except when adding ingredients, withdrawing samples, transferring the contents, or making visual inspection if these activities cannot be carried out with the cover in place. Specifications for the covers have been added in § 60.743(c)(1).

The EPA does not believe that the use of portable containers or containers of varying sizes precludes the venting of emissions to a control device during the actual mixing process. In cases where portable tanks are used, the mixing apparatus remains stationary. Ductwork can be installed from this point to the control device. No evidence has been presented that small mixing vessels cannot be similarly equipped. The change to an equipment format with allowances for opening covers during periods of legitimate need addresses the concerns cited by the commenters.

The commenter's contention that sources applying urethane coatings employ mix equipment does not change the conclusions of the background study. Should these sources use mix equipment, the same cost factors that apply to mix equipment at other plants would apply. In fact, the higher value of the solvents saved by the application of control technology at this type of plant would improve the cost effectiveness of control beyond that calculated for other types of polymeric coating plants. Because of the direction of this change, the impacts of the standards were not recalculated. When such sources use mixers, the beneficial impacts of the standards will be obtained with reasonable cost effectiveness and will far outweigh the negative impacts.

One commenter said that EPA appears to have incorrectly applied information on emissions from solvent storage tanks to emissions from mix tanks. The resulting estimate that vapor-tight covers with conservation vents would reduce emissions by 40 percent significantly understates the emission reduction that would be obtained. The commenter presented results from a bench-scale experiment that showed a simple cover not equipped with vapor-tight seals or a conservation vent would reduce emissions 74 percent and 96 percent when covering 87 percent and 100 percent of the vessel, respectively. The commenter contended that economic analysis would show that the small gain in emissions control achieved by a vapor-tight cover with a conservation vent as opposed to a simple cover would not be cost effective. The commenter suggested that the standard for mix equipment using at least 110 m^3/yr but less than 150 m^3/yr of VOC (§ 60.742(a)(3) at proposal) be revised to require only a cover that encloses at least 95 percent of the opening and that must be closed at all times except when adding ingredients, withdrawing samples, transferring the contents, or making visual inspection when such activities cannot be carried out with the cover in place.

The EPA agrees that the improvement in control efficiency on mix equipment to be gained from a vapor-tight cover with a conservation vent compared to that from a simple tight-fitting cover is insignificant. The chief benefit to be gained from conservation vents is the control of "breathing losses" resulting from diurnal temperature changes. Because mix equipment is not normally exposed to such changes in this industry, the requirement that covers be sealed and equipped with conservation vents has been dropped. However, EPA does not agree that the emission reduction ascribed to covers is significantly underestimated. The experiment conducted by the commenter explored only evaporative losses during the mixing process. This treatment neglects the impact of the "working losses" that occur due to the filling and emptying of a vessel that contains a solvent-saturated air space. An analysis of cover efficiency was carried out for

mix equipment in the magnetic tape manufacturing industry, and the results of this analysis are considered representative of the polymeric coating industry as well. The efficiency of covers was determined by this analysis to be 40 percent.

The standards for mixing vessels that use at least 95 Mg/yr (110 m^3/yr) but less than 130 Mg/yr (150 m^3/yr) (§ 60.742(c)(3)) of VOC has been revised to require the equipment to be covered at all times except when adding ingredients, withdrawing samples, transferring the contents, or making visual inspection when such activities cannot be carried out with the cover in place. The same requirements have been extended to mix equipment at facilities using at least 130 Mg/yr of VOC that are associated with coating operations without concurrent construction of a control device. Specifications for the covers are the same as those listed under § 60.743(c)(1) for mix equipment serving coating operations that use at least 130 Mg/yr. The cost of compliance with the revised standard will be less than that associated with the use of covers and conservation vents, which were cost effective under the proposed standard. This is because the cost of covers is expected to be included in the purchase price of new equipment, so that there is no incremental cost associated with the emission reduction.

D. Control Costs

One commenter claimed that the cost of totally enclosing print blanket coating equipment was seriously underestimated. According to the commenter, the nature of these operations requires constant operator access to the coater; therefore, a small enclosure immediately around the coating application/flashoff area cannot be used. The commenter further stated that a total room enclosure is infeasible for existing plants because there are typically multiple lines in a single large room with many openings and ventilation systems. The remaining option is to enclose the equipment within a smaller room of sufficient size to allow the constant presence and mobility of equipment operators. The commenter stated that, for worker safety, the concentration of solvent within this enclosure must be limited to 100 parts per million by volume and that the only option for achieving this low solvent concentration would be to flush high volumes of air through the enclosure.

The commenter presented an analysis of the costs and cost effectiveness of this approach. The commenter's analysis was based on the assumption that the only way to protect workers within a total enclosure is to dilute the emissions to the level considered safe for personnel. The resulting airflow rate required an entirely new carbon adsorption system at a cost of $2.5 million to control the emissions. The capital cost of this system, coupled with the high operating costs associated with maintaining a high removal efficiency from such a dilute SLA steam, resulted in an unreasonable cost-effectiveness value.

The EPA believes that the commenter's assumption is unrealistic and erroneous. In practice, localized pickup points (hoods or other enclosures) should be placed within a total enclosure to both protect any workers that must be inside and reduce the ventilation rate to a level such that the air from the enclosure can be used as makeup air in the drying oven. Thus, a new carbon adsorption system would not be required, and the composition of the SLA stream ducted to the control device would be similar to that assumed in EPA's analyses.

The analysis presented by the commenter was reworked using more realistic assumptions. Using the commenter's values for annual solvent use, electricity and stream costs, and the value of reclaimed solvent and the factors from EPA's original analysis for adsorber steam and electricity demand, the cost effectiveness of moving from the source's current control level to the level required by the standards is less than $200 per ton of additional VOC recovered. The EPA considers this to be a reasonable value. Thus, EPA believes that the costs associated with totally enclosing equipment such as that operated by the commenter were not underestimated.

E. Compliance Provisions

One commenter sought confirmation that under the proposed regulations compliance could be demonstrated with an "approved" room enclosure around the coating equipment and data that indicate proper operation of collecting equipment. The commenter's interpretation is that the design of the room enclosure will be approved by EPA on a case-by-case basis and that the major requirement for approval is that the room be under negative pressure and the exhaust which produces this negative pressure be vented to a 95 percent efficient control device. Data to prove proper operation of the control device would be taken from continuous recordings of the pollutant concentration in the gas vented from the carbon beds.

The final standards have been revised to clarify that the use of certain equipment, i.e., a total enclosure and a 95 percent efficient control device is available as an alternative standard to the 90 percent emission reduction standard. In other words, the owner or operator may choose to comply with either the emission reduction standard or the alternative standard. The EPA also has revised the compliance provisions to include specifications for a total enclosure. Case-by-case approval by the Administrator is not required if these specifications are met. After the initial determination of compliance, an approved parameter (such as fan amperage or duct flow rates) shall be monitored to demonstrate proper operation of the vapor capture system. Also, the control device must be monitored in accordance with the same provisions that apply when the two-part gaseous emissions test is used to demonstrate compliance. If the control device is a carbon adsorber, monitoring of the pollutant concentration in either the control device outlet stream or both inlet and outlet streams is required.

In addition, the compliance provisions for coating operations meeting the emission reduction standard have been clarified and revised since proposal. In the final standards, one method of demonstrating compliance is to perform a two-part gaseous emissions test to measure both capture efficiency and control device efficiency. Compliance is demonstrated if the product of these two efficiencies is equal to or greater than 0.90. This compliance method is available to all affected facilities. An alternative to performing the gaseous emissions tests is performing a liquid-liquid material balance. However, this compliance provision has limited applicability. A liquid-liquid material balance can only be used when a single coating operation is vented to a dedicated control device (i.e., the control device may not be used to control emissions from any other emission source, including mix equipment.) This compliance provision is most likely to be applicable for facilities with mix equipment that is not required to be vented to the control device. The liquid-liquid material balance compliance provisions include two options. The first option requires that a liquid-liquid material balance be performed for each nominal 1-month period. When using this option, no monitoring is required beyond that necessary to perform the material balance. The second option, which has been added since proposal, requires performing a one-time material balance over 3 to 7 days followed by

continuous monitoring. The number of days for the performance test is selected by the operator and shall provide data that represent the plant's typical coating practices. The monitoring requirements are the same as those specified for the two-part gaseous emissions test and alternative standard. This second option may be attractive for facilities that cannot or do not want to conduct the continuous, detailed monthly liquid material balance measurements that are required for an accurate balance (e.g., VOC applied at the coater, retained VOC [optional], VOC waste losses).

F. Test Methods and Monitoring

One commenter stated that the 93 percent reduction required of coating operations will be unattainable because of the inherent vagaries of the parameters that must be measured to perform the liquid material balance compliance test. The commenter noted that the method requires measurement techniques that are not currently used. The commenter also stated that the measurement techniques and formula for the control device efficiency in the gas balance compliance test are realistic but that the formula for capture efficiency appears to assume that all uncontrolled solvent vapors will be discharged through a measurable point and that there will be no "stray" fugitive emissions.

The EPA acknowledges that short-term variations in process conditions could affect a facility's ability to perform the measurements required to demonstrate compliance in the short term by means of a liquid material balance. For this reason, a relatively long averaging time (in this case, 1 month) is available to allow for a representative variety of coatings and products, as well as to reduce the impact of short-term variations due to process upsets, solvent spills, and variable amounts of solvent in use in the process. Facilities should already keep at least some of the required records as part of normal business practices and should be able to negotiate any specific problems faced by an individual facility with the enforcing agency. As stated in section E, facilities that find the recordkeeping and measurements burdensome may opt to conduct the short-term liquid balance or gas-phase test to demonstrate compliance. In any case, the alternative standard, use of a total enclosure and 95 percent efficient control device, is available to facilities that do not wish to perform the testing and measurements associated with the capture portion of the emission reduction standard. Because EPA has determined that facilities can conduct the measurements required for a liquid material balance and because several alternatives are available, the month-long liquid material balance has been retained in the final standards.

In response to the commenter's other concern, it appears that the commenter has misinterpreted the requirements of the gaseous emissions compliance test. The standard requires (not assumes) that all uncontrolled VOC emissions, including solvent vapors, will be passed through stacks suitable for measurement. To carry out the compliance test, the source must ensure that all VOC emissions will either be directed to the control device or be measured at the exit stack of a temporary enclosure or at all room exhaust points. In other words, there should be no "stray" fugitive emissions that are not accounted for in the compliance test.

One commenter recommended that the standards include a plant-wide VOC recovery of 85 percent as an alternative method of demonstrating compliance and that this is justified because of its simplicity, low expense, and effectiveness. The commenter said that the standards regulate some processes at different levels and leave other emissions, such as those from storage, cleaning, and transfers, unregulated. The commenter believes that enforcement officers would prefer a plant-wide material balance and said that enforcement officers routinely ask for this information along with the data required by a particular standard. According to the commenter, the solvent disbursed to the plant can be readily measured by metering withdrawals from the solvent tanks. Also, solvent purchases, which are always measured accurately, are a direct measure of emissions bcause recovered solvent is replaced into inventory. Thus, the plant's VOC recovery efficiency can be calculated as the difference between VOC used and VOC (including solvent) purchased, divided by VOC used. Because some emissions in the plant would be unregulated, the commenter concluded that the standards assume and accept a plant-wide recovery of less than 93 percent. The commenter suggested that EPA determine an appropriate recovery level under the final standard. Using several years of data from a modern facility that nearly conforms with the standard, the commenter concluded that a reasonable plant-wide recovery level for a new plant designed to comply with the standards would be 85 percent.

The option of demonstrating compliance using a plant-wide material balance has not been incorporated into the final standards. Section 111 of the Clean Air Act requires that the standard be based on BDT. Compliance methods must demonstrate that the affected facility meets the control efficiency set by BDT. If a plant-wide material balance were used to demonstrate compliance for polymeric coating operations, a plant-wide control efficiency that ensures 90 (formerly 93) percent control of VOC emissions from an affected coating operation(s) would be required. Without extensive testing to apportion emissions from all VOC sources in the plant, a plant-wide material balance demonstrating less than 90 percent control does not ensure that the affected facility initially achieves 90 percent control or maintains 90 percent control over each month of operation.

It is not feasible to select a plant-wide VOC recovery value because of the wide range of potential emission points that differ from plant to plant. These include existing coating operations and mix equipment, solvent storage tanks, and cleanup operations. With the variation in emissions from such sources, it is not possible to select a single plant-wide recovery efficiency value that would reflect BDT, yet be achievable in all cases. Even if such a level were established, it would be impossible to tell whether the affected facilities within the plant were in compliance with the standards applicable to them individually. For these reasons, a plant-wide material balance has not been added to the standards as an alternative method of demonstrating compliance.

One commenter noted the unreliability and the expense of maintaining a continuous monitoring device for a carbon adsorber. The commenter stated that these monitors work well for short-term measurements but are not reliable for continuous measurements because the high water content of the carbon adsorber exhaust immediately after desorption damages the monitors. Thus, the industry may have difficulty maintaining continuous monitoring over the long term as required in the proposed regulation.

The EPA must have some means to determine whether proper carbon adsorber operation and maintenance practices are being carried out. The monitoring of organic compounds is the only parameter that has been identified that adequately relates to adsorber performance. Without these monitors, sources are unable to detect when they may be operating out of compliance. Tests on existing systems show that the lack of proper monitoring is a major cause of poor performance of carbon

adsorber systems. Discussions with carbon adsorber experts indicated that continuous monitors are available that are reliable when the proper calibration and maintenance procedures are used.

G. Wording of the Regulation

One commenter recommended converting all references to m^3 to pounds. This would be consistent with the units normally used by the industry for recordkeeping, solvent purchases, and pollution control system and equipment specifications.

Consistent with U.S. government policy, EPA has chosen the International System of Units as the format for regulations. However, EPA has revised all references in the final standards of m^3 to Mg to be consistent with the mass reporting basis typically used by industry and enforcing agencies. Reporting emissions and VOC usage rates on a mass basis rather than a volume basis also avoids the need to select average or typical densities of materials when reporting general values.

One commenter suggested that the volumetric flow rate be stated on a wet basis rather than a dry basis because, according to a contact at EPA, Method 25A gives results in parts per million by volume on a wet basis.

The commenter is correct. Method 25A gives results in terms of parts per million by volume on a wet basis; therefore, the volumetric flow rate also should be stated on a wet basis when the method is used. The final standard has been corrected. However, volumetric flow rates used in conjunction with Method 25 concentration measurements are to be expressed in dry standard cubic meters per hour.

One commenter stated that, for consistency with other NSPS and State regulations, coating mix preparation equipment should not be included in the definition for a coating line and that the term "coating line" was unnecessary since "coating operations" and "coating mix preparation equipment" are described. The commenter suggested changing all references to "coating operations" to "coating lines" since these two terms, by his definition, are synonymous.

In the proposed standards, coating line is defined as "the coating operation(s) and coating mix preparation equipment that service the coating operation(s)." According to the commenter, the term coating line is commonly used interchangeably with coating operation. To avoid confusion, the term "coating line" is not used in the final standard. The term "coating operation" has been retained in order to maintain consistency with the proposal BID and preamble.

One commenter recommended eliminating references to baking, curing, and polymerizing from the definition for drying oven. Although the preamble makes clear that the curing oven is not covered by the standard, the proposed definition for "drying oven" suggests that the curing oven is included.

The definition of drying oven has been changed to "a chamber within which heat is used to dry a surface coating; drying may be the only process or one of multiple processes performed in the chamber." By eliminating references to baking, curing, and polymerizing, this revised definition makes it clear that the standard does not apply to chambers in which drying is not performed. The definition also makes it clear that the standard does apply to any chamber within which drying is performed, regardless of the other processes performed in the chamber. This change is consistent with the fact that cure volatiles resulting from separate curing ovens are expected to be minimal in this industry, or to occur offsite, and thus, are not available for control.

One commenter recommended changing the definition for solvent used from "the amount of solvent delivered to the coating mix preparation equipment of the affected facility" to "the net quantity consumed in the coating operation line." According to the commenter, coating mixes are typically prepared in greater quantities than required for a specific production run. The excess coating may be recycled, which would result in double counting, or disposed as a waste material.

"Solvent used" was defined at proposal as the amount of solvent delivered to the coating mix preparation equipment because: (1) This is the simplest and most direct measurement point, and (2) it reflects the quantity used in determining the cutoff. The commenter's suggested definition of "solvent used" would make accurate measurement considerably more difficult because sampling and analysis of the applied coating would be required. Also, the commenter's suggested definition does not take into account VOC emitted during mixing, which were included in the computation of the solvent-use cutoff. The cutoff was computed by determining the minimum quantity of applied VOC that could be cost-effectively controlled and then adjusting this volume to account for VOC emitted before the coating reaches the applicator of the affected coating operation.

The proposed definition was not intended to result in double counting. However, it may require the owner or operator to keep careful records of VOC use in cases where prepared coatings are not used immediately.

To clarify the meaning of this term, the definition has been changed to "VOC used." The amount of "VOC used" should be computed as the sum of: (1) The VOC delivered to the mix equipment from storage, (2) any VOC added after initial formulation is complete (e.g., dilution solvent added at the coating operation), and (3) the VOC content of any ingredients prepared off the plant site that are used in the preparation of coatings. When excess coating is recycled for use in a later coating run, the VOC it contains will not be counted a second time. When premixed coatings or ingredients are used in the formulation of coatings, only the VOC content of coatings prepared off the plant site must be included in the volume of VOC used. Should a source reclaim the VOC from excess coatings, the VOC will enter the recovery system just as if it were applied to a substrate. When this reclaimed VOC is reused, it will be properly counted toward the volume of VOC used. It is true that coatings disposed as waste materials were not considered when the annual VOC-use cutoff was calculated. However, EPA believes that such wastes should be minimized. Thus, to provide an incentive to minimize these wastes, no change has been made to this aspect of the definition.

A change has been made to the proposed definition to account for facilities that purchase premixed coatings or other ingredients that contain VOC. The new definition of "VOC used" reads "the amount of VOC delivered to the coating mix preparation equipment of the affected facility (including any contained in premixed coatings or other ingredients prepared off the plant site) for the formulation of polymeric coatings to be applied to supporting substrates at the coating operation, plus any VOC added after initial formulation is complete (e.g., dilution solvent added at the coating operation). If premixed coatings that require no mixing at the plant site are used, "VOC used" means the amount of VOC delivered to the coating applicator(s) of the affected facility.

A commenter suggested redefining the symbol M_r used in Equation 1 (as proposed) as the total VOC recovered before purification because the proposed definition does not allow for VOC losses during separation/purification.

As proposed, the definition of "M_r" does not specify whether the recovered

VOC is to be measured before or after separation/purification. The 93 percent recovery efficiency required to demonstrate compliance using Equation 1 was determined considering the total VOC recovered by the carbon adsorption system. It did not include any losses from separation/purification. Therefore, EPA requires that "M_r" be measured after adsorption. There may be cases, however, where it is more convenient to measure "M_r" after separation/purification. Thus, a measurement point for "M_r" has not been specified, but it is to be established when the compliance procedures are approved. This is explained in § 60.743(a)(3)(vi), which has been added to the compliance provisions.

A commenter suggested redefining the term RS_i in Equation 1 (as proposed) to include all VOC, not just the solvent, retained on the substrate. A portion of the VOC in some coating formulations is monomer that is retained in the substrate either as free monomer or polymer. The suggested definition change would make it clear that any monomer retained in the substrate would be included in the term RS_i. Another commenter recommended that the provisions of justifying the need for retained solvent be broadened to include economic and technical feasibility concerns.

In response to the commenter's suggestion, the definition of RS_i has been changed to "the total mass (kg) of VOC retained on the coated substrate after oven drying or contained in waste coating for a given combination of coating and substrate." Without this change, coatings that release reaction by-products when tested by Method 24 would indicate the presence of some VOC which may not be available for recovery by the VOC recovery system unless the coating is exposed to a similar temperature within the oven. If the amount of monomer retained on the substrate is significant, this may affect a source's ability to demonstrate compliance. By changing "solvent" to VOC in the definition of RS_i enables the source to account for the amount of VOC retained on the substrate. The source is responsible for demonstrating the quantity retained on the substrate.

In response to the other commenter, EPA notes that the intent of the retained solvent (now VOC) provision as proposed was to ensure that all facilities take steps to minimize uncontrolled emissions from retained VOC whenever possible. The exemption for retained VOC was written to permit the facility as much flexibility as possible in demonstrating to the Administrator the level of, and need for, retained VOC. However, EPA has revised this requirement to minimize the burden on both enforcement and plant personnel. The revised requirement eliminates the need for the plant to justify the need for retained VOC if the measured value of RS_i is less than or equal to 6 percent by weight of the liquid VOC applied. A limited survey of the industry indicated that 6 percent is a common breakpoint in retained VOC values and would encompass the majority of plants reporting retained VOC. Plants reporting RS_i values above 6 percent by weight of the liquid VOC applied would still be required to demonstrate to the satisfaction of the Administrator that the retained VOC is required for product quality or to meet product specifications. In all cases, plants would be required to submit for approval data on the specific measurement techniques used to determine RS_i.

VIII. Administrative

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to identify and locate documents readily so that they can intelligently and effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated standards and EPA responses to significant comments, the contents of the docket, except for interagency review materials, will serve as the record in case of judicial review (section 307(d)(7)(A)).

The effective date of this regulation is September 11, 1989. Section 111 of the Clean Air Act provides that standards of performance or revisions thereof become effective upon promulgation and apply to affected facilities, the construction or modification of which was commenced after April 30, 1987, the date of proposal.

As prescribed by section 111, the promulgation of these standards is based on the Administrator's determination (40 CFR 60.16, 44 FR 4922, dated August 21, 1979) that industrial fabric coating contributes significantly to air pollution which may reasonably be anticipated to endanger public health or welfare. The polymeric coating of supporting substrates category includes the fabric coating category. In accordance with Section 117 of the Act, publication of these promulgated standards was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies.

This regulation will be reviewed 4 years from the date of promulgation as required by the Clean Air Act. This review will include an assessment of such factors as the need for integration with other programs, the existence of alternative methods, enforceability, improvements in emission control technology, and reporting requirements.

Section 317 of the Clean Air Act requires the Administrator to prepare an economic impact assessment for any new source standard of performance promulgated under section 111(b) of the Act. An economic impact assessment was prepared for this regulation and for other regulatory alternatives. All aspects of the assessment were considered in the formulation of the standards to ensure that cost was carefully considered in determining BDT. The economic impact assessment is included in the BID for the proposed standards.

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control No. 2060–0181.

Public reporting burden for this collection of information is estimated to average 3 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Initial performance testing is estimated to average 100 hours per occurrence.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Paperwork Reduction Project (2060–0181), Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

Under Executive Order 12291, EPA is required to judge whether a regulation is a "major rule" and, therefore, subject to the requirements of a regulatory impact analysis (RIA). The EPA has determined that this regulation would result in none of the adverse economic effects set forth in section 1 of the Order as grounds for finding a regulation to be a "major rule." The cost increases resulting from the

NSPS will be small and will have an insignificant impact on the industry. The EPA has concluded, therefore, that this regulation is not a "major rule" under Executive Order 12291.

The Regulatory Flexibility Act of 1980 requires the identification of potentially adverse impacts of Federal regulations upon small business entities. The Act specifically requires the completion of a Regulatory Flexibility Analysis in those instances where small business impacts are possible. Because these standards impose no adverse economic impacts, a Regulatory Flexibility Analysis has not been conducted.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 60

Air pollution control, Intergovernmental relations, Incorporation by reference, Polymeric coating of supporting substrates (SIC Codes 2295, 2296, 2394, 3041, 3069, and 3293), Reporting and recordkeeping requirements.

Dated: August 28, 1989.

F. Henry Habicht,

Acting Administrator.

40 CFR part 60 is amended as follows:

PART 60—[AMENDED]

1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7414, 7416, 7601.

2. By adding a new subpart VVV to read as follows:

Subpart VVV—Standards of Performance for Polymeric Coating of Supporting Substrates Facilities

Sec.

60.740 Applicability and designation of affected facility.
60.741 Definitions, symbols, and cross-reference tables.
60.742 Standards for violatile organic compounds.
60.743 Compliance provisions.
60.744 Monitoring requirements.
60.745 Test methods and procedures.
60.746 Permission to use alternative means of emission limitation.
60.747 Reporting and recordkeeping requirements.
60.748 Delegation of authority.

Subpart VVV—Standards of Performance for Polymeric Coating of Supporting Substrates Facilities

§ 60.740 Applicability and designation of affected facility.

(a) The affected facility to which the provisions of this subpart apply is each coating operation and any onsite coating mix preparation equipment used to prepare coatings for the polymeric coating of supporting substrates.

(b) Any affected facility for which the amount of VOC used is less than 95 Mg per 12-month period is subject only to the requirements of § 60.744(b), § 60.747(b), and § 60.747(c). If the amount of VOC used is 95 Mg or greater per 12-month period, the facility is subject to all the requirements of this subpart. Once a facility has become subject to the requirements of this subpart, it will remain subject to those requirements regardless of changes in annual VOC use.

(c) This subpart applies to any affected facility for which construction, modification, or reconstruction begins after April 30, 1987, except for the facilities specified in paragraph (d) of this section.

(d) This subpart does not apply to the following:

(1) Coating mix preparation equipment used to manufacture coatings at one plant for shipment to another plant for use in an affected facility (coating operation) or for sale to another company for use in an affected facility (coating operation);

(2) Coating mix preparation equipment or coating operations during those times they are used to prepare or apply waterborne coatings so long as the VOC content of the coating does not exceed 9 percent by weight of the volatile fraction;

(3) Web coating operations that print an image on the surface of the substrate or any coating applied on the same printing line that applies the image.

§ 60.741 Definitions, symbols, and cross-reference tables.

(a) All terms used in this subpart not defined below have the meaning given to them in the Act and in subpart A of this part.

Coating applicator means any apparatus used to apply a coating to a continuous substrate.

Coating mix preparation equipment means all mixing vessels in which solvent and other materials are blended to prepare polymeric coatings.

Coating operation means any coating applicator(s), flashoff area(s), and drying oven(s) located between a substrate unwind station and a rewind station that coats a continuous web to produce a substrate with a polymeric coating. Should the coating process not employ a rewind station, the end of the coating operation is after the last drying oven in the process.

Common emission control device means a device controlling emissions from an affected coating operation as well as from any other emission source.

Concurrent means the period of time in which construction of an emission control device serving an affected facility is commenced or completed, beginning 6 months prior to the date that construction of the affected facility commences and ending 2 years after the date that construction of the affected facility is completed.

Control device means any apparatus that reduces the quantity of a pollutant emitted to the air.

Cover means, with respect to coating mix preparation equipment, a device that fits over the equipment opening to prevent emissions of volatile organic compounds (VOC) from escaping.

Drying oven means a chamber within which heat is used to dry a surface coating; drying may be the only process or one of multiple processes performed in the chamber.

Equivalent diameter means four times the area of an opening divided by its perimeter.

Flashoff area means the portion of a coating operation between the coating applicator and the drying oven where VOC begins to evaporate from the coated substrate.

Natural draft opening means any opening in a room, building, or total enclosure that remains open during operation of the facility and that is not connected to a duct in which a fan is installed. The rate and direction of the natural draft across such an opening is a consequence of the difference in pressures on either side of the wall or barrier containing the opening.

Nominal 1-month period means a calendar month or, if established prior to the performance test in a statement submitted with notification of anticipated startup pursuant to 40 CFR 60.7(a)(2), a similar monthly time period (e.g., 30-day month or accounting month).

Onsite coating mix preparation equipment means those pieces of coating mix preparation equipment located at the same plant as the coating operation they serve.

Polymeric coating of supporting substrates means a web coating process that applies elastomers, polymers, or prepolymers to a supporting web other than paper, plastic film, metallic foil, or metal coil.

Substrate means the surface to which a coating is applied.

Temporary enclosure means a total enclosure that is constructed for the sole purpose of measuring the fugitive VOC emissions from an affected facility.

Total enclosure means a structure that is constructed around a source of emissions and operated so that all VOC emissions are collected and exhausted through a stack or duct. With a total enclosure, there will be no fugitive emissions, only stack emissions. The drying oven itself may be part of the total enclosure.

Vapor capture system means any device or combination of devices designed to contain, collect, and route solvent vapors released from the coating mix preparation equipment or coating operation.

VOC in the applied coating means the product of Method 24 VOC analyses or formulation data (if those data are demonstrated to be equivalent to Method 24 results) and the total volume of coating fed to the coating applicator.

VOC used means the amount of VOC delivered to the coating mix preparation equipment of the affected facility (including any contained in premixed coatings or other coating ingredients prepared off the plant site) for the formulation of polymeric coatings to be applied to supporting substrates at the coating operation, plus any solvent added after initial formulation is complete (e.g., dilution solvent added at the coating operation). If premixed coatings that require no mixing at the plant site are used, "VOC used" means the amount of VOC delivered to the coating applicator(s) of the affected facility.

Volatile organic compounds or *VOC* means any organic compounds that participate in atmospheric photochemical reactions; or that are measured by a reference method, an equivalent method, an alternative method, or that are determined by procedures specified under any subpart.

Waterborne coating means a coating which contains more than 5 weight percent water in its volatile fraction.

Web coating means the coating of products, such as fabric, paper, plastic film, metallic foil, metal coil, cord, and yarn, that are flexible enough to be unrolled from a large roll; and coated as a continuous substrate by methods including, but not limited to, knife coating, roll coating, dip coating, impregnation, rotogravure, and extrusion.

(b) The nomenclature used in this subpart has the following meaning:

"A_k" means the area of each natural draft opening (k) in a total enclosure, in square meters.

"C_{aj}" means the concentration of VOC in each gas stream (j) exiting the emission control device, in parts per million by volume.

"C_{bi}" means the concentration of VOC in each gas stream (i) entering the emission control device, in parts per million by volume.

"C_{di}" means the concentration of VOC in each gas stream (i) entering the emission control device from the affected coating operation, in parts per million by volume.

"C_{fk}" means the concentration of VOC in each uncontrolled gas stream (k) emitted directly to the atmosphere from the affected coating operation, in parts per million by volume.

"C_{gv}" means the concentration of VOC in the gas stream entering each individual carbon adsorber vessel (v), in parts per million by volume. For purposes of calculating the efficiency of the individual adsorber vessel, C_{gv} may be measured in the carbon adsorption system's common inlet duct prior to the branching of individual inlet ducts.

"C_{hv}" means the concentration of VOC in the gas stream exiting each individual carbon adsorber vessel (v), in parts per million by volume.

"E" means the control device efficiency achieved for the duration of the emission test (expressed as a fraction).

"F" means the VOC emission capture efficiency of the vapor capture system achieved for the duration of the emission test (expressed as a fraction).

"FV" means the average inward face velocity across all natural draft openings in a total enclosure, in meters per hour.

"H_v" means the individual carbon adsorber vessel (v) efficiency achieved for the duration of the emission test (expressed as a fraction).

"H_{sys}" means the carbon adsorption system efficiency calculated when each adsorber vessel has an individual exhaust stack.

"M_{ci}" means the total mass (kg) of each coating (i) applied to the substrate at an affected coating operation during a nominal 1-month period as determined from facility records.

"M_r" means the total mass (kg) of VOC recovered for a nominal 1-month period.

"Q_{aj}" means the volumetric flow rate of each gas stream (j) exiting the emission control device, in dry standard cubic meters per hour when Method 18 or 25 is used to measure VOC concentration or in standard cubic meters per hour (wet basis) when Method 25A is used to measure VOC concentration.

"Q_{bi}" means the volumetric flow rate of each gas stream (i) entering the emission control device, in dry standard cubic meters per hour when Method 18 or 25 is used to measure VOC concentration or in standard cubic meters per hour (wet basis) when Method 25A is used to measure VOC concentration.

"Q_{di}" means the volumetric flow rate of each gas stream (i) entering the emission control device from the affected coating operation, in dry standard cubic meters per hour when Method 18 or 25 is used to measure VOC concentration or in standard cubic meters per hour (wet basis) when Method 25A is used to measure VOC concentration.

"Q_{fk}" means the volumetric flow rate of each uncontrolled gas stream (k) emitted directly to the atmosphere from the affected coating operation, in dry standard cubic meters per hour when Method 18 or 25 is used to measure VOC concentration or in standard cubic meters per hour (wet basis) when Method 25A is used to measure VOC concentration.

"Q_{gv}" means the volumetric flow rate of the gas stream entering each individual carbon adsorber vessel (v), in dry standard cubic meters per hour when Method 18 or 25 is used to measure VOC concentration or in standard cubic meters per hour (wet basis) when Method 25A is used to measure VOC concentration. For purposes of calculating the efficiency of the individual adsorber vessel, the value of Q_{gv} can be assumed to equal the value of Q_{hv} measured for that adsorber vessel.

"Q_{hv}" means the volumetric flow rate of the gas stream exiting each individual carbon adsorber vessel (v), in dry standard cubic meters per hour when Method 18 or 25 is used to measure VOC concentration or in standard cubic meters per hour (wet basis) when Method 25A is used to measure VOC concentration.

"Q_{inj}" means the volumetric flow rate of each gas stream (i) entering the total enclosure through a forced makeup air duct, in standard cubic meters per hour (wet basis).

"Q_{outj}" means the volumetric flow rate of each gas stream (j) exiting the total enclosure through an exhaust duct or hood, in standard cubic meters per hour (wet basis).

"R" means the overall VOC emission reduction achieved for the duration of the emission test (expressed as a fraction).

"RS_i" means the total mass (kg) of VOC retained on the coated substrate after oven drying or contained in waste coating for a given combination of coating and substrate.

"W_{oi}" means the weight fraction of VOC in each coating (i) applied at an affected coating operation during a nominal 1-month period as determined by Method 24.

(c) Tables 1a and 1b present a cross reference of the affected facility status and the relevant section(s) of the regulation.

TABLE 1A.—CROSS REFERENCE[a] [b]

Status	Standard	Compliance provisions § 60.743
A. Coating operation:		
1. If projected VOC use is <95 Mg/yr.	§ 60.740(b): Monitor VOC use	Not applicable.
2. If projected VOC use is >95 Mg/yr.	§ 60.742(b)(1): Reduce VOC emissions to the atmosphere from the coating operation by at least 90 percent; or. § 60.742(b)(2): Install, operate, and maintain a total enclosure around the coating operation and vent the captured VOC emissions from the total enclosure to a control device that is at least 95 percent efficient.	(a)(1), (a)(2), (a)(3), or (a)(4); (b), (e).
B. Coating mix preparation equipment:		
1. If projected VOC use is >95 Mg/yr but <130 Mg/yr.	§ 60.742(c)(3): (i) Install, operate, and maintain a cover on each piece of affected equipment; or (ii) install, operate, and maintain a cover on each piece of affected equipment and vent VOC emissions to a VOC control device.	(d), (e).
2. If projected VOC use is > 130 Mg/yr but there is no concurrent construction of a control device.	§ 60.742(c)(2): (i) Install, operate, and maintain a cover on each piece of affected equipment; or (ii) install, operate, and maintain a cover on each piece of affected equipment and vent VOC emissions to a VOC control device.	(d).
3. If projected VOC use is >130 Mg/yr and there is concurrent construction of a control device.	§ 60.742(c)(1): Install, operate, and maintain a cover on each piece of affected equipment and vent VOC emissions from the covered equipment to a 95 percent efficient control device while preparation of the coating is taking place within the vessel.	(c), (e).

[a] This table is presented for the convenience of the user and is not intended to supercede the language of the regulation. For the details of the requirements, refer to the text of the regulation.

[b] Refer to Table 1b to determine which subsections of §§ 60.744, 60.745, and 60.747 correspond to each compliance provision (§ 60.743).

TABLE 1B.—CROSS REFERENCE

Compliance provisions—§ 60.743	Test methods—§ 60.745	Category/equipment[a]	Monitoring requirements—§ 60.744	Reporting and recordkeeping requirements—§ 60.747
A. Coating operation:				
(a)(1)—Gaseous emission test for coating operations not using carbon adsorption beds with individual exhausts.	(b)–(g)	General, CA, CO, TI, CI, PE, TE.	(a), (i), (j), (k), (c)(1), (d), (e), (f), (g).	(a), (d)(7), (f), (g), (h), (d)(1)(i), (d)(2)(i), (d)(3), (d)(4), (d)(5), (d)(6).
(a)(2)—Gaseous emission test for coating operations using carbon adsorption beds with individual exhausts.	(b)–(g)	General, CA, PE, TE	(a), (i), (j), (k), (c)(2), (g)	(a), (d)(7), (f), (g), (h), (d)(1)(ii), (d)(2)(ii), (d)(6).
(a)(3)—Monthly liquid material balance—can be used only when a VOC recovery device controls only those emissions from one affected coating operation.	(a)	VOC recovery	(i), (k)	(e), (f), (g), (h).
(a)(4)—Short-term (3 to 7 day) liquid material balance—may be used as an alternative to (a)(3).	(a)	General, CA, CO, PE, TE	(a), (i), (j), (k), (c)(1), (c)(2), (d), (g).	(a), (d)(7), (f), (g), (h), (d)(1), (d)(2), (d)(3), (d)(6).
(b)—Alternative standard for coating operation—demonstrate use of approved total enclosure and emissions vented to a 95 percent efficient control device.	(b)–(g)	General, CA, CO, TI, CI, PE, TE.	(a), (i), (j), (k), (c)(1), (c)(2), (d), (e), (f), (h).	(a), (d)(7), (f), (g), (h), (d)(1), (d)(2), (d)(3), (d)(4), (d)(5), (d)(6).
B. Coating mix preparation equipment:				
(c)—Standard for equipment servicing a coating operation with concurrent construction of a control device that uses at least 130 Mg/yr of VOC—demonstrate that covers meeting specifications are installed and used properly; procedures detailing proper use are posted; the mix equipment is vented to a 95 percent efficient control device.	(b)–(g)	General, CA, TI, CI	(a), (i), (j), (k), (c)(1), (c)(2), (e), (f).	(a), (d)(7), (f), (g), (h), (d)(1), (d)(2), (d)(4), (d)(5).
(d)—Standard for equipment servicing a coating operation that does not have concurrent construction of a control device but uses at least 130 Mg/yr of VOC or for equipment servicing a coating operation that uses <130 Mg/yr but >95 Mg/yr of VOC—demonstrate that covers meeting specifications are installed and used properly; procedures detailing proper use are posted; the mix equipment is vented to a control device (optional).	No other requirements apply.			

[a] CA=carbon adsorber; CO=condenser; TI=thermal incinerator; CI=catalytic incinerator; PE=partial enclosure; TE=total enclosure.

§ 60.742 Standards for volatile organic compounds.

(a) Each owner or operator of an affected facility that is subject to the requirements of this subpart shall comply with the emissions limitations set forth in this section on and after the date on which the initial performance test required by § 60.8 is completed, but not later than 60 days after achieving the maximum production rate at which the affected facility will be operated or 180 days after initial startup, whichever date comes first.

(b) For the coating operation, each owner or operator of an affected facility shall either:

(1) Reduce VOC emissions to the atmosphere from the coating operation by at least 90 percent ("emission reduction" standard); or

(2) Install, operate, and maintain a total enclosure around the coating operation and vent the captured VOC emissions from the total enclosure to a control device that is at least 95 percent effecient (alternative standard).

(c) For the onsite coating mix preparation equipment of an affected facility, the owner or operator shall comply with the following requirements, as applicable:

(1) For an affected facility that has concurrent construction of a control device and uses at least 130 Mg of VOC per 12-month period, the owner or operator shall install, operate, and maintain a cover on each piece of affected coating mix preparation equipment and vent VOC emissions from the covered mix equipment to a 95 percent efficient control device while preparation of the coating is taking place within the vessel.

(2) For an affected facility that does not have concurrent construction of a control device but uses at least 130 Mg of VOC per 12-month period, the owner or operator shall either:

(i) Install, operate, and maintain a cover on each piece of affected coating mix preparation equipment; or

(ii) Install, operate, and maintain a cover on each piece of affected coating mix preparation equipment and vent VOC emissions to a VOC control device.

(3) For an affected facility that uses at least 95 Mg but less than 130 Mg of VOC per 12-month period, the owner or operator shall either.

(i) Install, operate, and maintain a cover on each piece of affected coating mix preparation equipment; or

(ii) Install, operate, and maintain a cover on each piece of affected coating mix preparation equipment and vent VOC emissions to a VOC control device.

§ 60.743 Compliance provisions.

(a) To demonstrate compliance with the emission reduction standard for coating operations specified in § 60.742(b)(1), the owner or operator of the affected facility shall use one of the following methods.

(1) *Gaseous emission test for coating operations not using carbon adsorption beds with individual exhausts.* This method is applicable when the emissions from any affected coating operation are controlled by a control device other than a fixed-bed carbon adsorption system with individual exhaust stacks for each adsorber vessel. The owner or operator using this method shall comply with the following procedures:

(i) Construct the vapor capture system and control device so that all gaseous volumetric flow rates and total VOC emissions can be accurately determined by the applicable test methods and procedures specified in § 60.745(b) through (g);

(ii) Determine capture efficiency from the coating operation by capturing, venting, and measuring all VOC emissions from the coating operation. During a performance test, the owner or operator of an affected coating operation located in an area with other sources of VOC shall isolate the coating operation emissions from all other sources of VOC by one of the following methods:

(A) Build a temporary enclosure, as defined in § 60.741(a) and conforming to the requirements of § 60.743(b)(1), around the affected coating operation. The temporary enclosure must be constructed and ventilated (through stacks suitable for testing) so that it has minimal impact on performance of the capture system; or

(B) Shut down all other sources of VOC and continue to exhaust fugitive emissions from the affected coating operation through any building ventilation system and other room exhausts such as those on drying ovens. All such ventilation air must be vented through stacks suitable for testing because the VOC content in each must be determined.

(iii) Operate the emission control device with all emission sources connected and operating.

(iv) Determine the efficiency (E) of the control device by Equation 1:

$$E = \frac{\sum_{i=1}^{n} Q_{bi}C_{bi} - \sum_{j=1}^{n} Q_{aj}C_{aj}}{\sum_{i=1}^{n} Q_{bi}C_{bi}} \qquad \text{(Equation 1)}$$

(v) Determine the efficiency (F) of the vapor capture system by Equation 2:

$$F = \frac{\sum_{i=1}^{n} Q_{di}C_{di}}{\sum_{i=1}^{n} Q_{di}C_{di} + \sum_{k=1}^{p} Q_{fk}C_{fk}} \qquad \text{(Equation 2)}$$

(vi) For each affected coating operation subject to § 60.742(b)(1) (emission reduction standard for coating operations), compliance is demonstrated if the product of (E)x(F) is equal to or greater than 0.90.

(2) *Gaseous emission test for coating operations using carbon adsorption beds with individual exhausts.* This method is applicable when emissions from any affected coating operation are controlled by a fixed-bed carbon adsorption system with individual exhaust stacks for each adsorber vessel. The owner or operator using this method shall comply with the following procedures:

(i) Construct the vapor capture system and control device so that each volumetric flow rate and the total VOC emissions can be accurately determined by the applicable test methods and procedures specified in § 60.745 (b) through (g);

(ii) Assure that all VOC emissions from the coating operation are segregated from other VOC sources and that the emissions can be captured for measurement, as described in § 60.743(a)(1)(ii) (A) and (B);

(iii) Operate the emission control device with all emission sources connected and operating;

(iv) Determine the efficiency (H_v) of each individual adsorber vessel (v) using Equation 3:

$$H_v = \frac{Q_{gv}C_{gv} - Q_{hv}C_{hv}}{Q_{gv}C_{gv}} \qquad \text{(Equation 3)}$$

(v) Determine the efficiency of the carbon adsorption system (H_{sys}) by computing the average efficiency of the adsorber vessels as weighted by the volumetric flow rate (Q_{hv}) of each individual adsorber vessel (v) using Equation 4:

$$H_{sys} = \frac{\sum_{v=1}^{q} H_v Q_{hv}}{\sum_{v=1}^{q} Q_{hv}} \qquad \text{(Equation 4)}$$

(vi) Determine the efficiency (F) of the vapor capture system using Equation (2).

(vii) For each affected coating operation subject to § 60.742(b)(1) (emission reduction standard for coating operations), compliance is demonstrated if the product of (H_{sys})x(F) is equal to or greater than 0.90.

(3) *Monthly liquid material balance.* This method can be used only when a VOC recovery device controls only those emissions from one affected coating operation. It may not be used if the VOC recovery device controls emissions from any other VOC emission sources. When demonstrating compliance by this method, § 60.8(f) (Performance Tests) of this part does not apply. The owner or operator using this method shall comply with the following procedures to determine the VOC emission reduction for each nominal 1-month period:

(i) Measure the amount of coating applied at the coating applicator. This quantity shall be determined at a time and location in the process after all ingredients (including any dilution solvent) have been added to the coating, or appropriate adjustments shall be made to account for any ingredients added after the amount of coating has been determined;

(ii) Determine the VOC content of all coatings applied using the test method specified in § 60.745(a). This value shall be determined at a time and location in the process after all ingredients (including any dilution solvent) have been added to the coating, or appropriate adjustments shall be made to account for any ingredients added after the VOC content in the coating has been determined;

(iii) Install, calibrate, maintain, and operate, according to the manufacturer's specifications, a device that indicates the cumulative amount of VOC recovered by the control device over each nominal 1-month period. The device shall be certified by the manufacturer to be accurate to within ±2.0 percent;

(iv) Measure the amount of VOC recovered; and

(v) Calculate the overall VOC emission reduction (R) for each and every nominal 1-month period using Equation 5. Emissions during startups and shutdowns are to be included when determining R because startups and shutdowns are part of normal operation for this source category.

$$R = \frac{M_r}{\sum_{i=1}^{n} [W_{oi}M_{ci} - RS_i]} \qquad \text{(Equation 5)}$$

If the value of R is equal to or greater than 0.90, compliance with § 60.742(b)(1) is demonstrated.

(A) The value of RS_i is zero unless the owner or operator submits the following information to the Administrator for approval of a measured value of RS_i that is greater than zero but less than or equal to 6 percent by weight of the liquid VOC applied:

(*1*) Measurement techniques; and

(2) Documentation that the measured value of RS_i exceeds zero but is less than or equal to 6 percent by weight of the liquid VOC applied.

(B) For those facilities not subject to paragraph (a)(3)(v)(A) of this section, the value of RS_i is zero unless the owner or operator submits the following information to the Administrator for approval of a measured value of RS_i that is greater than 6 percent by weight of the liquid VOC applied.

(1) Measurement techniques;

(2) Documentation that the measured value of RS_i exceeds 6 percent by weight of the liquid VOC applied; and

(3) Either documentation of customer specifications requiring higher values or documentation that the desired properties of the product make it necessary for RS_i to exceed 6 percent by weight of the liquid VOC applied and that such properties cannot be achieved by other means.

(C) The measurement techniques of paragraphs (a)(3)(v)(A)(1) and (a)(3)(v)(B)(1) of this section shall be submitted to the Administrator for approval with the notification of anticipated startup required under § 60.7(a)(2).

(vi) The point at which M_r is to be measured shall be established when the compliance procedures are approved. The presumptive point of measurement shall be prior to separation/purification; a point after separation/purification may be adopted for enhanced convenience or accuracy.

(4) *Short-term liquid material balance.* This method may be used as an alternative to the monthly liquid material balance described in paragraph (a)(3) of this section. The owner or operator using this method shall comply with the following procedures to determine VOC emission reduction for a 3- to 7-day period and shall continuously monitor VOC emissions as specified in § 60.744.

(i) Use the procedures described in paragraphs (a)(3) (i) through (vi) of this section to determine the overall emission reduction, R. Compliance is demonstrated if the value of R is equal to or greater than 0.90.

(ii) The number of days for the performance test (3 to 7) is to be based on the affected facility's representative performance consistent with the requirements of § 60.8(c). Data demonstrating that the chosen test period is representative shall be submitted to the Administrator for approval with the notification of anticipated startup required under § 60.7(a)(2).

(b) Each owner or operator of an affected coating operation subject to the standard specified in § 60.742(b)(2) (alternative standard for coating operations) shall:

(1) Demonstrate that a total enclosure is installed. The total enclosure shall either be approved by the Administrator in accordance with the provisions of § 60.746, or meet the requirements in paragraphs (b)(1) (i) through (vi) of this section, as follows:

(i) The only openings in the enclosure are forced makeup air and exhaust ducts and natural draft openings such as those through which raw materials enter and exist the coating operation;

(ii) Total area of all natural draft openings does not exceed 5 percent of the total surface area of the total enclosure's walls, floor, and ceiling;

(iii) All access doors and windows are closed during normal operation of the enclosed coating operation, except for brief, occasional openings to accommodate process equipment adjustments. If such openings are frequent, or if the access door or window remains open for a significant amount of time during the process operation, it must be considered a natural draft opening. Access doors used routinely by workers to enter and exit the enclosed area shall be equipped with automatic closure devices;

(iv) Average inward face velocity (FV) across all natural draft openings is a minimum of 3,600 meters per hour as determined by the following procedures:

(A) Construct all forced makeup air ducts and all exhaust ducts so that the volumetric flow rate in each can be accurately determined by the test methods and procedures specified in § 60.745 (c) and (d). Volumetric flow rates shall be calculated without the adjustment normally made for moisture content; and

(B) Determine FV by Equation 6:

$$FV = \frac{\sum_{j=1}^{n} Q_{out\ j} - \sum_{i=1}^{p} Q_{in\ i}}{\sum_{k=1}^{q} A_k} \qquad \text{(Equation 6)}$$

(v) The air passing through all natural draft openings flows into the enclosure continuously. If FV is less than or equal to 9,000 meters per hour, the continuous inward airflow shall be verified by continuous observation using smoke tubes, streamers, tracer gases, or other means approved by the Administrator over the period that the volumetric flow rate tests required to determine FV are carried out. If FV is greater than 9,000 meters per hour, the direction of airflow thourgh the natural draft openings shall be presumed to be inward at all times without verification.

(vi) All sources of emissions within the enclosure shall be a minimum of four equivalent diameters away from each natural draft opening.

(2) Determine the control device efficiency using Equation (1) or Equations (3) and (4), as applicable, and the test methods and procedures specified in § 60.745 (b) through (g).

(3) Compliance is demonstrated if the installation of a total enclosure is demonstrated and the value of E determined from Equation (1) or the value of H_{sys} determined from Equations (3) and (4), as applicable, is equal to or greater than 0.95.

(c) To demonstrate compliance with § 60.742(c)(1) (standard for coating mix preparation equipment servicing a coating operation with concurrent construction of a control device that uses at least 130 Mg per year of VOC), each owner or operator of affected coating mix preparation equipment shall demonstrate that:

(1) Covers meeting the following specifications have been installed and are being used properly:

(i) Cover shall be closed at all times except when adding ingredients, withdrawing samples, transferring the contents, or making visual inspection when such activities cannot be carried out with cover in place. Such activities shall be carried out through ports of the minimum practical size;

(ii) Cover shall extend at least 2 centimeters beyond the outer rim of the opening or shall be attached to the rim;

(iii) Cover shall be of such design and construction that contact is maintained between cover and rim along the entire perimeter;

(iv) Any breach in the cover (such as a slit for insertion of a mixer shaft or port for addition of ingredients) shall be covered consistent with paragraphs (c)(1) (i), (ii), and (iii) of this section when not actively in use. An opening sufficient to allow safe clearance for a mixer shaft is acceptable during those periods when the shaft is in place; and

(v) A polyehtylene or nonpermanent cover may be used provided it meets the requirements of paragraphs (c)(1) (ii), (iii), and (iv) of this section. Such a cover shall not be reused after once being removed.

(2) Procedures detailing the proper use of covers, as specified in paragraph (c)(1)(i) of this section, have been posted in all areas where affected coatings mix preparation equipment is used;

(3) The coating mix preparation equipment is vented to a control device while preparation of the coating is taking place within the vessel; and

(4) The control device efficiency (E or H_{sys}, as applicable) determined using Equation (1) or Equations (3) and (4), respectively, and the test methods and procedures specified in § 60.745 (b) through (g) is equal to or greater than 0.95.

(d) To demonstrate compliance with § 60.742(c)(2) (standard for coating mix preparation equipment servicing a coating operation that does not have concurrent construction of a control device but uses at least 130 Mg of VOC per year) or § 60.742(c)(3) (standard for coating mix preparation equipment servicing a coating operation that uses at least 95 Mg but less than 130 Mg of VOC per year), each owner or operator of affected coating mix preparation equipment shall demonstrate upon inspection that:

(1) Covers satisfying the specifications in paragraphs (c)(1) (i) through (v) of this section have been installed and are being properly operated and maintained; and

(2) Procedures detailing the proper use of covers, as specified in paragraph (c)(1)(i) of this section, have been posted in all areas where affected coating mix preparation equipment is used.

(3) Owners or operators meeting the standard specified in § 60.742 (c)(2)(ii) or (c)(3)(ii) shall also demonstrate that the coating mix preparation equipment is vented to a control device.

(e) If a control device other than a carbon adsorber, condenser, or incinerator is used to control emissions from an affected facility, the necessary operating specifications for that device must be approved by the Administrator. An example of such a device is a flare.

§ 60.744 Monitoring requirements.

(a) Each owner or operator of an affected facility shall install and calibrate all monitoring devices required under the provisions of this section according to the manufacturer's specifications, prior to the initial performance test in locations such that representative values of the monitored parameters will be obtained. The parameters to be monitored shall be continuously measured and recorded during each performance test.

(b) Each owner or operator of an affected facility that uses less than 95 Mg of VOC per year and each owner or operator of an affected facility subject to the provisions specified in § 60.742(c)(3) shall:

(1) Make semiannual estimates of the projected annual amount of VOC to be used for the manufacture of polymeric coated substrate at the affected coating operation in that year; and

(2) Maintain records of actual VOC use.

(c) Each owner or operator of an affected facility controlled by a carbon adsorption system and demonstrating compliance by the procedures described in § 60.743 (a)(1), (a)(2), (b), or (c) (which include control device efficiency determinations) or § 60.743(a)(4) (short-term liquid material balance) shall carry out the monitoring provisions of paragraph (c)(1) or (c)(2) of this section, as appropriate.

(1) For carbon adsorption systems with a common exhaust stack for all the individual adsorber vessels, install, calibrate, maintain, and operate, according to the manufacturer's specifications, a monitoring device that continuously indicates and records the concentration level of organic compounds in either the control device outlet gas stream or in both the control device inlet and outlet gas streams. The outlet gas stream shall be monitored if the percent increase in the concentration level of organic compounds is used as the basis for reporting, as described in § 60.747(d)(1)(i). The inlet and outlet gas streams shall be monitored if the percent control device efficiency is used as the basis for reporting, as described in § 60.747(d)(2)(i).

(2) For carbon adsorption systems with individual exhaust stacks for each adsorber vessel, install, calibrate, maintain, and operate, according to the manufacturer's specifications, a monitoring device that continuously indicates and records the concentration level of organic compounds in the outlet gas stream for a minimum of one complete adsorption cycle per day for each adsorber vessel. The owner or operator may also monitor and record the concentration level of organic compounds in the common carbon adsorption system inlet gas stream or in each individual carbon adsorber vessel inlet stream. The outlet gas streams shall be monitored if the percent increase in the concentration level of organic compounds is used as the basis for reporting, as described in § 60.747(d)(1)(ii). In this case, the owner or operator shall compute daily a 3-day rolling average concentration level of organics in the outlet gas stream from each individual adsorber vessel. The inlet and outlet gas streams shall be monitored if the percent control device efficiency is used as the basis for reporting, as described in § 60.747(d)(2)(ii). In this case, the owner or operator shall compute daily a 3-day rolling average efficiency for each individual adsorber vessel.

(d) Each owner or operator of an affected facility controlled by a condensation system and demonstrating compliance by the test methods described in § 60.743 (a)(1), (a)(2), (b), or (c) (which include control device efficiency determinations) or § 60.743(a)(4) (short-term liquid material balance) shall install, calibrate, maintain, and operate, according to the manufacturer's specifications, a monitoring device that continuously indicates and records the temperature of the condenser exhaust stream.

(e) Each owner or operator of an affected facility controlled by a thermal incinerator and demonstrating compliance by the test methods described in § 60.743 (a)(1), (a)(2), (b), or (c) (which include control device efficiency determinations) shall install, calibrate, maintain, and operate, according to the manufacturer's specifications, a monitoring device that continuously indicates and records the combustion temperature of the incinerator. The monitoring device shall have an accuracy within ±1 percent of

the temperature being measured in Celsius degrees.

(f) Each owner or operator of an affected facility controlled by a catalytic incinerator and demonstrating compliance by the test methods described in § 60.743 (a)(1), (a)(2), (b), or (c) (which include control device efficiency determinations) shall install, calibrate, maintain, and operate, according to the manufacturer's specifications, a monitoring device that continuously indicates and records the gas temperature both upstream and downstream of the catalyst bed. The monitoring device shall have an accuracy within ±1 percent of the temperature being measured in Celsius degrees.

(g) Each owner or operator of an affected facility who demonstrates compliance by the test methods described in § 60.743(a) (1) or (2) (which include vapor capture system efficiency determinations) or § 60.743(a)(4) (short-term liquid material balance) shall submit a monitoring plan for the vapor capture system to the Administrator for approval with the notification of anticipated startup required under § 60.7(a)(2) of the General Provisions. This plan shall identify the parameter to be monitored as an indicator of vapor capture system performance (e.g., the amperage to the exhaust fans or duct flow rates) and the method for monitoring the chosen parameter. The owner or operator shall install, calibrate, maintain, and operate, according to the manufacturer's specifications, a monitoring device that continuously indicates and records the value of the chosen parameter.

(h) Each owner or operator of an affected facility who demonstrates compliance as described in § 60.743(b) shall follow the procedures described in paragraph (g) of this section to establish a monitoring system for the total enclosure.

(i) Each owner or operator of an affected facility shall record time periods of mixing or coating operations when the emission control device is malfunctioning or not in use.

(j) Each owner or operator of an affected facility shall record time periods of mixing or coating operations when each monitoring device is malfunctioning or not in use.

(k) Records of the measurements and calculations required in § 60.743 and § 60.744 must be retained for at least 2 years following the date of the measurements and calculations.

(Approved by the Office of Management and Budget under Control No. 2060–0181.)

§ 60.745 Test methods and procedures.

Methods in Appendix A of this part, except as provided under § 60.8(b), shall be used to determine compliance as follows:

(a) Method 24 is used to determine the VOC content in coatings. If it is demonstrated to the satisfaction of the Administrator that coating formulation data are equivalent to Method 24 results, formulation data may be used. In the event of any inconsistency between a Method 24 test and a facility's formulation data, the Method 24 test will govern. For Method 24, the coating sample must be a 1-liter sample collected in a 1-liter container at a point in the process where the sample will be representative of the coating applied to the substrate (i.e., the sample shall include any dilution solvent or other VOC added during the manufacturing process). The container must be tightly sealed immediately after the sample is collected. Any solvent or other VOC added after the sample is taken must be measured and accounted for in the calculations that use Method 24 results.

(b) Method 25 shall be used to determine VOC concentrations from incinerator gas streams. Alternative Methods (18 or 25A), may be used as explained in the applicability section of Method 25 in cases where use of Method 25 is demonstrated to be technically infeasible. The owner or operator shall submit notice of the intended test method to the Administrator for approval along with the notification of the performance test required under § 60.8(d) of the General Provisions. Except as indicated in paragraphs (b)(1) and (b)(2) of this section, the test shall consist of three separate runs, each lasting a minimum of 30 minutes.

(1) When the method is to be used in the determination of the efficiency of a fixed-bed carbon adsorption system with a common exhaust stack for all the individual adsorber vessels pursuant to § 60.743 (a)(1), (b), or (c), the test shall consist of three separate runs, each coinciding with one or more complete system rotations through the adsorption cycles of all the individual adsorber vessels.

(2) When the method is to be used in the determination of the efficiency of a fixed-bed carbon adsorption system with individual exhaust stacks for each adsorber vessel pursuant to § 60.743 (a)(2), (b), or (c), each adsorber vessel shall be tested individually. Each test shall consist of three separate runs, each coinciding with one or more complete adsorption cycles.

(c) Method 1 or 1A is used for sample and velocity traverses;

(d) Method 2, 2A, 2C, or 2D is used for velocity and volumetric flow rates;

(e) Method 3 is used for gas analysis;

(f) Method 4 is used for stack gas moisture;

(g) Methods 2, 2A, 2C, or 2D; 3; and 4 shall be performed, as applicable, at least twice during each test run.

§ 60.746 Permission to use alternative means of emission limitation.

(a) If, in the Administrator's judgment, an alternative means of emission limitation will achieve a reduction in emissions of VOC from any emission point subject to § 60.742(c) at least equivalent to that required by § 60.742(b)(2) or § 60.742(c), respectively, the Administrator will publish in the **Federal Register** a notice permitting the use of the alternative means. The Administrator may condition permission on requirements that may be necessary to ensure operation and maintenance to achieve the same emission reduction as specified in § 60.742(b)(2) or § 60.742(c), respectively.

(b) Any notice under paragraph (a) of this section shall be published only after public notice and an opportunity for a public hearing.

(c) Any person seeking permission under this section shall submit to the Administrator either results from an emission test that accurately collects and measures all VOC emissions from a given control device or an engineering evaluation that accurately determines such emissions.

§ 60.747 Reporting and recordkeeping requirements.

(a) For each affected facility subject to the requirements of § 60.742 (b) and (c), the owner or operator shall submit the performance test data and results to the Administrator as specified in § 60.8(a) of this part. In addition, the average values of the monitored parameters measured at least every 15 minutes and averaged over the period of the performance test shall be submitted with the results of all performance tests.

(b) Each owner or operator of an affected facility subject to the provisions specified in § 60.742(c)(3) and claiming to use less than 130 Mg of VOC in the first year of operation and each owner or operator of an affected facility claiming to use less than 95 Mg of VOC in the first year of operation shall submit to the Administrator, with the notification of anticipated startup required under § 60.7(a)(2) of the General Provisions, a material flow chart indicating projected VOC use. The owner or operator shall also submit

actual VOC use records at the end of the initial year.

(c) Each owner or operator of an affected facility subject to the provisions of § 60.742(c)(3) and initially using less than 130 Mg of VOC per year and each owner or operator of an affected facility initially using less than 95 Mg of VOC per year shall:

(1) Record semiannual estimates of projected VOC use and actual 12-month VOC use;

(2) Report the first semiannual estimate in which projected annual VOC use exceeds the applicable cutoff; and

(3) Report the first 12-month period in which the actual VOC use exceeds the applicable cutoff.

(d) Each owner or operator of an affected facility demonstrating compliance by the methods described in § 60.743 (a)(1), (a)(2), (a)(4), (b), or (c) shall maintain records and submit quarterly reports to the Administrator documenting the following:

(1) For those affected facilities monitoring only the carbon adsorption system outlet concentration levels of organic compounds, the periods (during actual coating operations) specified in paragraph (d)(1) (i) or (ii) of this section, as applicable.

(i) For carbon adsorption systems with a common exhaust stack for all the individual adsorber vessels, all periods of three consecutive system rotations through the adsorption cycles of all the individual adsorber vessels during which the average value of the concentration level of organic compounds in the common outlet gas stream is more than 20 percent greater than the average value measured during the most recent performance test that demonstrated compliance.

(ii) For carbon adsorption systems with individual exhaust stacks for each adsorber vessel, all 3-day rolling averages for each adsorber vessel when the concentration level of organic compounds in the individual outlet gas stream is more than 20 percent greater than the average value for that adsorber vessel measured during the most recent performance test that demonstrated compliance.

(2) For those affected facilities monitoring both the carbon adsorption system inlet and outlet concentration levels of organic compounds, the periods (during actual coating operations), specified in paragraph (d)(2) (i) or (ii) of this section, as applicable.

(i) For carbon adsorption systems with a common exhaust stack for all the individual adsorber vessels, all periods of three consecutive adsorption cycles of all the individual adsorber vessels during which the average carbon adsorption system efficiency falls below the applicable level as follows:

(A) For those affected facilities demonstrating compliance by the performance test method described in § 60.743(a)(1), the value of E determined using Equation (1) during the most recent performance test that demonstrated compliance.

(B) For those affected facilities demonstrating compliance by the performance test described in § 60.743(a)(4), the average value of the system efficiency measured with the monitor during the most recent performance test that demonstrated compliance.

(C) For those affected facilities demonstrating compliance pursuant to § 60.743 (b) or (c), 0.95.

(ii) For carbon adsorption systems with individual exhaust stacks for each adsorber vessel, all 3-day rolling averages for each adsorber vessel during which the average carbon adsorber vessel efficiency falls below the applicable level as follows:

(A) For those affected facilities demonstrating compliance by the performance test method described in § 60.743 (a)(2), (b), or (c), the value of H_v determined using Equation (3) during the most recent performance test that demonstrated compliance.

(B) For those affected facilities demonstrating compliance by the performance test described in § 60.743(a)(4), the average efficiency for that adsorber vessel measured with the monitor during the most recent performance test that demonstrated compliance.

(3) For those affected facilities monitoring condenser exhaust gas temperature, all 3-hour periods (during actual coating operations) during which the average exhaust temperature is 5 or more Celsius degrees above the average temperature measured during the most recent performance test that demonstrated compliance;

(4) For those affected facilities monitoring thermal incinerator combustion gas temperature, all 3-hour periods (during actual coating operations) during which the average combustion temperature of the device is more than 28 Celsius degrees below the average combustion temperature of the device during the most recent performance test that demonstrated compliance;

(5) For those affected facilities monitoring catalytic incinerator catalyst bed temperature, all 3-hour periods (during actual coating operations) during which the average gas temperature immediately before the catalyst bed is more than 28 Celsius degrees below the average gas temperature during the most recent performance test that demonstrated compliance and all 3-hour periods (during actual coating operations) during which the average gas temperature difference across the catalyst bed is less than 80 percent of the average gas temperature difference during the most recent performance test that demonstrated compliance;

(6) For each affected facility monitoring a total enclosure pursuant to § 60.744(h) or vapor capture system pursuant to § 60.744(g), all 3-hour periods (during actual coating operations) during which the average total enclosure or vapor capture system monitor readings vary by 5 percent or more from the average value measured during the most recent performance test that demonstrated compliance.

(7) Each owner or operator of an affected coating operation not required to submit reports under paragraphs (d)(1) through (6) of this section because no reportable periods have occurred shall submit semiannual statements clarifying this fact.

(e) Each owner or operator of an affected coating operation, demonstrating compliance by the test methods described in § 60.743(a)(3) (liquid-liquid material balance) shall submit the following:

(1) For months of compliance, semiannual reports to the Administrator stating that the affected coating operation was in compliance for each 1-month period; and

(2) For months of noncompliance, quarterly reports to the Administrator documenting the 1-month amount of VOC contained in the coatings, the 1-month amount of VOC recovered, and the percent emission reduction for each month.

(f) Each owner or operator of an affected coating operation, either by itself or with associated coating mix preparation equipment, shall submit the following with the reports required under paragraphs (d) and (e) of this section:

(1) All periods during actual mixing or coating operations when a required monitoring device (if any) was malfunctioning or not operating; and

(2) All periods during actual mixing or coating operations when the control device was malfunctioning or not operating.

(g) The reports required under paragraphs (b), (c), (d), and (e) of this section shall be postmarked within 30 days of the end of the reporting period.

(h) Records required in § 60.747 must be retained for at least 2 years.

(i) The requirements of this section remain in force until and unless EPA, in delegating enforcement authority to a State under section 111(c) of the Act, approves reporting requirements or an alternative means of compliance surveillance adopted by such States. In this event, affected sources within the State will be relieved of the obligation to comply with this subsectdion, provided that they comply with the requirements established by the State.

(Approved by the Office of Management and Budget under Control No. 2060-0181.)

§ 60.748 Delegation of authority.

(a) In delegating implementation and enforcement authority to a State under section 111(c) of the Act, the authorities contained in paragraph (b) of this section shall be retained by the Administrator and not transferred to a State.

(b) Authorities that will not be delegated to States: §§ 60.743(a)(3)(v)(A) and (B); 60.743(e); 60.745(a); 60.746.

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Monday
September 11, 1989

Part III

Department of Commerce

Patent and Trademark Office

37 CFR Parts 1 and 2

Amendments to Patent and Trademark Rules to Implement Trademark Law Revision Act; Miscellaneous Trademark Rule Amendments; Final Rule

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1 and 2

[Docket No. 90374-9181]

RIN 0651-AA38

Amendments to Patent and Trademark Rules to Implement Trademark Law Revision Act; Miscellaneous Trademark Rule Amendments

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The Patent and Trademark Office (PTO) is amending the rules of practice in trademark cases, and the rules of practice in patent cases which are applicable to trademark cases, to implement the provisions of the Trademark Law Revision Act of 1988 (Title 1 of Pub. L. 100-667, 102 Stat. 3935 (15 U.S.C. 1051)), codify changes in practice resulting from a Trademark Trial and Appeal Board decision commonly known as the "Crocker" decision, and otherwise codify, clarify, and/or revise certain procedures for the examination of applications.

EFFECTIVE DATE: November 16, 1989.

FOR FURTHER INFORMATION CONTACT: Carlisle E. Walters by telephone at (703) 557-7464 or by mail marked to her attention and addressed to Box 5, Office of the Assistant Commissioner for Trademarks, Commissioner of Patents and Trademarks, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: In a notice of proposed rulemaking published in the **Federal Register** on May 4, 1989, at 54 FR 19286, the Patent and Trademark Office "Official Gazette" of May 16, 1989, at 1102 O.G. 47-70, and the Bureau of National Affairs' "Patent, Trademark, & Copyright Journal", at 38 PTCJ 43-71, (May 11, 1989), the Patent and Trademark Office proposed to amend Parts 1 and 2 of title 37 of the Code of Federal Regulations by amending or revising §§ 1.1, 1.8, 2.6, 2.18, 2.21, 2.24, 2.31, 2.33, 2.38, 2.39, 2.41, 2.44, 2.45, 2.47, 2.51, 2.52, 2.53, 2.56, 2.57, 2.58, 2.61, 2.64, 2.65, 2.66, 2.69, 2.71, 2.72, 2.73, 2.75, 2.81, 2.82, 2.83, 2.84, 2.86, 2.87, 2.99, 2.101, 2.111, 2.129, 2.133, 2.161, 2.162, 2.181, 2.185 and 2.187; and adding §§ 2.2, 2.59, 2.76, 2.77, 2.88 and 2.89. The notice of proposed rulemaking was designed primarily to implement certain provisions of the Trademark Law Revision Act of 1988 (Title 1 of Pub. L. 100-667, 102 Stat. 3935 (15 U.S.C. 1051)) (hereinafter "Pub. L. 100-667"), which was enacted on November 16, 1988, and will become effective on November 16, 1989. The text of the law was published in the "Congressional Record", S. 1883, 100th Cong., 2d Sess., 134 Cong. Rec. 149, H10411 (daily ed. October 19, 1988), and in "BNA's Patent, Trademark & Copyright Journal", at 36 PTCJ 751 (October 27, 1988).

Written comments were submitted by one firm, eight individuals, and six organizations. Six individuals testified at the oral hearing. Four of those individuals testified on behalf of two organizations, both of which also submitted written comments. Of the two individuals who testified on their own behalf, one also submitted written comments.

The following includes a summary of the "intent-to-use" provisions of Pub. L. 100-667, a summary of the other provisions of Public Law 100-667 which are relevant to PTO practice, a list of rules being changed as a result of Public Law 100-667, a brief discussion of other rules being changed and the reasons for those changes, a detailed section-by-section analysis of the final rules, and an analysis of all comments received in response to the notice of proposed rulemaking.

Discussion of "Intent-to-Use" Provisions of Public Law 100-667

Pub. L. 100-667 substantially revises the Trademark Act of 1946 ("Act"). Previously, the Act permitted the filing of an application for Federal registration of a trademark based upon use of the mark in commerce in connection with goods or services, under section 1 of the Act; or, ownership of a foreign application or registration, under section 44 of the Act. The new law adds a third basis for the filing of an application, namely, a bona fide intention to use a mark in commerce in relation to specific goods or services. For these "intent-to-use" applications, actual use of the mark in commerce will be a prerequisite to the ultimate issuance of a registration.

Section 103, Public Law 100-667, 102 Stat. 3935, amends section 1 of the Act to permit the filing of an application for Federal registration of a trademark based upon either use of the mark in commerce or a bona fide intention to use the mark in commerce. Use-based applications will be governed by an amended and redesignated section 1(a) of the Act. A new section 1(b) of the Act authorizes the filing of "intent-to-use" applications and sets forth the filing requirements of such applications.

Section 113, Public Law 100-667, 102 Stat. 3940, amends section 12 of the Act, concerning examination of applications and publication, to provide that if the Trademark Examining Attorney examines an "intent-to-use" application and finds that the applicant would be entitled to registration upon the acceptance of a statement of use, the mark will be published in the "Official Gazette" for purposes of opposition.

Section 114, Public Law 100-667, 102 Stat. 3940, amends section 13 of the Act, concerning opposition to registration of marks on the Principal Register, to add a new section 13(b) to govern the handling of applications which are not successfully opposed. New section 13(b) provides that, unless registration is successfully opposed, a notice of allowance will be issued to the applicant in an "intent-to-use" application.

Section 103, Public Law 100-667, 102 Stat. 3935, further amends section 1 of the Act by adding a new section 1(c), which permits an "intent-to-use" applicant, at any time during examination, to amend the application to bring it into conformity with the requirements for an application based on use; and by adding a new section 1(d) which sets forth the registration requirements for an "intent-to-use" application following issuance of a notice of allowance.

Section 1(d)(1) of the Act requires that, within six months after the issuance of the notice of allowance, the applicant must file specimens evidencing use of the mark in commerce, the prescribed fee, and a verified statement which asserts that the mark is in use in commerce and contains certain averments related to that use.

Section 1(d)(2) provides that the time for filing the statement of use will be extended for a period of six months upon written request of the applicant, if the request is filed before expiration of the six-month period for filing a statement of use. The request must be accompanied by the prescribed fee and a verified statement that the applicant has a continued bona fide intention to use the mark in commerce, specifying those goods or services identified in the notice of allowance for which that intention exists.

Section 1(d)(2) provides that further extensions of time for filing a statement of use may be granted by the Commissioner, for periods aggregating not more than 24 months, upon a showing of good cause by the applicant. A written request must be filed before the expiration of the last granted extension and accompanied by the prescribed fee and by a verified statement (of continued bona fide intention to use the mark in commerce) as required for the first extension of time. The Commissioner is to issue regulations setting forth what

constitutes good cause for a further extension of time for filing a statement of use.

Section 1(d)(3) of the Act provides that any applicant who files a statement of use will be notified of the acceptance or refusal thereof and, if the statement is refused, of the reasons for the refusal, and that the statement of use may be amended.

Section 1(d)(4) of the Act provides that the failure of an applicant to timely file a statement of use, as required under section 1(d) of the Act, will result in the abandonment of the application.

Discussion of Other Provisions of Public Law 100–667

The new law includes certain other provisions which significantly affect practice in the PTO. Section 104, Public Law 100–667, 102 Stat. 3937, amends section 2(f) of the Act, pertaining to registration of a mark used by the applicant which has become distinctive of the applicant's goods in commerce. The amendment will permit the Commissioner to accept, as prima facie evidence that a mark has become distinctive, proof of substantially exclusive and continuous use as a mark by the applicant in commerce for "five years before the date on which the claim of distinctiveness is made." The Act previously permitted such a showing by the applicant to be only for "the five years next preceding the date of the filing of the application."

Section 109, Public Law 100–667, 102 Stat. 3938, adds a new section 7(c) to the Act to provide, *inter alia*, that contingent on the registration of a mark on the Principal Register, the filing of an application to register such mark on the Principal Register shall constitute constructive use of the mark and confer nationwide priority.

Section 110, Public Law 100–667, 102 Stat. 3939, amends section 8(a) of the Act to provide that each certificate of registration shall remain in force for ten (rather than twenty) years. Section 110 further amends section 8(a) of the Act to require that the affidavit, which must be filed during the sixth year after issuance of a registration, set forth "those goods or services recited in the registration on or in connection with which the mark is in use in commerce and attaching to the affidavit a specimen or facsimile showing current use of the mark, * * *" instead of the previous requirement for a "showing that said mark is in use in commerce * * *"

Section 111, Public Law 100–667, 102 Stat. 3939, amends section 9(a) of the Act to reduce the term for which a registration may be renewed from twenty years to ten years. Similarly, section 135, Public Law 100–667, 102 Stat. 3948, amends the Act by adding a new section, section 51, which provides that certificates of registration which issue from applications pending in the PTO on November 16, 1989, the effective date of the new law, shall remain in force for a period of ten years.

Section 118, Public Law 100–667, 102 Stat. 3941, amends section 18 of the Act to expand a portion of the description of the actions which may be taken by the Trademark Trial and Appeal Board ("Board"), in an inter partes proceeding, from "may refuse to register the opposed mark, may cancel or restrict the registration of a registered mark, or may refuse to register any or all of several interfering marks, * * *" to "may refuse to register the opposed mark, may cancel the registration, in whole or in part, may modify the application or registration by limiting the goods or services specified therein, may otherwise restrict or rectify with respect to the register the registration of a registered mark, may refuse to register any or all of several interfering marks, * * *" The same section of the new law further amends section 18 of the Act to provide, with respect to inter partes proceedings before the Board, that no final judgment shall be entered in favor of an intent-to-use applicant before the mark is registered, if such applicant cannot prevail without establishing constructive use pursuant to section 7(c) of the Act, as amended by section 109, Public Law 100–667, 102 Stat. 3938.

Section 121, Public Law 100–667, 102 Stat. 3942, amends section 23 of the Act, which governs applications for registration on the Supplemental Register, to delete the requirement that the mark must have been in lawful use in commerce for the year preceding the filing of the application; and to substitute a requirement that the mark must be in lawful use in commerce by the owner.

Section 122, Public Law 100–667, 102 Stat. 3943, amends section 24 of the Act, which governs petitions to cancel registrations on the Supplemental Register, to delete the requirement that such a petition be verified, and to add a provision that (in such a cancellation proceeding) no final judgment shall be entered in favor of an intent-to-use applicant before the mark is registered, if such applicant cannot prevail without establishing constructive use pursuant to section 7(c) of the Act, as amended.

Finally, section 133, Public Law 100–667, 102 Stat. 3946, amends section 44 of the Act to require that an application filed pursuant to section 44(d) or 44(e) of the Act include a statement that the applicant has a bona fide intention to use the mark in commerce. The new law further amends section 44(e) of the Act to specify that use in commerce shall not be required prior to registration in the case of an application under that section of the Act.

Specific Rules Changed or Added

The existing rules of practice in Parts 1 and 2 of Title 37 of the Code of Federal Regulations which are amended as a result of the enactment of Public Law 100–667 are §§ 1.1, 1.8, 2.6, 2.21, 2.33, 2.38, 2.39, 2.41, 2.44, 2.45, 2.47, 2.51, 2.52, 2.53, 2.56, 2.57, 2.61, 2.64, 2.65, 2.69, 2.71, 2.72, 2.73, 2.75, 2.81, 2.82, 2.84, 2.86, 2.87, 2.99, 2.101, 2.111, 2.129, 2.133, 2.161, and 2.162. In addition, new §§ 2.2, 2.59, 2.76, 2.77, 2.88, and 2.89 are added. The amendments made to existing rules, and the provisions of the new rules which are added, are described in detail hereafter.

Other changes are made in the rules of practice in trademark cases as a result of the decision of the Board in *Crocker National Bank* v. *Canadian Imperial Bank of Commerce*, 223 USPQ 909 (TTAB 1984) ("Crocker"). Prior to Crocker, an applicant applying under section 44 of the Act was allowed, under present § 2.39, to omit certain of the allegations required for an application based on use, namely, the allegation that the mark sought to be registered was in use in commerce, and the statements of the applicant's date of first use of the mark, and first use of the mark in commerce, on or in connection with the specified goods or services. Nevertheless, it was the practice of the PTO to require such an applicant to allege use of the mark (somewhere in the world) and to submit specimens of the mark as used on or in connection with the specified goods or services. The Board held in Crocker, however, that an applicant filing in accordance with section 44 need not allege use or submit specimens. The practice of the PTO was thereafter modified to bring it into accordance with the Board's decision. The rules of practice which are amended to codify the present practice are §§ 2.21, 2.33, 2.39, 2.41, 2.44, 2.45, 2.47, 2.51, 2.56, and 2.72. As indicated above, those rules are also amended to implement changes in practice required as a result of the enactment of Public Law 100–667.

Additionally, certain miscellaneous amendments are made to codify, clarify, and/or revise procedures for the examination of applications. Specifically, § 2.18 is amended to clarify the practice of the PTO regarding correspondence with foreign applicants.

Section 2.24 is amended to correct a cross-reference. Section 2.31 is amended to indicate that it is preferable that an application be on approximately "lettersize" (i.e., 8½ inches by 11 inches) rather than legal-size, paper. Section 2.52(e) is amended to simplify the drawing color linings for the colors orange and yellow or gold. Sections 2.56 and 2.57 are amended to reduce the number of specimens or facsimiles required to be filed, in those instances where specimens are necessary, from five to three, and to indicate that specimens or facsimiles may not exceed eleven inches in length. When specimens exceeding the size limitations are submitted, the applicant will be required to submit proper substitute specimens. Section 2.83, which governs procedure in the case of conflicting marks, is amended to delete a provision which does not conform to present PTO practice, namely, the provision that a notice will be sent, if practicable, to the applicants involved informing them of the publication or issuance of the earliest-filed mark (or, if the conflicting applications have the same effective filing date, of the publication or issuance of the application with the earliest date of execution). Finally, § 2.187 is amended to revise the conditions under which a certificate of registration will be issued in the name of an applicant's assignee, or in an applicant's new name.

Discussion of Specific Sections Changed or Added

In this discussion, "Patent and Trademark Office" is abbreviated as "PTO," "Trademark Trial and Appeal Board" is abbreviated as "Board," the Trademark Act of 1946 is abbreviated as "the Act," and all references to sections of the Act are as amended by Public Law 100–667, unless otherwise stated.

Section 1.1, which specifies the address to be used on communications intended for the PTO, and also provides special box designations which may be used on certain types of communications to the PTO, is amended to add new paragraph (h) which establishes a new separate receipt box for statements of use under section 1(d) of the Act and requests for extensions of time to file such statements. The new paragraph encourages, but does not require, applicants to use the designation "Box ITU" when submitting the identified papers. Use of the box designation will permit prompt and efficient processing of the identified papers. The proposed rule also included amendments to allege use under section 1(c) of the Act as papers which should be identified by the new "Box ITU" designation. However, as a result of a change in planned internal workflow, that proposal is withdrawn. Amendments to allege use under section 1(c) of the Act should not be identified with the "Box ITU" designation.

Section 1.8, which provides that certain papers will be considered filed in the PTO on the date the papers are certified as mailed, subject to specified conditions, is amended to add new paragraphs (a)(2)(xiv) through (a)(2)(xvi) to exclude the following papers from the "Certificate of Mailing" procedure established under the section: Statements of use under new § 2.88 (15 U.S.C. 1051(d)), requests for extensions of time to file such statements, and amendments to allege use under new § 2.76 (15 U.S.C. 1051(c)). The specified papers are excluded due to the nature and significance of the papers and the importance of their prompt receipt in the PTO. Before a registration can be issued in an application under section 1(b) of the Act, either an amendment to allege use or a statement of use must be filed and accepted. An amendment to allege use may be submitted only during the examination of an application prior to approval of the mark for publication for opposition in the Trademark "Official Gazette". After issuance of a notice of allowance in an application under section 1(b) of the Act, applicant must file either a statement of use or request a six-month extension of time to file a statement of use within six months thereafter (successive extension requests may not aggregate more than 36 months from the notice of allowance). Each of these papers is required to be filed within tight time frames and should be processed by the PTO expeditiously. Thus, to avoid problems related to mail delays, these papers are excluded from the "Certificate of Mailing" procedure.

Section 2.2 is added to establish a definitions section for part 2 of 37 CFR.

Section 2.2(a) is added to state that all references to "the Act" pertain to the Trademark Act of 1946, as amended.

Section 2.2(b) is added to state that all references, for example in §§ 2.101 and 2.111, to "entity" include both natural and juristic persons.

Section 2.6, which governs trademark fees, is amended to add paragraphs (u) and (v) to establish two new fees for the filing of papers required or permitted under section 1(c) or 1(d) of the Act. Section 2.6(a) establishes the fee for filing an application, per class, and it is applicable to all new applications filed in the PTO, regardless of the basis asserted for filing. Section 2.6(u) is added to establish a filing fee of $100.00 for an amendment to allege use under new § 2.76 (15 U.S.C. 1051(c)) or for a statement of use under new § 2.88 (15 U.S.C. 1051(d)). Section 2.6(v) is added to establish a filing fee of $100.00 for any request, under new § 2.89 (15 U.S.C. 1051(d)), for a six-month extension of time to file a statement of use.

The PTO is amending § 2.6 to establish new fees required under provisions of Public Law 100–667. A fee is required under section 1(b)(2) of the Act for the filing of an application under section 1(b) of the Act ("intent-to-use"). A fee is required under section 1(d)(1) of the Act for the filing of a statement of use in an application under section 1(b) of the Act; and a fee is required under section 1(d)(2) of the Act for the filing of a request for an extension of time to file a statement of use. A fee is being established for an amendment to allege use, which is filed under section 1(c) of the Act, to bring an application under section 1(b) of the Act into conformity with the requirements of section 1(a) of the Act ("use in commerce"). These actions are consistent with section 103(a) of Public Law 100–703 which governs the way fees established under section 31 of the Act may be adjusted.

Section 103(a) of Public Law 100–703 provides that the Commissioner cannot establish additional fees under section 31 of the Act during fiscal years 1989, 1990 and 1991. However, Public Law 100–667 requires that the fees for filing an application under section 1(b) of the Act, a statement of use, and a request for an extension of time to file a statement of use be established. Further, Congressman Kastenmeier has stated that "the Commissioner is not precluded from charging a new fee for a new service or material or from charging a different fee where a significant and material improvement in service or material, such as in promptness or quality is offered. Under any circumstances, augmented fees ought to be clearly justified and reported to the Congress." "Congressional Record," S. 1883, 100th Cong., 2d Sess., 134 Cong. Rec. 149, H9677 (daily ed. October 5, 1988). Amendments to allege use filed under section 1(c) of the Act create a new examination practice that was not contemplated when the fees were established for activities performed under the Act and this fee is clearly not an increase in an existing fee.

On February 15, 1989, a final rule was published in the **Federal Register** at 54 FR 6893 to adjust patent and trademark fees. Effective April 17, 1989, three trademark fees were reduced: The fee for filing an application for trademark registration was reduced from $200 to $175 per class, and two fees for recording trademark assignments or

other papers relating to a registered mark or application for registration were reduced from $100 to $8.

In establishing the new fees related to Public Law 100–667, the PTO followed the fee methodology which was described in the February 15, 1989, **Federal Register** notice (54 FR 6893), and is summarized as follows:

Cost Calculations: The PTO calculated unit costs for the new fees based on OMB Circular A–25, "User Fees," and OMB Circular A–130, "Management of Federal Information Resources." Costs were determined from the best available records (for example, the FY 1987 end-of-year financial statements for the Office) and included direct and indirect costs to the PTO for carrying out the activity, as directed by OMB Circular A–25. To estimate costs for the three-year period from November 1989 to October 1992, the 1987 actual costs were adjusted by the Administration's inflation projection ("Budget of the United States Government, Fiscal Year 1990", Part 3, "The Economy and the Budget"). This methodology was utilized in conjunction with an analysis of the worksteps and procedures that will be involved in the processing of a new application to register a mark under section 1(b) of the Act. The PTO has determined that the processing and examination of an application under section 1(b) of the Act from the filing date through issuance of a notice of allowance is expected to cost the same as the processing and examination of an application under section 1(a) of the Act from the filing date through issuance of the certificate of registration. Therefore, the fee for applications filed under section 1(a) or 1(b) is the same.

Workload Projections: The PTO has estimated that there will be a one-time, twenty-five percent (25%) increase in trademark applications filed in FY 1990, bringing the estimated trademark application filings for FY 1990 to approximately 100,000. In FY 1991, the PTO estimates that approximately 86,700 trademark applications will be filed and that, thereafter, trademark application filing increases will drop to normal levels (approximately six percent (6%) over the previous year) for the remainder of the fee cycle. The PTO estimates that sixty percent (60%) of the total applications filed in FY 1990 and subsequent years in this fee cycle will be filed under section 1(b) of the Act.

The PTO estimates that, beginning in FY 1991, the first requests for extensions of time to file a statement of use will be filed; and that these requests will be filed in approximately ten percent (10%) of the section 1(b) applications filed in the prior year. In FY 1992, the filing of requests for extensions of time to file a statement of use will increase to sixteen percent (16%) of the new section 1(b) applications filed in the previous year and remain at that level during the remainder of the fee cycle.

The PTO estimates that approximately twenty-five percent (25%) of all applications filed under section 1(b) of the Act will be abandoned before the filing of either an amendment to allege use, under section 1(c) of the Act, or a statement of use, under section 1(d) of the Act.

The PTO estimates that twenty-five percent (25%) of all applications filed under section 1(b) of the Act will be amended to conform to the provisions of section 1(a) of the Act (by the filing of an amendment to allege use under new § 2.76) during the first examination of the application, before approval of the mark for publication for opposition; and that this filing will increase first examination processing by a factor of forty percent (40%).

The PTO estimates that a statement of use under new § 2.88 will be filed in fifty percent (50%) of all applications filed under section 1(b) of the Act; and that the second examination required under section 1(d)(1) of the Act will require additional processing time equal to forty percent of the processing time required for the first examination.

Fee Adjustment Methodology: Based on the fee methodology described in the February 15, 1989, **Federal Register** notice (54 FR 6893), the projected revenue from these fees, when coupled with the fees generated by all other trademark fees, does not exceed the costs associated with the filing and processing of an application for the registration of a trademark or other mark and for all other services performed by, and materials furnished by, the PTO related to trademarks and other marks.

The PTO has detailed cost calculation worksheets for each fee item, which are available for public inspection in Suite 914 of Building 2, Crystal Park at 2121 Crystal Drive, Arlington, Virginia.

Section 2.18, which specifies to whom correspondence will be sent by the PTO, is revised to add a new sentence to the section to clarify PTO policy regarding correspondence with foreign applicants. The new sentence provides that PTO correspondence will be sent to the domestic representative of a foreign applicant unless the application is being prosecuted by an attorney at law or other qualified person duly authorized, in which event correspondence will be sent to the attorney at law or other qualified person duly authorized. The section, as amended, conforms to present § 2.24.

Section 2.21(a), which governs the requirements for receiving an application filing date, is amended by revising paragraphs (a)(5) and (a)(6) and adding new paragraphs (a)(5)(i), (a)(5)(ii), (a)(5)(iii), and (a)(5)(iv) to revise the minimum filing requirements for applications under section 1(a) or 44 of the Act, and to add minimum filing requirements for applications under section 1(b) of the Act. A requirement that an application be verified by the applicant in order to receive a filing date is added for all types of applications. The minimum filing requirements for an application under section 44 are revised to comply with the Crocker decision and to implement the provisions of Public Law 100–667.

Section 2.21(a)(5), which presently specifies the filing date requirement of at least one specimen or facsimile of the mark as actually used, is revised to delete that requirement from the paragraph and to indicate that the four new paragraphs added thereunder all relate to the assertion of a basis for filing.

Section 2.21(a)(5)(i) is added to specify all filing requirements which pertain only to the assertion of a basis for filing an application under section 1(a) of the Act, namely, the statement of a date of first use in commerce and at least one specimen or facsimile of the mark as actually used.

Section 2.21(a)(5)(ii) is added to specify all filing requirements which pertain only to the assertion of a basis for filing an application under section 44(e) of the Act, namely, a claim of a bona fide intention to use the mark in commerce and a certification or a certified copy of the foreign registration on which the application is based. In accordance with Crocker, the new paragraph contains no requirement for a statement of use of the mark anywhere or for the filing of a specimen or facsimile of the mark as used.

Section 2.21(a)(5)(iii) is added to specify all filing requirements which pertain only to the assertion of a basis for filing an application pursuant to section 44(d) of the Act, namely, a claim of a bona fide intention to use the mark in commerce and a claim of the benefit of a prior foreign application. In accordance with Crocker, the new paragraph contains no requirement for a statement of use of the mark anywhere or for the filing of a specimen or facsimile of the mark as used.

Section 2.21(a)(5)(iv) is added to specify all filing requirements which pertain only to an assertion of a basis

for filing an application under section 1(b) of the Act, namely, a claim of a bona fide intention to use the mark in commerce.

Section 2.21(a)(6), which presently includes certain of the filing requirements incorporated in new paragraphs (a)(5)(i), (a)(5)(ii), and (a)(5)(iii), is revised to require that an application include a verification in accordance with § 2.33(b), signed by the applicant, as a condition for receiving a filing date. The proposed requirement is in accordance with sections 1 and 44 of the Act.

Section 2.24, which relates to the designation of a representative by a foreign applicant, is revised to clarify language concerning official communications from the PTO to indicate that such communications will be addressed to the domestic representative unless the application is being prosecuted by an attorney at law or other qualified person duly authorized, in which event the communication will be sent to the attorney at law or other qualified person duly authorized. Additionally, the section is revised to correct cross-references. Cross-references to § 10.14 of the subchapter, which now governs qualifications of individuals to practice before the PTO in trademark and other non-patent cases, are substituted for the cross-references to § 2.12, which has been removed.

Section 2.31, which presently states that it is preferable that an application be on legal or lettersize paper, is revised to state that it is preferable that an application be on lettersize (i.e., 8½ inches by 11 inches) paper. This amendment conforms generally to the standards of Federal court practice.

Section 2.33, which specifies the complete requirements for a written application, is amended by changing the section title from "Requirements for application." to "Requirements for written application.," revising certain existing paragraphs, redesignating and revising certain other existing paragraphs, and adding three new paragraphs to, *inter alia.*, incorporate in this section the requirements for an application under section 44 of the Act, and add the requirements for an application under section 1(b) of the Act. The application requirements for an application under section 44 of the Act are in accordance with the Crocker decision.

Section 2.33(a)(1)(ii), which requires a statement of applicant's citizenship, is revised to clarify the language of the section and to codify the requirement that an applicant which is a partnership must specify in the application the state or nation under the laws of which the partnership is organized.

Section 2.33(a)(1)(iv), which presently requires a statement that applicant has adopted and is using the mark shown in the accompanying drawing, is revised to limit this requirement to an application under section 1(a) of the Act; and to add, for an application under section 1(b) or 44 of the Act, a requirement for a statement that applicant has a bona fide intention to use the mark shown in the accompanying drawing in commerce.

Section 2.33(a)(1)(v), which presently requires an identification of the particular goods on or in connection with which the mark is used, is revised to include a reference to services, as well as goods; to limit the requirement to an application under section 1(a) of the Act; and to add, for an application under section 1(b) or 44 of the Act, the requirement for an identification of the particular goods or services on or in connection with which the applicant has a bona fide intention to use the mark. The paragraph is further amended to incorporate the provision, presently included in § 2.39, that the goods or services specified in an application under section 44 may not exceed the scope of the goods or services covered by the foreign application or registration.

Section 2.33(a)(1)(vi), which presently requires a statement of the class of merchandise according to the official classification, if known to the applicant, is revised to substitute the words "goods or services" for the word "merchandise."

Section 2.33(a)(1)(vii), which presently requires a statement of the date of applicant's first use of the mark as a trademark on or in connection with goods specified in the application, is revised to include references to a service mark, as well as a trademark, and to services, as well as goods; to limit the requirement to an application under section 1(a) of the Act; and to add for such an application the requirement, presently stated in paragraph (a)(1)(viii) of the section, for a statement of applicant's date of first use of the mark in commerce on or in connection with the goods or services listed in the application, specifying the nature of such commerce.

Section 2.33(a)(1)(viii), which presently requires a statement of the date of applicant's first use in commerce of the mark as a trademark on or in connection with goods specified in the application, specifying the nature of such commerce, is revised to remove this requirement, which is added to paragraph (a)(1)(vii); and to incorporate the requirements, presently stated in § 2.39(a), concerning submission, with an application under section 44(e) of the Act, of a certificate of the trademark office of the applicant's country of origin and, if the certificate is not in the English language, of a translation thereof.

Section 2.33(a)(1)(ix), which presently requires a statement of the mode, manner or method of applying, affixing or otherwise using the mark on or in connection with the goods specified, is redesignated as (a)(1)(x); revised to indicate that this requirement pertains only to an application under section 1(a) of the Act; and amended to include a requirement, for an application under section 1(b) of the Act, for a statement of the intended mode, manner or method of applying, affixing or otherwise using the mark on or in connection with the goods or services specified.

A new § 2.33(a)(1)(ix) is added to require, for an application claiming the benefit of a foreign application in accordance with section 44(d) of the Act, that the application comply with the requirements of § 2.39.

Section 2.33(a)(2), which presently provides that if more than one item of goods is specified in the application, the dates of use required in present paragraphs (a)(1)(vii) and (viii) of the section need be for only one of the items specified, provided the particular item to which the dates apply is designated, is revised to refer to services as well as goods and to delete the cross-reference to paragraph (a)(1)(viii), the present substance of which is incorporated in paragraph (a)(1)(vii).

Section 2.33(b), which presently states the requirement that an application include certain averments concerning ownership of the mark, use of the mark in commerce, and the truth of the statements contained in the application, is redesignated as (b)(1); revised to indicate that the requirement of the paragraph pertains only to an application under section 1(a) of the Act; and revised to clarify the language of the paragraph and to make such language gender neutral.

Section 2.33(b)(2) is added to specify, for an application under section 1(b) or 44 of the Act, a requirement that the application include certain averments concerning ownership of the mark, the truth of the statements contained in the application, and applicant's bona fide intention to use the mark in commerce on or in connection with the specified goods or services.

Section 2.33(c), which concerns the applicability of this section to an application for the registration of a mark for goods or services falling within

multiple classes, is revised to correct a cross-reference which presently is correct but would be incorrect when the amendments to §§ 2.86 and 2.87 become effective. Specifically, § 2.33(c) is revised to refer to § 2.86 rather than § 2.87.

Section 2.33(d) is added to state that an applicant may not file under both sections 1(a) and 1(b) of the Act in a single application, nor may an applicant in an application under section 1(a) of the Act amend that application to seek registration under section 1(b) of the Act. An application which is filed under both sections 1(a) and 1(b) of the Act will not be accorded a filing date and will be returned to the applicant. The provision that an applicant under section 1(a) of the Act is precluded from amending the application to seek registration under section 1(b) of the Act is based upon the language of section 1(b) of the Act which requires that an application under the section include, upon filing, a verified statement of a bona fide intention to use the mark in commerce; however, an application filed under section 1(a) of the Act does not include such a statement and cannot be based on a bona fide intention to use a mark. There is no prohibition against amending the basis for an application from section 1(b) to section 1(a) of the Act because section 1(a) requires that an application assert use in commerce prior to the filing date of the application. This is a factual assertion that is verifiable at any time.

Section 2.38 is revised to change a cross-reference which presently is correct but would be incorrect when the amendments to § 2.33 become effective. Specifically, § 2.38 is revised to refer to § 2.33(a)(1)(vii) rather than § 2.33(a)(1)(vii) and (viii).

Section 2.39, which presently contains provisions concerning the omission of an allegation of use in commerce and statements of dates of first use in applications filed under Section 44 of the Act, as well as provisions specifying certain requirements for such applications, is amended by changing the section title from "Omission of allegation of use in commerce by foreign applicants." to "Priority claim based on foreign application.," and revising paragraphs (a) and (b). The purpose of the amendments is to delete the omission provisions and the provisions specifying requirements for applications under section 44(e) of the Act which are subsumed by § 2.33 as amended; and to add certain provisions concerning applications claiming the benefit of a prior foreign application in accordance with section 44(d) of the Act.

In the notice of proposed rulemaking, present paragraphs (a) and (b) of § 2.39 were proposed to be revised and a new paragraph (c) was proposed to be added. As the result of a written comment concerning proposed paragraph (a) (*see* "Response to Comments on the Rules"), paragraph (a) is withdrawn, and proposed paragraphs (b) and (c) are redesignated (a) and (b), respectively.

Section 2.39(a), Which presently contains provisions concerning the omission of an allegation of use in commerce and statements of dates of first use by applicants filing under section 44(e) of the Act, as well as provisions specifying requirements for such applications, is revised to delete those provisions, which are subsumed by § 2.33 as amended; to add requirements, presently specified in paragraph (b) of the section, for filing an application in accordance with section 44(d) of the Act.

Section 2.39(b), which presently contains provisions concerning the omission of an allegation of use in commerce and of statements of dates of first use by applicants filing under section 44(d) of the Act, and a statement of certain other requirements for an application in accordance with section 44(d) of the Act, is revised to delete the omission provisions, which are subsumed by § 2.33 as amended. The paragraph is further revised to provide that before an application filed in accordance with section 44(d) of the Act can be approved for publication, a basis for registration under section 1(a), 1(b) or 44(e) of the Act must be established.

Section 2.41(a), which relates to proof of distinctiveness of a mark, pursuant to section 2(f) of the Act, is revised to indicate that allegations and evidence of acquired distinctiveness must be based upon use of the mark on or in connection with goods or services "in commerce."

Section 2.41(b) is revised in the same manner as § 2.41(a) above, and is revised further to implement section 104 of Public Law 100–667. Section 2(f) of the Act presently requires an applicant relying upon an allegation of five years of substantially exclusive and continuous use of a mark in commerce in support of a claim of distinctiveness to assert that such use was made during the five years next preceding the filing date of the application. Section 104 of Public Law 100–667 amends section 2(f) of the Act to permit an applicant to rely upon such use made for the five years before the date on which the claim of distinctiveness is made.

Section 2.44, which presently requires that an application to register a collective mark include certain statements concerning the class of persons entitled to use the mark, their relationship to the applicant, and the nature of applicant's control over the use of the mark, is amended to redesignate the present paragraph as (a); revise redesignated paragraph (a) to indicate that it pertains only to applications under section 1(a) of the Act; and add a new paragraph (b) which requires, for collective mark applications under section 1(b) or 44 of the Act, that the application include certain statements concerning the class of persons entitled to use the mark, their relationship to the applicant, and the nature of applicant's control over the use of the mark.

Section 2.45, which presently requires that an application to register a certification mark include certain statements concerning the use of the mark, applicant's control thereover, and that applicant is not engaged in the production or marketing of the goods or services to which the mark is applied, is amended to redesignate the present paragraph as (a); revise redesignated paragraph (a) to indicate that it pertains only to applications under section 1(a) of the Act; and add a new paragraph (b) which requires, for certification mark applications under section 1(b) or 44 of the Act, that the application include certain statements concerning the intended use of the mark, applicant's intended control thereover, and that applicant will not engage in the production or marketing of the goods or services to which the mark is applied.

Section 2.47, which governs applications to register on the Supplemental Register, is amended to redesignate the present paragraph as (a); revise redesignated paragraph (a); and add new paragraphs (b), (c) and (d) to implement certain provisions of Public Law 100–667.

Section 2.47(a), as redesignated, is revised to implement section 23 of the Act by eliminating provisions pertaining to the requirement for one year of use of the mark for an application for registration on the Supplemental Register.

Section 2.47(b) is added to provide, in accordance with the Crocker decision, that in an application to register on the Supplemental Register under section 44 of the Act, the statement of lawful use in commerce may be omitted.

Section 2.47(c) is added to provide that a mark in an application to register on the Principal Register under section 1(b) of the Act is eligible for registration

on the Supplemental Register only after an acceptable allegation of use under section 1 (c) or (d) of the Act has been timely filed. Section 23 of the Act requires lawful use in commerce as a prerequisite for an application for registration on the Supplemental Register. This requirement bars an application under section 1(b) of the Act from the Supplemental Register until an acceptable allegation of use has been submitted.

Section 2.47(d) is added to provide that an application for registration on the Supplemental Register must conform to the requirements for registration on the Principal Register under section 1(a) of the Act so far as applicable.

Section 2.51, which specifies certain general requirements for drawings, is amended by redesignating present paragraph (a) as (a)(1), revising paragraph (a)(1), adding new paragraphs (a)(2) and (a)(3), redesignating present paragraph (b) as (b)(1), revising paragraph (b)(1), adding new paragraphs (b)(2) and (b)(3), revising paragraph (c), redesignating and republishing present paragraph (d) as (e), and adding a new paragraph (d) to codify existing practice and to specify certain drawing requirements for applications under sections 1(b) of the Act and applications under section 44 of the Act.

Section 2.51(a), which presently requires that the drawing of a trademark be a substantially exact representation of the mark as used on or in connection with the goods, is redesignated as (a)(1) and revised to indicate that it pertains only to applications under section 1(a) of the Act.

Section 2.51(a)(2) is added to provide that, in an application under section 1(b) of the Act, the drawing of a trademark shall be a substantially exact representation of the mark as intended to be used on or in connection with the goods specified in the application and, that once an amendment to allege use under new § 2.76, or a statement of use under new § 2.88 has been filed, the drawing of the trademark shall be a substantially exact representation of the mark as used.

Section 2.51(a)(3) is added to provide that, in an application under section 44 of the Act, the drawing of the trademark shall be a substantially exact representation of the mark as it appears in the drawing in the registration certificate of a mark duly registered in the country of origin of the applicant.

Section 2.51(b), which presently specifies, for service marks, requirements similar to those specified in paragraph (a) for trademarks, is amended by redesignating the present paragraph as (b)(1) and adding paragraphs (b)(2) and (b)(3) to parallel, for service marks, the provisions of new paragraphs (a)(1), (a)(2) and (a)(3).

Section 2.51(c), which presently provides that, when appropriate and necessary, the drawing in an application for registration on the Supplemental Register may be the drawing of a package or configuration of goods, is revised to delete that provision, which is outdated, and to add a provision codifying the practice that the drawing of a service mark may be dispensed with in the case of a mark not capable of representation by a drawing, but in any such case the application must contain an adequate description.

Section 2.51(d) is redesignated as (e) and a new paragraph (d) is added to provide that broken lines should be used in the drawing of a mark to show placement of the mark on the goods, or on the packaging, or to show matter not claimed as part of the mark, or both, as appropriate, and to provide further that, in an application to register a mark with three-dimensional features, the drawing shall depict the mark in perspective in a single rendition. These proposed provisions codify existing practice.

Section 2.52(a), which pertains to the character of drawings, is revised to correct a cross-reference which presently is correct but would be incorrect when the amendments made herein to § 2.51 become effective. Specifically, § 2.52(a) is amended to refer to paragraph (e), rather than (d), of § 2.51.

Section 2.52(d), which pertains to drawing headings and which presently includes, *inter alia*, a requirement that the heading of a drawing (except for a drawing in an application under section 44 of the Act) not exceed one-fourth of the sheet and specify dates of use, is revised to indicate that the heading should not exceed one-third of the sheet and that the dates of use requirement pertains only to an application under 1(a) of the Act; to add a requirement that the heading of a drawing in an application filed in accordance with section 44(d) of the Act specify the priority filing date of the relevant foreign application; and to add a provision that, if a drawing is in special form, the heading of the drawing should include a description of the essential elements of the mark.

Section 2.52(e), which pertains to drawing linings for color, is revised to simplify the conventional color linings for orange and yellow or gold.

Section 2.53 is revised to change a cross-reference which presently is correct but would be incorrect when the amendments made herein to § 2.51 become effective. Specifically, § 2.53 is amended to refer to paragraph (e), rather than (d), of § 2.51.

Section 2.56, which concerns specimens for trademarks, is revised to indicate that the requirement for the filing of specimens pertains only to an application under section 1(a) of the Act, an amendment to allege use under new § 2.76, and a statement of use under new § 2.88; remove the redundant word "actually," in accordance with section 1(a)(1)(C) of the Act; add a provision, in accordance with section 45 of the Act, that if placement of the mark on labels, tags, containers or displays associated with the goods is impracticable, then specimens may be documents associated with the goods or their sale; and reduce the maximum size limit for specimens (the proposed maximum size limit parallels the preferable size of paper for a trademark application as specified in amended § 2.31). When specimens exceeding the size limitations are submitted, the applicant will be required to submit proper substitute specimens. The paragraph is revised further to reduce the number of specimens required from five to three. The present requirement for five specimens was adopted to permit members of the public to obtain specimens directly from the application file. Advances in copying technology have rendered the requirement for five specimens unnecessary because members of the public may now obtain quality photocopies of the specimens in the file, making removal of specimens unnecessary in most cases. The requirement for three specimens will provide one specimen for the file and make two specimens available for removal by third parties.

Section 2.57, which pertains to facsimiles in the case of a trademark, is amended to revise paragraph (a) to reduce the number of facsimiles required from five to three, and to reduce the maximum size limit for specimens (the maximum size limit parallels the preferable size of paper for a trademark application as specified in amended § 2.31); and to revise paragraph (b) by removing the redundant word "actually," in accordance with section 1(a)(1)(C) of the Act. When facsimiles exceeding the size limitations are submitted, the applicant will be required to submit proper substitute specimens.

Section 2.58, which concerns the filing of audio cassette tape recordings as specimens for service marks not used in written or printed form, was proposed to be amended to reduce the number of audio tapes required from three to two. As a result of comments received with

respect to this proposal, it has been withdrawn.

Section 2.59, entitled "Filing substitute specimens," is added to specify the requirements related to the filing of substitute specimens for applications under section 1(a) or 1(b) of the Act. The new section codifies existing practice with respect to applications under section 1(a) of the Act and sets forth the requirements which will apply to applications under section 1(b) of the Act.

Section 2.59(a) is added to provide that, in an application based upon use in commerce, the applicant may submit substitute specimens of the mark as used on or in connection with the goods, or in the sale or advertising of the services, provided that any substitute specimens are properly verified as to their use in commerce at least as early as the filing date of the application; and that the verification requirement shall not apply if the specimens are duplicates or facsimiles, such as photographs, of specimens already of record in the application. The new provision is in accordance with section 1(a) of the Act, which requires use in commerce, evidenced by specimens, as a prerequisite to the filing of an application thereunder.

Section 2.59(b) is added to provide that, after filing either an amendment to allege use under new § 2.76 or a statement of use under new § 2.88, in an application under section 1(b) of the Act, the applicant may submit substitute specimens of the mark as used on or in connection with the goods, or in the sale or advertising of the services, provided that the use in commerce of any substitute specimens submitted is supported by applicant's affidavit or declaration in accordance with § 2.20; and to provide further that, in the case of a statement of use under new § 2.88, the applicant must verify that the substitute specimens were in use in commerce prior to the filing of the statement of use or prior to the expiration of the time allowed to applicant for filing a statement of use. Since use in commerce is not required before filing an application under section 1(b) of the Act, there is no requirement that a substitute specimen have been in use at the time of the filing of the application. Furthermore, because an applicant may file a statement of use at any time during the six-month period following the notice of allowance, or at any time during any extension of time for filing a statement of use, a substitute specimen need not be in use any earlier than the expiration of the relevant period.

Section 2.61, which concerns the examination of an application, is amended to provide also for the examination of amendments to allege use under section 1(c) of the Act and statements of use under section 1(d) of the Act.

Section 2.61(a) is revised to indicate that not only applications for registration, but also amendments to allege use under section 1(c) of the Act and statements of use under section 1(d) of the Act will be examined.

Section 2.61(c) is revised to clarify the language.

Section 2.64, which relates to final action by the Trademark Examining Attorney and the applicant's permissible responses thereto, is amended by adding new paragraphs (c)(1), (c)(2), and (c)(3) concerning examination of an amendment to allege use under new § 2.76, filed during the six-month response period after issuance of a final action.

Section 2.64(c)(1) is added to provide that if an amendment to allege use under new § 2.76 is filed during the six-month response period after issuance of a final action, the Trademark Examining Attorney shall examine the amendment, but that the filing of such an amendment will not extend the time for filing an appeal or petitioning the Commissioner.

Section 2.64(c)(2) is added to provide that if the amendment to allege use under new § 2.76 is acceptable in all respects, the applicant will be notified of its acceptance.

Section 2.64(c)(3) is added to provide that if a new refusal or requirement is necessary as a result of the examination of the amendment to allege use under new § 2.76, the final action will be withdrawn and all unresolved refusals or requirements will be stated in a new non-final action.

Section 2.65(c) is added to provide that if an applicant in an application under section 1(b) of the Act fails to timely file a statement of use under new § 2.88, the application shall be deemed to be abandoned. The new paragraph is in conformity with section 1(d)(4) of the Act.

Section 2.66, which governs the revival of abandoned applications, is amended by redesignating the present paragraph as (a), and revising redesignated paragraph (a), which presently provides for the filing of a petition to revive an application abandoned for failure to respond, to pertain also to an application abandoned for failure to timely file a statement of use under new § 2.88, in an application under section 1(b) of the Act. Section 2.66 is further amended by transferring the last sentence of paragraph (a), which states the requirements for a petition to revive for failure to respond, to new paragraph (b), and by adding new paragraphs (c) and (d).

Section 2.66(c) is added to state the requirements for a petition to revive an application abandoned for failure to timely file a statement of use under new § 2.88, in an application under section 1(b) of the Act. The requirements parallel those stated in present § 2.66 and new paragraph (b).

Section 2.66(d) is added to provide that a petition to revive must be filed promptly, but that no petition to revive will be granted in an application under section 1(b) of the Act if granting the petition would permit the filing of a statement of use more than 36 months after the issuance of a notice of allowance under section 13(b)(2) of the Act. The 36-month limit for the filing of a statement of use is in accordance with the provisions of section 1(d) of the Act. Usually a petition to revive will be considered filed promptly if it is filed within two months of the date the application was abandoned for failure to respond.

Section 2.69, which pertains to inquiry by a Trademark Examining Attorney as to the applicant's compliance with other laws, is revised to delete the words "before allowance." The word "allowance," as presently used in the section, signifies approval of a mark for publication. The purpose of the deletion is to prevent confusion between this word and the new "notice of allowance" provided in section 13(b)(2) of the Act.

Section 2.71, which concerns amendments to correct informalities in applications, is amended by changing the section title from "Amendments to application." to "Amendments to correct informalities."; revising paragraphs (a), (b), and (c); and adding new paragraphs (d)(1), (d)(2), and (d)(3) to govern amendments to the dates of use.

Section 2.71(a), which presently provides for the amendment of applications to correct informalities and for other reasons, and also contains a provision concerning amendments to dates of use, is revised by deleting the provision concerning dates of use, which is transferred to a new paragraph designated as (d)(1).

Section 2.71(b), which presently provides that additions to the identification of goods or services will not be permitted unless certain specified conditions are met, is revised to provide that the identification of goods or services may be amended to clarify or limit the identification, but that

additions thereto will not be permitted. The purposes of the requirement for the identification of goods or services are to give notice to third parties of the scope of the rights claimed by the applicant and to permit an accurate search for conflicting marks. Addition of goods or services to the identification, after the filing of an application, would frustrate these purposes. Moreover, section 7(c) of the Act provides that, contingent on the registration of a mark on the Principal Register, the filing of the application to register such mark shall constitute constructive use of such mark on or in connection with the goods or services specified in the registration.

Section 2.71(c), which presently provides, in essence, that a defect in the verification or declaration may be corrected only by filing a substitute or supplemental verification or declaration, is revised to clarify the language. The paragraph is further revised to provide that a verification or declaration required under §§ 2.21(a)(6), 2.76(e)(3) or 2.88(e)(3), to be properly signed, must be signed by the applicant, a member of the applicant firm, or an officer of the applicant corporation or association; that a verification or declaration which is signed by a person having color of authority to sign is acceptable for the purpose of determining the timely filing of the paper; but that a properly signed substitute verification or declaration must be submitted before the application will be approved for publication or registration, as the case may be. Persons having color of authority to sign are those who have first-hand knowledge of the truth of the statements in the verification or declaration and who also have actual or implied authority to act on behalf of the applicant. In the case of a corporate applicant, a person having color of authority might include, within the contemplation of the amended section, managers or similar persons who are in positions of authority, although not actually officers, if they have first-hand knowledge of the truth of the statements in the application and actual or implied authority to act on behalf of the applicant. However, an applicant's attorney ordinarily will not be considered a person having color of authority to sign.

Section 2.71(d)(1) is added to provide that no amendment to the dates of use will be permitted unless the amendment is supported by applicant's affidavit or declaration in accordance with § 2.20 and by such showing as may be required. This provision, which is the second sentence of present § 2.71(a), is transferred to new paragraph (d)(1) to be grouped with two other new paragraphs, designated (d)(2) and (d)(3), relating to amendments to the dates of use.

Section 2.71(d)(2) is added to codify the practice that, in an application under section 1(a) of the Act, no amendment to specify a date of use which is subsequent to the filing date of the application will be permitted. The new provision is in accordance with section 1(a) of the Act, which requires use in commerce as a prerequisite to the filing of an application thereunder.

Section 2.71(d)(3) is added to provide that after the filing of a statement of use under new § 2.88, in an application under section 1(b) of the Act, no amendment will be permitted to the statement of use to recite dates of use which are subsequent to the expiration of the time allowed to applicant for filing a statement of use. The reason for this limitation is that section 1(d) of the Act requires use of the mark in commerce, in an application under section 1(b) of the Act, within a specified period of time and imposes certain absolute limitations on extensions of that period. Any use later than the time permitted would not comply with the requirements of section 1(d) of the Act.

Section 2.72, which governs amendments to the description or drawing of a mark, is amended by redesignating the present paragraph as (b), revising redesignated paragraph (b), and adding new paragraphs (a), (c), and (d).

Section 2.72(a) is added to provide that amendments may not be made to the description or drawing of the mark if the character of the mark is materially altered, and that the Trademark Examining Attorney will determine whether a proposed amendment materially alters the character of the mark by comparing the proposed amendment with the description or drawing of the mark as originally filed. Concerning material alteration of a mark *see Torres* v. *Cantine Torresella S.r.l.*, 808 F.2d 46, 1 USPQ 2d 1483 (Fed. Cir. 1986); In re Holland American Wafer Co., 737 F.2d 1015, 222 USPQ 273 (Fed. Cir. 1984); *United Rum Merchants, Ltd.* v. *Distillers Corp.(S.A.) Ltd.*, 9 USPQ 2d 1481 (TTAB 1988); *Visa International Service Assn.* v. *Life-Code Systems, Inc.*, 220 USPQ 740 (TTAB 1983). The first of these two provisions is the last sentence of present § 2.72. The second provision is added to codify present practice, the purpose of which is to prevent an applicant from repeatedly amending the mark sought to be registered until it bears little resemblance to the mark as originally filed.

Section 2.72(b), as redesignated, is revised to transfer the last sentence, which specifies the general rule concerning amendments to marks, to new paragraph 2.72(a). The remainder of the paragraph, which presently provides that amendments to the description or drawing of the mark may be permitted only if warranted by the specimens (or facsimiles) as originally filed, or supported by additional specimens (or facsimiles) verified as to their use prior to the filing date of the application, is further revised to indicate that the provisions of the paragraph pertain only to applications under section 1(a) of the Act. The amendment is in accordance with section 1(a) of the Act, which requires use in commerce as a prerequisite to the filing of an application thereunder.

Section 2.72(c) is added to provide that, in applications under section 1(b) of the Act, amendments to the description or drawing of the mark, which are filed after submission of an amendment to allege use under new § 2.76 or a statement of use under new § 2.88, may be permitted only if warranted by the specimens (or facsimiles) filed, or supported by additional specimens (or facsimiles) and a supplemental affidavit or declaration in accordance with § 2.20 alleging that the mark shown in the amended drawing is in use in commerce; and that in the case of a statement of use under new § 2.88, applicant must verify that the mark shown in the amended drawing was in use in commerce prior to the filing of the statement of use or prior to the expiration of the time allowed to applicant for filing a statement of use. The reason for the latter requirement, in the case of a statement of use, is that section 1(d) of the Act requires use of the mark in commerce, in an application under section 1(b) of the Act, within a specified period of time and imposes certain absolute limitations on extensions of that period. Any use later than the time permitted would not comply with the requirements of section 1(d) of the Act.

Section 2.72(d) is added to codify the practice that in applications under section 44 of the Act, amendments to the description or drawing of the mark may be permitted only if warranted by the description or drawing of the mark in the foreign registration certificate.

Section 2.73, which governs amendments to recite concurrent use, is amended by redesignating the present paragraph as (a), revising redesignated

paragraph (a), and adding new paragraph (b).

Section 2.73(a), as redesignated, which presently provides that an application may be amended so as to be treated as an application for a concurrent registration, provided the application as amended satisfies the requirements of § 2.42, is revised to indicate that this provision pertains only to an application under section 1(a) of the Act. The Trademark Examining Attorney will determine whether the application, as amended, is acceptable.

Section 2.73(b) is added to provide that an application under section 1(b) of the Act may not be amended so as to be treated as an application for a concurrent registration until an acceptable amendment to allege use under new § 2.76 or statement of use under new § 2.88 has been filed in the application, after which time such an amendment may be made, provided the application as amended satisfies the requirements of § 2.42. To provide otherwise would be to permit an application for concurrent registration based on an intent to use concurrently, which would be in conflict with the well-established legal principle that an applicant for concurrent registration must have adopted and used the mark in good faith without knowledge of the prior right of another in the same or similar mark for the same or similar goods or services. The Trademark Examining Attorney will determine whether the application, as amended, is acceptable.

Section 2.75, which governs amendments to change register, is amended to redesignate the present paragraph as (a), revise redesignated paragraph (a), and add new paragraph (b).

Section 2.75(a), as redesignated, which presently provides for amendments to change applications from one register to another and also contains provisions relating to the effect of such an amendment on the filing date of an application, is revised to indicate that the paragraph pertains only to applications under section 1(a) or 44 of the Act; and to delete the provisions concerning the effect on the filing date. Prior to the enactment of Public Law 100-667, section 23 of the Act required that the mark in an application for registration on the Supplemental Register have been in use for one year prior to the filing of the application, whereas there is no such requirement for an application to register on the Principal Register. However, section 23, as amended, does not require use of a mark for one year prior to application on the Supplemental Register. Thus, under the Act, as amended, an amendment to change registers has no effect on the filing date of an application under section 1(a) or 44 of the Act.

Section 2.75(b) is added to provide that an application under section 1(b) of the Act may be amended to change the application to a different register only after submission of an acceptable amendment to allege use under new § 2.76 or statement of use under new § 2.88, and that when such an application is changed from the Principal Register to the Supplemental Register, the effective filing date of the application is the date of the filing of the allegation of use under section 1(c) or 1(d) of the Act. The amendment is in accordance with section 23 of the Act, both in its prior and amended forms, which requires use in commerce as a prerequisite to filing an application thereunder.

Section 2.76, entitled "Amendment to allege use.," is added to govern amendments to allege use under section 1(c) of the Act in an application under section 1(b) of the Act.

Section 2.76(a) is added to specify the time when such an amendment may be filed, namely, at any time between the filing of the application and the date the Trademark Examining Attorney approves the mark for publication or the date of expiration of the six-month response period after issuance of a final action, and to specify further that, thereafter, an allegation of use may be submitted only as a statement of use under new § 2.88 after the issuance of a notice of allowance under section 13(b)(2) of the Act. If an amendment to allege use is filed outside the time period specified, it will be returned to the applicant. The paragraph is in accordance with section 1(c) of the Act, which provides that an amendment to allege use may be filed at any time during examination of an application. The examination of an application extends from the filing of the application to the date the mark is approved for publication or the expiration of the six-month response period after issuance of a final action. The date a mark is approved for publication is the date the approval is entered into the TRAM (Trademark Reporting and Monitoring) System. The date of approval for publication is immediately available to the public through TRAM.

Section 2.76(b) is added to specify the elements of a complete amendment to allege use, namely, three specimens or facsimiles, conforming to the requirements of §§ 2.56, 2.57 and 2.58, of the mark as used in commerce; the fee prescribed in § 2.6; and a verified statement by the applicant containing certain averments concerning applicant's ownership of the mark and use of the mark in commerce, specifying the date of the applicant's first use of the mark and first use of the mark in commerce, the type of commerce, those goods or services specified in the application on or in connection with which the mark is in use in commerce and the mode or manner in which the mark is used on or in connection with such goods or services.

Section 2.76(c) is added to provide that an amendment to allege use may only be filed when the applicant has made use of the mark in commerce on or in connection with all of the goods or services, as specified in the application, for which applicant will seek registration in that application, unless the amendment is accompanied by a request, in accordance with amended § 2.87, to divide out from the application the goods or services to which the amendment pertains; and that if more than one item of goods or services is specified in the amendment to allege use, the dates of use required in paragraph (b)(1) of the section need be for only one of the items specified in each class, provided the particular item to which the dates apply is designated. The first provision in the paragraph prevents piecemeal prosecution of an application. The second provision in the paragraph is in conformity with both present and amended § 2.33(a)(2).

Section 2.76(d) is added to provide that the title "Amendment to allege use under § 2.76." should appear at the top of the first page of the paper.

Section 2.76(e) is added to specify minimum requirements for an amendment to allege use, namely, that the amendment be filed within the time period specified in paragraph (a) of the section, and include the fee prescribed in § 2.6, at least one specimen or facsimile of the mark as used in commerce, and a verification or declaration signed by the applicant stating that the mark is in use in commerce. The paragraph corresponds in principle to § 2.21, which sets forth minimum requirements for the filing of an application.

Section 2.76(f) is added to provide that a timely filed amendment to allege use which meets the minimum requirements specified in paragraph (e) of this section will be examined in accordance with §§ 2.61 through 2.69. If, as a result of the examination of the amendment to allege use, applicant is found not entitled to registration for any reason not previously stated, applicant will be notified and advised of the reasons and of any formal requirements or refusals.

The notification shall incorporate all unresolved refusals or requirements previously stated. The amendment to allege use may be amended in accordance with §§ 2.59 and 2.71 through 2.75. If the amendment to allege use is acceptable in all respects, the applicant will be notified of its acceptance. The filing of such an amendment shall not constitute a response to any outstanding action by the Trademark Examining Attorney.

Section 2.76(g) is added to provide that if the amendment to allege use is filed within the permitted time period but does not meet the minimum requirements specified in paragraph (e) of this section, applicant will be notified of the deficiency. The deficiency may be corrected provided the mark has not been approved for publication or the six-month response period after issuance of a final action has not expired. If an acceptable amendment to correct the deficiency is not filed prior to approval of the mark for publication or prior to the expiration of the six-month response period after issuance of a final action, the amendment will not be examined.

Section 2.76(h) is added to provide that an amendment to allege use may be withdrawn for any reason prior to approval of a mark for publication or expiration of the six-month response period after issuance of a final action.

Section 2.77, entitled "Amendments between notice of allowance and statement of use.", is added to provide that an application under section 1(b) of the Act may not be amended during the period between the issue date of the notice of allowance under section 13(b)(2) of the Act and the filing of a statement of use under new § 2.88, except to delete specified goods or services. Other amendments filed during this period will be placed in the application file and considered when the statement of use is examined.

The heading entitled "Publication and Allowance," for §§ 2.80 through 2.84, is changed to "Publication and Post Publication." The amended heading more accurately reflects the scope of the sections which follow. The word "allowance," as presently used in the heading, signifies approval of a mark for registration. The purpose of the deletion is to prevent confusion between the word "allowance" and the new "notice of allowance" provided in section 13(b)(2) of the Act.

Section 2.81 is amended by changing the section title from "Allowance of application." to "Post publication."; redesignating the present paragraph as (a); revising redesignated paragraph (a), which presently concerns the preparation of an application for registration after publication, to indicate that it does not apply to applications under section 1(b) of the Act for which no amendment to allege use under new § 2.76 has been submitted and accepted; and adding new paragraph (b) concerning the post-publication processing of applications under section 1(b) of the Act for which no amendment to allege use under new § 2.76 has been submitted and accepted. The word "allowance," as presently used in the section title, signifies approval of a mark for registration. The purpose of the title change is to prevent confusion between this word and the new "notice of allowance" provided in section 13(b)(2) of the Act.

Section 2.81(b) is added to provide that, in an application under section 1(b) of the Act, for which no amendment to allege use under new § 2.76 has been submitted and accepted, if no opposition is filed within the time permitted or all oppositions filed are dismissed, and if no interference is declared, a notice of allowance will issue stating the serial number of the application, the name of the applicant, the correspondence address, the mark, the identification of goods or services, and the issue date of the notice of allowance; that the mailing date that appears on the notice of allowance will be the issue date of the notice of allowance; and that thereafter, the applicant shall submit a statement of use under new § 2.88. The paragraph is in accordance with the provisions of section 13(b)(2) of the Act.

Section 2.82, which concerns the processing of an application for registration on the Supplemental Register after the examiner has approved the application for issuance, is revised to clarify the language of the section.

Section 2.83, which concerns the processing of conflicting marks, is amended by revising paragraph (a) to delete a provision stating "a notice will be sent, if practicable, to the applicants involved informing them of the publication or issuance of the earliest filed mark," and by revising paragraph (b) to delete a provision stating "a notice will be sent, if practicable, to the applicants involved informing them of the publication or issuance of the application with the earliest date of execution." These provisions are deleted because they do not conform to present practice.

Section 2.84, which concerns jurisdiction over published applications, is amended by deleting the words "or allowed" from the section title, which presently reads "Jurisdiction over published or allowed applications."; and revising paragraphs (a) and (b) to clarify the provisions and to add provisions concerning jurisdiction over applications under section 1(b) of the Act which have been published. The words "allowed" and "allowance," as presently used in the section title and in paragraphs (a) and (b), signify approval of a mark for registration. The purpose of the amendments deleting these words is to prevent confusion between the words "allowed" and "allowance" and the new "notice of allowance" provided in section 13(b)(2) of the Act.

Section 2.86, which presently concerns applications with a plurality of goods or services comprised in a single class, is amended by changing the section title from "Plurality of goods or services comprised in single class may be covered by single application." to "Application may include multiple goods or services comprised in single class or multiple classes."; redesignating the present paragraph as (a); and adding new paragraphs (b) and (c).

Section 2.86(a), as redesignated, which presently provides that an application may recite a plurality of goods or services comprised in a single class provided the particular identification of goods or services is stated and the mark has actually been used in connection with all of the goods or services specified, is revised to clarify the language of the paragraph and to add, as an alternative to the requirement of use, a requirement that the applicant have a bona fide intention to use the mark on or in connection with all the goods or services specified.

Section 2.86(b) is added to incorporate in § 2.86 the provisions of the present § 2.87, which governs the filing of an application to register a mark for goods and/or services which fall within a plurality of classes; clarify the language of those provisions; and add certain requirements relating to multiple class applications under section 1(b) of the Act.

Section 2.86(c) is added to prohibit applicants from alleging use as to certain goods or services and a bona fide intention to use as to other goods or services in the same application, regardless of the number of classes contained therein.

Section 2.87, which presently governs the filing of an application to register a mark for goods and/or services which fall within a plurality of classes, is amended by changing the section title from "Combined applications." to "Dividing an application."; redesignating the present paragraph as (a); revising redesignated paragraph (a); and adding

new paragraphs (b) and (c), to govern the division of applications.

Section 2.87(a), as redesignated, is revised by deleting the existing paragraph, which is incorporated in revised form in new paragraph (b) of amended § 2.86, and adding the new provisions that an application may be physically divided into two or more separate applications upon submission by the applicant of a request therefor; that in the case of a request to divide out some, but not all, of the goods or services in a class, a fee for each new separate application to be created by the division must be submitted; and that any outstanding time period for action by the applicant in the original application at the time of the division will be applicable to each new separate application created by the division.

Section 2.87(b) is added to provide that an application may be divided at any time between the filing of the application and the date the Trademark Examining Attorney approves the mark for publication or the date of expiration of the six-month response period after issuance of a final action; or during an opposition, upon motion granted by the Board. The paragraph provides further that an application under section 1(b) of the Act also may be divided upon request filed with a statement of use under new § 2.88 or at any time between the filing of a statement of use and the date the Trademark Examining Attorney approves the mark for registration or the date of expiration of the six-month response period after issuance of a final action. The date a mark is approved for publication is the date the approval is entered into the TRAM (Trademark Reporting and Monitoring) System. The date of approval for publication is immediately available to the public through TRAM.

Section 2.87(c) is added to provide that a request to divide an application should be made in a separate paper from any other amendment or response in the application. The title "Request to divide application." should appear at the top of the first page of the paper. Failure to make the request to divide in a separate paper or to title it as a "Request to divide application" will delay action on the request.

A new heading, entitled "Post Notice of Allowance," and two new sections, designated §§ 2.88 and 2.89, are added to govern the filing of statements of use, and requests for extensions of time, under section 1(d) of the Act, in applications under section 1(b) of the Act, after issuance of a notice of allowance under section 13(b)(2) of the Act.

Section 2.88, entitled "Filing statement of use after notice of allowance.", is added to govern statements of use under section 1(d) of the Act in an application under section 1(b) of the Act.

Section 2.88(a) is added to specify the time when such an amendment may be filed, namely, within six months after the date on which the notice of allowance under section 13(b)(2) of the Act is issued to an applicant under section 1(d)(2) of the Act. A statement of use filed prior to the issue date of a notice of allowance is premature, will not be considered, and will be returned to the applicant.

Section 2.88(b) is added to specify the elements of a complete statement of use under section 1(d) of the Act, namely, three specimens or facsimiles, conforming to the requirements of §§ 2.56 and 2.57, as amended, and § 2.58, of the mark as used in commerce; the fee prescribed in amended § 2.6; and a verified statement by the applicant containing certain averments concerning applicant's ownership of the mark and use of the mark in commerce, specifying the date of the applicant's first use of the mark and first use of the mark in commerce, the type of commerce, those goods or services specified in the application on or in connection with which the mark is in use in commerce and the mode or manner in which the mark is used on or in connection with such goods or services.

Section 2.88(c) is added to provide that a statement of use under section 1(d) of the Act may only be filed when the applicant has made use of the mark in commerce on or in connection with all of the goods or services, as specified in the application, for which applicant will seek registration in that application, unless the statement of use is accompanied by a request in accordance with amended § 2.87 to divide out from the application the goods or services to which the statement of use pertains; and that if more than one item of goods or services is specified in the statement of use, the dates of use required in proposed paragraph (b)(1) of this section need be for only one of the items specified in each class, provided the particular item to which the dates apply is designated. The latter provision in the paragraph is in conformity with both present and amended § 2.33(a)(2).

Section 2.88(d) is added to provide that the title "Statement of use under § 2.88." should appear at the top of the first page of the paper.

Section 2.88(e) is added to specify minimum requirements for a statement of use, namely, that the statement be filed within the time period specified in paragraph (a) of the section, and include the fee prescribed in amended § 2.6, at least one specimen or facsimile of the mark as used in commerce, and a verification or declaration signed by the applicant stating that the mark is in use in commerce. The paragraph corresponds in principle to amended § 2.21, which sets forth minimum requirements for the filing of an application.

Section 2.88(f) is added to provide that a timely filed statement of use which meets, at least, the minimum requirements specified in paragraph (e) of this section will be examined in accordance with §§ 2.61 through 2.69. If, as a result of the examination of the statement of use, applicant is found not entitled to registration, applicant will be notified and advised of the reasons and of any formal requirements or refusals. The statement of use may be amended in accordance with §§ 2.59 and 2.71 through 2.75. If the statement of use is acceptable in all respects, the applicant will be notified of its acceptance. The provision of the new paragraph permitting amendment of the statement of use is in accordance with section 1(d)(3) of the Act, which specifically provides that an applicant may amend the statement of use.

Section 2.88(g) is added to provide that if the statement of use does not meet the minimum requirements specified in paragraph (e) of this section, applicant will be notified of the deficiency. If the time permitted for applicant to file a statement of use has not expired, applicant may correct the deficiency. After the filing of a statement of use during a permitted time period for such filing, the applicant may not withdraw the statement to return to the previous status of awaiting submission of a statement of use, regardless of whether the statement is in compliance with paragraph (e) of this section.

Section 2.88(h) is added to provide that the failure to timely file a statement of use which meets the minimum requirements specified in paragraph (e) of this section shall result in the abandonment of the application. The new paragraph is in conformity with section 1(d)(4) of the Act.

Section 2.88(i)(1) is added to provide that the goods or services specified in a statement of use must conform to those goods or services identified in the notice of allowance; and that an applicant may specify the goods or services by stating "those goods or services identified in the notice of allowance" or, if appropriate, "those goods or services identified in the notice of allowance except * * *"

followed by an identification of the goods or services to be deleted. The requirement that the goods or services specified in the statement of use must conform to those goods or services identified in the notice of allowance is in accordance with section 1(d)(1) of the Act. The suggested format for specifying goods or services in the statement of use will prevent inadvertent errors in the applicant's recital of the goods or services and facilitate examination of statements of use by the PTO.

Section 2.88(i)(2) is added to provide that if any goods or services specified in the notice of allowance are omitted from the identification of goods or services in the statement of use, the Trademark Examining Attorney shall inquire about the discrepancy and permit the applicant to amend the statement of use to include any omitted goods or services, provided that the amendment is supported by a verification that the mark was in use in commerce, on or in connection with each of the goods or services sought to be included, prior to the expiration of the time allowed to applicant for filing a statement of use. The paragraph is in accordance with section 1(d)(3) of the Act, which specifically provides that the applicant may amend the statement of use.

Section 2.88(i)(3) is added to provide that the statement of use may be accompanied by a separate request to amend the identification of goods or services in the application, as stated in the notice of allowance, in accordance with amended § 2.71(b). The paragraph is in conformance with new § 2.77, which provides that an application under section 1(b) of the Act may not be amended during the period between issuance of the notice of allowance under section 13(b)(2) of the Act and the filing of a statement of use, except to delete specified goods or services. Other amendments filed during this period will be placed in the application file and considered when the statement of use is examined.

In the notice of proposed rulemaking, § 2.88(j) was proposed to be added to provide that the mark shown in the specimens submitted with the statement of use must be materially the same as the mark depicted in the drawing of record. However, because this provision duplicates requirements already stated in §§ 2.51 and 2.72, the provision is withdrawn. The provision that was proposed as § 2.88(k) is redesignated as § 2.88(j).

Section 2.88(j) is added to provide that the statement of use may be accompanied by a separate request to amend the drawing in the application in accordance with amended §§ 2.51 and 2.72.

Section 2.89, entitled "Extensions of time for filing a statement of use.", is added to govern the filing and examination of requests for extensions of time for filing statements of use under new § 2.88.

Section 2.89(a) is added to provide that an applicant may request a six-month extension of time to file the statement of use under new § 2.88 by submitting a written request, before the expiration of the six-month period following the issue date of a notice of allowance under section 13(b)(2) of the Act, accompanied by the fee prescribed in amended § 2.6 and a verified statement by the applicant that the applicant has a continued bona fide intention to use the mark in commerce, specifying those goods or services identified in the notice of allowance on or in connection with which the applicant has a continued bona fide intention to use the mark in commerce. The paragraph is in conformity with section 1(d)(2) of the Act.

Section 2.89(b) is added to provide that an applicant may request further six-month extensions of time for filing the statement of use by submitting a written request, prior to the expiration of a previously granted extension of time, accompanied by the fee prescribed in amended § 2.6; a verified statement by the applicant that the applicant has a continued bona fide intention to use the mark in commerce, specifying those goods or services identified in the notice of allowance on or in connection with which the applicant has a continued bona fide intention to use the mark in commerce; and a showing of good cause, as specified in paragraph (d) of this section.

Section 2.89(c) is added to provide that extensions of time, for good cause, under § 2.89(b) will be granted only in six-month increments and may not aggregate more than 24 months. The provision is in conformity with section 1(d)(2) of the Act.

Section 2.89(d) is added to provide that the showing of good cause which is required as part of a request for an extension of time under § 2.89(b) must include certain specified elements listed in paragraphs (d)(1) and (d)(2).

Section 2.89(d)(1) is added to require that the showing of good cause which is required as part of a request for an extension of time under § 2.89(b) must include, in part, an allegation that the applicant has not yet made use of the mark in commerce on all the goods or services specified in the notice of allowance on or in connection with which the applicant has a continued bona fide intention to use the mark in commerce.

Section 2.89(d)(2) is added to require that the showing of good cause which is required as part of a request for an extension of time under § 2.89(b) must include, in part, a statement of applicant's ongoing efforts to make use of the mark in commerce on or in connection with each of the goods or services specified in the verified statement of continued bona fide intention to use required under § 2.89(b); that the efforts may include, without limitation, product or service research or development, market research, manufacturing activities, promotional activities, steps to acquire distributors, steps to obtain required governmental approval, or other similar activities; and that, in the alternative, a satisfactory explanation for the failure to make such efforts must be submitted. The paragraph is in compliance with section 1(d)(2) of the Act, which requires the Commissioner to issue regulations setting forth what constitutes good cause for a request for an extension of time for filing a statement of use under section 1(d)(2) of the Act. The listing in the paragraph of examples of efforts to make use of the mark in commerce is intended to be illustrative rather than exhaustive. The inclusion in the examples of "steps to obtain required governmental approval" is not intended to imply that any use of a mark prior to such approval may not constitute "use in commerce" as that term is defined in section 45 of the Act.

Section 2.89(e)(1) is added to provide that at the time of the filing of a statement of use, or during any time remaining in the existing six-month period in which a statement of use is filed, the applicant may file one request, in accordance with paragraph (a) or (b) of the section, for a six-month extension of time for filing a statement of use, provided that the time requested would not extend beyond 36 months from the issue date of the notice of allowance; and that, thereafter, applicant may not request any further extension of time. This paragraph permits an applicant to obtain additional time to submit a substitute statement of use in case the original statement of use is rejected, as fatally defective, by the PTO near or after the expiration of the six-month period in which such original statement was filed.

Section 2.89(e)(2) is added to provide that a request for an extension of time that is filed at the time of the filing of a statement of use, or during any time remaining in the existing six-month

period in which a statement of use is filed, must comply with all the requirements of paragraph (a) of this section, if it is applicant's first extension request, or paragraph (b) of this section, if it is a second or subsequent extension request. The new rule further provides that in a request under paragraph (b), applicant may satisfy the requirement for a showing of good cause by asserting that applicant believes it has made valid use of the mark in commerce, as evidenced by the submitted statement of use, but that if the statement of use is found by the PTO to be fatally defective, applicant will need additional time in which to file a new statement of use.

Final § 2.89(e)(2) includes a provision which was not included in the proposed rule, namely, a request for an extension of time that is filed at the time of the filing of the statement of use, or during any time remaining in the existing six-month period in which a statement of use is filed, must comply with all of the requirements of paragraph (a) of this section if it is applicant's first extension request, or paragraph (b) of this section, if it is a second or subsequent extension request. The additional provision was included in the final rule in order to clarify the rule. It is not a material change since proposed and final paragraph (e)(1) of this section requires that an extension request be filed "in accordance with paragraph (a) or (b)" of the section.

Section 2.89(f) is added to provide that the goods or services specified in a request for an extension of time for filing a statement of use must conform to those goods or services identified in the notice of allowance. The requirement is in accordance with section 1(d)(2) of the Act. The paragraph also provides that any goods or services specified in the notice of allowance which are omitted from the identification of goods or services in the request for extension of time will be presumed to be deleted and the applicant may not thereafter request that the deleted goods or services be reinserted in the application. Finally, the paragraph provides that an applicant may specify the goods or services by stating "those goods or services identified in the notice of allowance" or, if appropriate, "those goods or services identified in the notice of allowance except * * *" followed by a list of the goods or services to be deleted. The format will prevent inadvertent errors in the applicant's recital of the goods or services and facilitate examination of such a request by the PTO.

Section 2.89(g) is added to provide that the applicant will be notified of the grant or denial of a request for an extension of time, and of the reasons for a denial; that failure to notify the applicant of the grant or denial of the request prior to the expiration of the existing or requested extension does not relieve the applicant of the responsibility of timely filing a statement of use under new § 2.88; that if, after denial of an extension request, there is time remaining in the existing six-month period for filing a statement of use, applicant may submit a substitute request for extension of time; that otherwise, the only recourse available after denial of a request for an extension of time is a petition to the Commissioner in accordance with amended § 2.66 or § 2.146; that a petition from the denial of a request for an extension of time to file a statement of use shall be filed within one month from the date of mailing of the denial of the request; and that if the petition is granted, the term of the requested six-month extension of time which was the subject of the petition will run from the date of the expiration of the previously existing six-month period for filing a statement of use. The paragraph parallels §§ 2.163 through 2.165, concerning affidavits and declarations under section 8 of the Act, except that the paragraph does not permit a request for reconsideration, but rather provides a petition to the Commissioner as the only recourse after a denial of a request for an extension of time.

Section 2.99(g), which presently lists the types of applications and registrations that are not subject to concurrent use registration proceedings, is revised to provide, additionally, that applications to register under section 1(b) of the Act are subject to concurrent use registration proceedings only after an acceptable amendment to allege use under new § 2.76 or statement of use under new § 2.88 has been filed.

Section 2.99(h) is added to provide that the Board will consider and determine concurrent use rights only in the context of a concurrent use registration proceeding. The amendment parallels an amendment to add § 2.133(c) to provide that geographic limitations will be considered and determined only in the context of a concurrent use registration proceeding.

Section 2.101(b), which pertains to the filing of an opposition, is amended to be gender neutral, and to specify that an opposition need not be verified and may be signed by the opposer or the opposer's attorney or other authorized representative. The amendment parallels an amendment to § 2.111(b) relating to petitions to cancel. At one time, sections 13, 14 and 24 of the Act required verification for oppositions, petitions to cancel registrations on the Principal Register, and petitions to cancel registrations on the Supplemental Register, respectively. The verification requirement was deleted from sections 13 and 14 of the Act by Public Law 97–247, enacted August 27, 1982. Through inadvertence, a provision deleting, from section 24 of the Act, the verification requirement for petitions to cancel registrations on the Supplemental Register was omitted from Public Law 97–247. The omitted provision was incorporated, however, in Public Law 100–667. Accordingly, it is now appropriate to amend §§ 2.101(b) and 2.111(b) to indicate that verification is not necessary.

Section 2.111(b), which pertains to the filing of a petition for cancellation, is amended to be gender neutral, and to specify that a petition to cancel need not be verified and may be signed by the petitioner or the petitioner's attorney or other authorized representative. This amendment parallels an amendment to § 2.101(b) relating to oppositions. The section is amended further to indicate that a petition may seek to cancel a registration in whole or in part. It has been the practice of the Board to entertain a petition which seeks to "partially cancel" a registration by restricting the identification of goods or services therein. *See Alberto-Culver Co.* v. *F.D.C. Wholesale Corp.*, 3 USPQ2d 1460 (TTAB 1987), and *U.S. Steel Corp.* v. *National Copper & Smelting Co.*, 131 USPQ 397 (TTAB 1961). *Cf. Stanspec Co.* v. *American Chain & Cable Co., Inc.*, 531 F.2d 563, 566 n.9, 189 USPQ 420, 423 n.9 (CCPA 1976), and *Pegasus Petroleum Corp.* v. *Mobil Oil Corp.*, 227 USPQ 1040, 1043–1044 (TTAB 1985). However, there has been some question as to the Board's authority, under section 18 of the Act, to "partially cancel" a registration in a cancellation proceeding. *See Selfway, Inc.* v. *Travelers Petroleum, Inc.*, 579 F.2d 75, 198 USPQ 271 (CCPA 1978). Section 118 of Public Law 100–667 resolves this question by amending section 18 of the Act (which specifies the actions that the Board, acting on behalf of the Commissioner, may take in inter partes proceedings) to provide that the Board may, *inter alia*, "cancel the registration, in whole or in part," "modify the application or registration by limiting the goods or services specified therein," and "otherwise restrict or rectify with respect to the register the registration of a registered mark." Accordingly, § 2.111(b) is amended to indicate the availability of a petition for "partial cancellation."

Section 2.129(d) is added to provide that when a party to an inter partes proceeding before the Board cannot prevail without establishing constructive use pursuant to section 7(c) of the Act in an application under section 1(b) of the Act, the Board will enter judgment in favor of that party, subject to the party's establishment of constructive use; and that the time for seeking judicial review under section 21 of the Act shall run from the date of the judgment.

Section 2.133, which governs the amendment of an application or registration involved in an inter partes proceeding before the Board, is amended to redesignate and republish the present paragraph as (a) and to add new paragraphs, designated (b), (c), and (d), to reflect the expanded authority granted to the Board under section 18 of the Act, as amended. At present, the Board, in determining an inter partes proceeding other than a concurrent use registration proceeding, is bound to determine the proceeding based on the defendant's application or registration as presented, including the identification of goods or services specified therein, and cannot consider restrictions or limitations to defendant's use (such as restrictions or limitations as to types of goods, trade channels, or classes of purchasers) which may exist although not incorporated in the identification of goods or services in the application or registration. *See*, for example, *Canadian Imperial Bank* v. *Wells Fargo Bank*, 811 F.2d 1490, 1 USPQ2d 1813 (Fed. Cir. 1987); *CTS Corp.* v. *Cronstoms Manufacturing, Inc.*, 515 F.2d 780, 185 USPQ 773 (CCPA 1975); USTA Trademark Review Commission, "Report and Recommendations on the United States Trademark System and the Lanham Act," 77 TMR 375, 452–453 (1987); and Daniel L. Skoler, "Trademark Identification—Much Ado About Something?", 76 TMR 224, 237–239 (1986). As a result, the Board must often decide, for example, the issue of likelihood of confusion on a hypothetical rather than "real world" basis. Section 118 of Public Law 100–667 remedies this situation by amending section 18 of the Act to confer upon the Board (acting on behalf of the Commissioner) the authority to "cancel the registration in whole or in part," "modify the application by limiting the goods or services specified therein," and "otherwise restrict or rectify with respect to the register the registration of a registered mark."

Section 2.133(b) is added to provide that if, in an inter partes proceeding, the Board finds that a defendant is not entitled to registration in the absence of a specified restriction to the defendant's involved application or registration, the Board will allow the defendant time in which to amend the application or registration to conform to the findings of the Board, failing which judgment will be entered against the defendant.

Section 2.133(c) is added to provide that geographic limitations will be considered and determined by the Board only in the context of a concurrent use registration proceeding. The amendment parallels an amendment to add § 2.99(h) to provide that the Board will consider and determine concurrent use rights only in the context of a concurrent use registration proceeding.

Section 2.133(d) is added to provide that a plaintiff's pleaded registration will not be restricted in the absence of a counterclaim or another proceeding between the same parties or their privies to cancel the registration in whole or in part.

Section 2.161, which concerns the cancellation of a registration for failure to file an affidavit or declaration during the sixth year of the registration pursuant to section 8 of the Act, is revised to clarify the language of the section and to implement the provisions of section 110 of Public Law 100–667. Section 8(a) of the Act presently requires, *inter alia*, that the registrant file in the PTO an affidavit "showing that said mark is in use in commerce, or showing that its nonuse is due to special circumstances * * *" Section 110 of Public Law 100–667 amends section 8(a) of the Act to require, *inter alia*, that the registrant file in the PTO an affidavit "setting forth those goods or services recited in the registration on or in connection with which the mark is in use in commerce and attaching to the affidavit a specimen or facsimile showing current use of the mark, or showing that any nonuse is due to special circumstances * * *"

Section 2.162, which concerns requirements for the affidavit or declaration which must be filed during the sixth year of a registration pursuant to section 8 of the Act, is amended by revising paragraphs (e) and (g) to implement the above-specified provisions of section 110 of Public Law 100–667, and by revising paragraph (f) to clarify the language of the paragraph.

Section 2.181, which concerns the terms of original registrations and renewals, is amended by redesignating present paragraph (a) as (a)(1), revising redesignated paragraph (a)(1), and adding new paragraph (a)(2) to implement the provisions of sections 110 and 111 of Public Law 100–667. Section 110 of Public Law 100–667 amends section 8(a) of the Act to reduce the term of a registration from twenty years to ten years, and section 111 of Public Law 100–667 amends section 9(a) of the Act to reduce the term of a renewal from twenty years to ten years.

Section 2.181(a)(1), as redesignated, is revised to indicate that registrations issued or renewed under the Act prior to November 16, 1989, Whether on the Principal Register or on the Supplemental Register, remain in force for twenty years from their date of issue or expiration, and may be renewed for periods of ten (rather than twenty) years from the expiring period unless previously cancelled or surrendered.

Section 2.181(a)(2) is added to indicate that registrations issued or renewed under the Act on or after November 16, 1989, whether on the Principal Register or on the Supplemental Register, remain in force for ten years from their date of issue or expiration, and may be renewed for periods of ten years from the expiring period unless previously cancelled or surrendered. The paragraph is in conformity with section 51 of the Act, added by section 135 of Public Law 100–667.

Section 2.187 presently provides that a certificate of registration will be issued to the assignee of an applicant, or in a new name of applicant, provided that an appropriate document is of record in the Assignment Search Room of the PTO no later than the time the notice of publication is mailed, or if such document is not of record, then if a statement that such document has been filed for recordation is in the application file by the time the application is being prepared for issuance of the certificate of registration; and that the address of the assignee must be made of record in the application file or in the recorded document. The paragraph is revised to provide that a certificate of registration will be issued to an assignee of an applicant, or in a new name of an applicant, provided that the party makes a written request in the application record by the time the application is being prepared for issuance of the certificate of registration, and the appropriate document is of record in the Assignment Search Room of the PTO, or if the assignment or name change document is not of record in the Assignment Search Room, the written request must state that the document has been filed for recordation. The purpose of the revision is to permit an assignee or an applicant whose name has been changed to ensure, by complying with the requirements of the paragraph, that the certificate of registration will be issued in the name of

such party. The paragraph is revised further to provide that the address of the assignee must be made of record in both the application file and the recorded document. This revision will help to ensure that the certificate of registration, and any subsequent papers which the PTO may need to send to the owner of the registration, will be mailed to the proper address.

Response to Comments on the Rules

The comments received in response to the notice of proposed rulemaking have been given careful consideration, and a number of the suggested modifications have been adopted. The comments and responses are discussed below.

Comment: Section 1.8 was proposed to be amended to exclude three new papers from the certificate of mailing procedure established under the section, namely, statements of use under new § 2.88, requests for extensions of time to file such statements, and amendments to allege use under new § 2.76. The certificate of mailing procedure permits papers to be mailed later than they otherwise could be and still be considered timely filed.

Two organizations and one individual expressed concern that this proposal was too restrictive. They suggested that the certificate of mailing procedure should be extended to cover these new papers, if possible.

Response: An amendment to allege use may be submitted only during the examination of an application prior to approval of the mark for publication for opposition in the Trademark Official Gazette. An amendment to allege use which is filed immediately before approval of the mark for publication may not be received in the Law Office until after the application is in the publication cycle. In such a case, the mark would have to be withdrawn from publication. Withdrawal of a mark from publication is a significant administrative problem. Use of the certificate of mailing procedure to file amendments to allege use would result in an increase in the number of applications which would have to be withdrawn from the publication cycle.

Both statements of use and requests for an extension of time to file such a statement are required to be filed during specified six-month periods. If a statement of use or an extension request is not filed during the time allowed, the application stands abandoned as a matter of law and the PTO amends its public records to reflect the abandonment. A statement of use or an extension request which is filed immediately before the expiration of the six-month period for filing a statement of use may not be received by the ITU Unit, which processes such papers, until after the application has been "abandoned" by the PTO. In such a case, the application would have to be reinstated. Reinstatement of an application is a significant administrative problem. Use of the certificate of mailing procedure to file statements of use and extension requests would result in an increase in the number of applications which would have to be reinstated. Moreover, during the time prior to reinstatement, the public records of the PTO would incorrectly indicate that these applications stood abandoned.

Accordingly, the suggestion that the certificate of mailing procedure be extended to cover these three papers has not been adopted.

Comment: Section 2.6 was proposed to be amended to establish two new fees for the filing of papers required or permitted under section 1(c) or 1(d) of the Act, namely, a filing fee of $100.00 for an amendment to allege use under new § 2.76 or for a statement of use under new § 2.88, and a filing fee of $100.00 for any request, under new § 2.89, for a six-month extension of time to file a statement of use. In addition, § 2.6(a) establishes the fee for filing an application, per class, and it was proposed to be made applicable to all new applications filed in the PTO, regardless of the basis asserted for filing.

Two organizations commented that the proposed amendment favors foreign Convention "intent-to-use" applicants over domestic applicants because foreign Convention applicants who perfect a basis for registration under section 44 of the Act do not need to submit evidence of actual use to support an application and, hence, will not need to avail themselves of the "intent-to-use" process beyond the initial application filing fee; whereas, domestic "intent-to-use" applicants will have to pay not only the initial application filing fee, but also the fee for an amendment to allege use or a statement of use and for any extensions of time they may request. To ameliorate this perceived inequity, the organizations recommended that the basic filing fee for an application asserting "intent-to-use" as a basis for filing should be increased to approximately $400.00 for all applicants and that the fees for the other three new papers be reduced to truly token amounts. An alternative suggestion was to require foreign applicants pay an additional fee for reliance on a foreign registration without use in commerce.

Response: The proposed fee increase would be inconsistent with the trademark fee schedule that took effect on April 17, 1989 as described in the February 15, 1989 **Federal Register** notice (54 FR 6893). The PTO will review the trademark fee structure approximately 18 months from implementation and propose fee adjustments, if warranted. Neither the Act nor the Paris Convention permit the PTO to charge a section 44 applicant an additional fee to register without asserting use in commerce. Accordingly, the suggested fee modifications have not been adopted.

Comment: Section 2.21(a)(5)(ii) was proposed to be added to specify all the filing requirements which pertain only to the assertion of a basis for filing an application under section 44(e) of the Act, including a certification or certified copy of the foreign registration on which the application is based. Section 7(c) of the Act states, in part, that contingent upon registration of the mark on the Principal Register, the filing of the application to register such mark shall constitute constructive use of the mark, conferring a right of priority.

One individual commented that in view of the provisions of section 7(c) of the Act and the delay which is sometimes encountered in receiving a certified copy of a foreign registration from a foreign applicant, it would be more equitable to foreign applicants if they could obtain a filing date without the certified copy of the foreign registration.

Response: Section 44(e) of the Act specifically requires that an application filed thereunder "shall be *accompanied* (emphasis added) by a certification or a certified copy of the registration in the country of origin of the applicant." In view thereof, the PTO believes that the statute requires submission of a certification or certified copy of the foreign registration as a necessary condition for receipt of a filing date. Accordingly, the suggested modification has not been adopted.

Comment: Section 2.21(a)(6) was proposed to be revised to require that an application include the verification in accordance with § 2.33(b), signed by the applicant, as a condition for receiving a filing date. One organization and four individuals objected to the proposed requirement.

The organization suggested that the PTO reconsider the necessity for imposing this requirement in the case of use-based applications under section 1(a) of the Act, where the verification of the applicant's bona fide intent is not at issue.

One individual suggested that the proposed rule be modified to allow an applicant who seeks registration on the basis of foreign trademark rights, and/or on use of a mark in commerce, to receive a filing date for the application even without the applicant's personal signature. This individual stated that one can, in virtually any country of the world, file a trademark application through counsel and obtain an effective filing date; that this has been the practice in the United States for many decades; that no reason exists to change the current practice; and that the proposed practice would be more burdensome to foreign nationals.

One individual suggested that signature by applicant's attorney or agent should be sufficient to receive a filing date and that when the signature is by applicant's agent or attorney, a substitute verification or declaration signed by the applicant could be required thereafter. This individual expressed his belief that requiring signature by the applicant in order to obtain a filing date would frustrate one of the purposes of Public Law 100–667 (namely, to encourage the earliest possible filing of applications) by unnecessarily delaying the filing of applications, especially in the case of foreign applicants.

One individual noted that, at present, a trademark applicant is allowed to file an unsigned application and receive a filing date, and to submit the verification later. The individual expressed his belief that obtaining a filing date without signature is in accordance with sections 1 and 44 of the Act, and that no change has been made to the Act which would require this amendment to the rules.

Another individual also objected to the proposed requirement, noting that in dealing with foreign applicants there may be a delay in obtaining a signed declaration. This individual suggested that the proposed requirement be deleted or, in the alternative, that a filing date be allowed on the basis of a facsimile copy, to be ratified and confirmed subsequently by a paper copy.

Response: Section 7(c) of the Act provides, in part, that contingent upon registration of a mark on the Principal Register, the filing of the application to register the mark shall constitute constructive use of the mark, conferring a right of priority. Thus, upon registration, all registrants on the Principal Register obtain a new substantive right, effective from the filing date of the application. For this reason a verified assertion, signed by the applicant, of the basis for filing the application is believed to be essential. However, for the purpose of determining the timely filing of a paper which must contain applicant's verification or declaration, amended § 2.71(c) permits the verification or declaration to be signed by a person having color of authority to sign for the applicant.

Although the Trademark Operation cannot receive any documents by "fax," for filing date purposes, a "fax" copy of an appropriately signed written application statement will be accepted, provided that the original document is later submitted.

Accordingly, the suggested changes have not been adopted.

Comment: Section 2.31, which presently states that it is preferable that an application be on legal or lettersize paper, was proposed to be amended to delete the reference to legal-size paper. One individual questioned whether the PTO could also allow the use of A–4 size paper.

Response: It is understood that A–4 size paper is 8$\frac{9}{32}$ inches by 11$\frac{1}{16}$ inches. The processing of papers of differing sizes is an administrative problem for the PTO. However, it should be noted that the paper size is expressed in the rule as a preference rather than as a mandatory requirement. An application filed on paper of a different size will not be denied a filing date for that reason. Accordingly, the suggested change has not been adopted.

Comment: Section 2.33(a)(1)(vii) was proposed to be amended, and § 2.88(b) was proposed to be added, to require, in part, that an application under section 1(a) of the Act, and a statement of use under section 1(d) of the Act, respectively, include a statement of applicant's date of first use of the mark in commerce on or in connection with the applicant's goods or services, specifying the nature of such commerce.

One individual commented that the proposed rules could be improved by including acceptable descriptions of "such commerce." The descriptions suggested by the individual were "interstate, federal (in the case of commerce in the District of Columbia), territorial (in the case of Puerto Rico and similar geographic areas) or foreign (when the nature of the commerce on the date of first use is of more than one type, than any of such types may be specified)."

Response: Section 45 of the Act defines commerce as "all commerce which may lawfully be regulated by Congress." The types of commerce which fall within this definition are many and varied, and are the subject of a large body of case law. Any attempt to include descriptions of such commerce in the rules could be perceived as limiting the types of commerce falling within the definition, and would also make the rules unduly lengthy. Accordingly, the suggested change has not been adopted.

Comment: Section 2.33(d) was proposed to be added to provide, in part, that an applicant in an application under section 1(a) of the Act may not amend that application to seek registration under section 1(b) of the Act.

Two organizations objected to this proposed provision. The organizations commented that a bona fide intention to use a mark in commerce is manifested clearly by the filing of an application based upon use of that mark in commerce; that the proposed provision would result in a loss of the application filing date (and the constructive use priority which would attach thereto, pursuant to section 7(c) of the Act, upon registration) if the use forming the basis for an application under section 1(a) proves to be defective; and that this provision discriminates against domestic applicants.

Response: Section 1(b) of the Act provides, in part, that a person who has a bona fide intention to use a mark in commerce may apply to register the mark on the Principal Register by filing in the PTO a written application, verified by the applicant and specifying, *inter alia*, applicant's bona fide intention to use the mark in commerce. Since the statement of a bona fide intention to use the mark in commerce is the sole statutory basis for filing an application under section 1(b) of the Act, the statement must be included in the application at the time of its filing. An application filed pursuant to section 1(a), based upon use of a mark in commerce, does not include such a statement and, hence, does not meet the requirements for an application under section 1(b) of the Act.

If an applicant has any doubt concerning the sufficiency of its use of a mark in commerce, the applicant may file its application under section 1(b) of the Act. Thereafter, the applicant may submit an amendment to allege use under section 1(c) of the Act, claiming use prior to the application filing date.

Accordingly, the suggested changes have not been adopted.

Comment: One individual commented, with respect to proposed §§ 2.33(a)(1)(ix) and 2.39(a), that the two rules contain cross-references to each other which are confusing.

Response: Upon further consideration, it is believed that the cross-reference in proposed § 2.39(a) to § 2.33 is

unnecessary. The cross-reference to § 2.33 has been deleted from § 2.39(a).

Comment: Section 2.39(b) (redesignated in the final rule as § 2.39(a)) was proposed to be revised to provide, in part, that an application claiming the benefit of a foreign application in accordance with section 44(d) of the Act shall specify the foreign application upon which it is based. One organization suggested that the rule should specify that the foreign application must be for a substantially identical mark and include the same goods or services as set forth in the U.S. application.

Response: The requirements concerning conformance of mark and goods in a U.S. application to its underlying foreign application are addressed in the rules. Section 2.33(a)(1)(v) provides, in part, that the goods or services asserted in an application under section 44 may not exceed the scope of the goods or services covered by the foreign application or registration. Sections 2.51 (a)(3) and (b)(3) provide that, in an application under section 44 of the Act, the drawing of a mark shall be a substantially exact representation of the mark as it appears in the drawing in the registration certificate of a mark duly registered in the country of origin of applicant. Accordingly, the suggested changes have not been adopted.

Comment: Section 2.39(c) (redesignated in the final rule as § 2.39(b)) was proposed to be added to provide that before an application filed in accordance with section 44(d) of the Act can be approved for publication, a basis for registration under section 1(a), 1(b) or 44(e) of the Act must be established; that the PTO will assume that basis to be section 44(e) unless otherwise stated in the application within six months of the filing date of the foreign application forming the basis of the section 44(d) claim; and that the filing of a paper, which claims a different basis for registration, more than six months after the filing date of the foreign application will result in a loss of priority under section 44(d).

One individual commented that the proposed paragraph is inconsistent with Public Law 100-667 "in requiring that U.S. applications claiming the priority of a foreign application, must forfeit the claim of priority in the event that registration is based on anything other than a foreign registration issuing on the priority application," and that it is also inconsistent with the Paris Convention. The individual expressed his belief that the basis for receiving a filing date under the Act can be separated into two categories, namely, use of a mark in commerce under section 1(a) of the Act and a bona fide intention to use a mark in commerce under section 1(b) of the Act; and that the second category includes applications under section 44 of the Act.

One individual commented that the assertion of a different basis might destroy not only the priority claim, but also the jurisdictional basis of the application as of the filing date; and that even if a different basis is asserted within six months of the filing date of the foreign application, a different basis might result in the loss of a priority claim. The individual suggested that the paragraph be revised to indicate that the loss of priority is not the only possible consequence that might follow from assertion of a different basis for registration.

One individual commented (without reference to a specific proposed rule) that "since section 44 applications are now required to include a statement of a bona fide intention to use a mark, it would appear equitable to permit such applicants to convert section 44 applications to section 1(b) applications." The individual noted that "this is especially true where the applicant may begin to use the mark prior to the date on which a registration from its home country issues."

Response: The proposed paragraph did not require "that U.S. applications claiming the priority of a foreign application must forfeit the claim of priority in the event that registration is based on anything other than a foreign registration issuing on the priority application." Rather, the proposed paragraph provided only that assertion of a different basis for registration, including reliance on a different registration under section 44(e) of the Act, more than six months after the filing date of the foreign application would result in a loss of priority. This provision was intended to apply to applications which, at the time of their filing, contained only a claim of priority pursuant to section 44(d), and no other asserted basis for filing under section 1(a), 1(b) or 44(e) of the Act. There is no provision in either Public Law 100-667 or the Paris Convention which prohibits the PTO from requiring an applicant, who filed an application in the U.S. asserting only a claim of priority under section 44(d) of the Act, to assert a basis for registration (i.e., under section 1(a), 1(b) or 44(e) of the Act) within a certain period of time after the filing date of the foreign priority application. Thus, this provision is not contrary to either Public Law 100-667 or the Paris Convention.

The PTO believes that the subject matter of these sentences may be addressed more appropriately in the "Trademark Manual of Examining Procedure". Accordingly, the proposal to add these two sentences to § 2.39 is withdrawn.

It should be noted that although an application filed under section 44 of the Act is required to include a statement that the applicant has a bona fide intention to use the mark in commerce, the PTO will not construe such an application to be an application filed also under section 1(b) of the Act unless the applicant specifically asserts section 1(b) as a basis for filing. An application asserting only a claim of priority under section 44(d) may not be amended to assert section 1(b) of the Act as a basis for filing without loss of the foreign priority date unless the amendment is submitted within six months of the filing date of the foreign application. *Cf.* In re Daiwa Seiko, Inc., 230 USPQ 794 (Comm'r Pats. 1963).

Comment: Section 2.44, which presently specifies the requirements for an application to register a collective mark, including the requirement that an applicant state the nature of applicant's control over the use of the mark, was proposed to be amended to indicate that the present paragraph pertains only to applications under section 1(a) of the Act, and to add a new paragraph specifying the requirements for an application to register a collective mark under section 1(b) or 44 of the Act, including the requirement that an applicant state the nature of the control applicant intends to exercise over the use of the mark.

One individual commented that there are some types of collective organizations, such as a university alumni association, which cannot reasonably be expected to exercise control over use of their indicia of membership once it has been given to a new member upon enrollment. The individual suggested that § 2.44 should be amended "so that only in appropriate cases would it be necessary for the applicant to show the exercise of control."

Response: Proposed new paragraph (b) requires only that the applicant specify, *inter alia*, "the nature of the control applicant intends to exercise over the use of the mark." Thus, the rule does not require that a particular degree of control be exercised, or intended to be exercised, over the use of a mark. This reflects the requirement under section 4 of the Act that an applicant exercise legitimate control over the use of the mark that it seeks to register. Accordingly, the suggested modification has not been adopted.

Comment: One individual commented (without reference to a specific proposed rule) that the proposed rules do not specify the procedure for filing a statement of use if the applicant amends to the Supplemental Register.

Response: Section 2.47(c) was proposed to be added to provide that a mark in an application to register on the Principal Register under section 1(b) of the Act is eligible for registration on the Supplemental Register only after an acceptable amendment to allege use under § 2.76 or statement of use under § 2.88 has been timely filed. Section 23 of the Act requires lawful use in commerce as a prerequisite for an application for registration on the Supplemental Register. This requirement bars an application under section 1(b) of the Act from the Supplemental Register until an acceptable allegation of use has been submitted. Moreover, section 1(b) of the Act only provides for filing an application based upon a bona fide intention to use a mark in commerce on the Principal Register. Accordingly, no modification of the rules is necessary.

Comment: Section 2.51(d) was proposed to be revised to provide that broken lines should be used in the drawing of a mark to show placement of the mark on the goods, or on packaging, or to show matter not claimed as part of the mark, or both, as appropriate, and to provide further that, in an application to register a mark with three-dimensional features, the drawing shall depict the mark in perspective in a single rendition. One individual commented that when a mark is three-dimensional, or when placement of the mark on the goods or packaging is significant, multiple drawings should be permitted; each drawing should be labeled with figure numbers as in the case of utility and design patent applications; and the trademark application should include a description of the figures.

Response: A drawing with multiple renditions, although suitable for a patent application, is not satisfactory for trademark purposes. The drawing of a trademark should depict the mark as it is seen by the consumer; the consumer does not see the mark in multiple renditions or from more than one perspective at a time. For the same reason, the labeling of a trademark drawing with figure numbers would be inappropriate. It has been the experience of the PTO that a three-dimensional mark can be adequately depicted in a single rendition, particularly when the application includes an appropriate description of the mark. *Cf.* In re Weber-Stephen Products Co., 3 USPQ2d 1659, 1661 (TTAB 1987); In re Vico Products Mfg. Co., Inc., 229 USPQ 364, 366 (TTAB 1985); In re Pierre Faber S.A., 221 USPQ 1210, 1211 (TTAB 1984); In re Ovation Instruments, Inc., 201 USPQ 116, 123 (TTAB 1978). Accordingly, the suggested modification has not been adopted. If an applicant believes that its mark is incapable of being depicted in a single rendition, it may file a petition to the Commissioner, pursuant to § 2.146(a)(5), to waive the requirement of the rule.

Comment: Section 2.52(d), which pertains to drawing headings and which presently includes, *inter alia*, a requirement that the heading of a drawing (except for a drawing in an application under section 44 of the Act) specify dates of use, was proposed to be revised to indicate that the requirement pertains only to an application under section 1(a) of the Act; and to add a requirement that the heading of a drawing in an application filed in accordance with section 44(d) of the Act specify the priority filing date of the relevant foreign application.

One individual commented that proposed § 2.52(d) does not reflect current practice because it continues the existing requirement that the heading must not exceed one fourth of the sheet; whereas, in the individual's experience, the PTO routinely accepts drawings when the heading occupies one-half or, in some cases, even two-thirds of the sheet. The individual suggested that the paragraph be modified to enlarge the heading size limit from one-fourth to one-half of the sheet.

One organization suggested that § 2.52(d) be amended to provide that when a significant element of a special form drawing is unclear or ambiguous, the heading should include a brief description of the mark in the drawing. The organization noted that such a description would provide more accurate information in the paper search file and facilitate accurate coding of marks for entry into the computer search system. The organization emphasized, however, that the suggested provision should be encouraging rather than mandatory in nature.

Response: The suggested modifications have been adopted, except that the heading size limit has been enlarged only to one-third of the sheet instead of the suggested one-half of the sheet. If a drawing had a heading of one-half of the sheet and a special form depiction of the mark which was four inches by four inches in size, there would not be enough room remaining for the required margins.

Comment: Sections 2.56, 2.57 and 2.58, which pertain to the specimens of use in an application, were proposed to be amended to reduce the number of specimens required from five to two in §§ 2.56 and 2.57 and from three to two in § 2.58. Similarly, the PTO proposed to require that two specimens be filed in connection with an amendment to allege use under proposed § 2.76 and a statement of use under proposed § 2.88.

Four organizations objected to the reduction in the required number of specimens from five to two. They commented that original specimens show color and detail more effectively than photocopies and provide valuable information enabling practitioners to better evaluate potential conflicts. One of the organizations recommended requiring at least three specimens, while the other three organizations favored maintaining the present requirement for five specimens.

Response: Having five specimens in an application or registration file increases the amount of storage space required for these files. Moreover, it is unusual for more than one party to ask to remove a specimen from the same application or registration file. A requirement for three specimens would provide one specimen to remain in the file and make two specimens available for removal by third parties. The PTO believes that this number requirement will meet the needs of both the public and the PTO. Since § 2.58(b) presently requires three audio cassettes, no change to that rule is required and the proposed amendment is withdrawn. Accordingly, the suggestion that the PTO require three specimens has been adopted in the final rules.

Comment: Section 2.59(a) was proposed to be added to provide that, in an application based upon use in commerce, the applicant may submit substitute specimens of the mark as used on or in connection with the goods, or in the sale or advertising of the services, provided that any substitute specimens are properly verified as to their use in commerce at least as early as the filing date of the application.

One individual commented that there should be no need to submit a verification in support of substitute specimens which are, in fact, "faithful photographic reproductions" of the specimens already of record and recommended that proposed § 2.59(a) be modified to indicate that a verification will not be required in such circumstances.

Response: This suggestion codifies present practice set out in section 808.10 of the "Trademark Manual of Examining Procedure" and has been adopted.

Comment: Section 2.66(d) was proposed to be added to provide that a petition to revive an abandoned application must be filed promptly, but that no petition to revive will be granted in an application under section 1(b) of the Act if granting the petition would permit the filing of a statement of use more than 36 months after the issuance of a notice of allowance under section 13(b)(2) of the Act.

One organization commented that "in view of the constructive use awarded applications under the new law, it will be more important than ever for practitioners to be able to rely on the fact that an application uncovered in a search has truly been abandoned in the PTO without the specter of its revival after an indeterminate period of time." The organization recommended that "the rules should place an outside limit of six months or one year on petitions to revive either 1(a) or 1(b) applications."

Response: Usually a petition to revive will be considered filed promptly if it is filed within two months of the date the application was abandoned for failure to respond. Section 12(b) of the Act provides, in part, that an application "shall be deemed to have been abandoned, unless it can be shown to the satisfaction of the Commissioner that the delay in responding was unavoidable, whereupon such time may be extended." The Commissioner cannot determine in advance that facts asserted beyond a certain time limit cannot show unavoidable delay. Accordingly, the suggested modification has not been adopted.

Comment: Section 2.71(b), which presently provides that additions to the identification of goods or services will not be permitted unless certain specified conditions are met, was proposed to be revised to provide that the identification of goods or services may be amended to clarify or limit the identification, but that additions will not be permitted. It was indicated in the notice of proposed rulemaking that the purposes of the requirement for the identification of goods or services are to give notice to third parties of the scope of the rights claimed by the applicant and to permit an accurate search for conflicting marks; and that addition of goods or services to the identification, after the filing of an application, would frustrate these purposes. It was also noted that section 7(c) of the Act provides that, contingent on the registration of a mark on the Principal Register, the filing of the application to register such mark shall constitute constructive use of such mark on or in connection with the goods or services specified in the registration.

One individual commented that he agreed in principle with the proposed rule and the reasoning offered, but that the PTO should not apply the proposed amendment without some flexibility that allows an applicant to minimally enlarge the scope of the initially claimed goods or services in an application. The individual expressed his belief that such flexibility would not defeat either of the two legitimate reasons cited for the proposal and that "strict adherence to the proposed change would result in additional workload due to refiled or additional applications to comprehensively cover goods or services that the applicant inadvertently failed to claim." The individual suggested that the rule be modified to provide that the identification of goods or services may be amended to clarify or limit the identification, but that "substantive additions" will not be permitted.

Response: For the reasons stated in the notice of proposed rulemaking, the PTO believes that it would be inappropriate to allow any additions to the identification of goods or services in an application. Accordingly, the suggested modification has not been adopted.

Comment: Section 2.71(c), which presently provides that a defect in the verification or declaration may be corrected only by filing a substitute or supplemental verification or declaration, was proposed to be revised to clarify the language. The paragraph was proposed to be further revised to provide that a verification or declaration required under §§ 2.21(a)(6), 2.76(e)(3) or 2.88(e)(3), to be properly signed, must be signed by the applicant, a member of the applicant firm, or an officer of the applicant corporation or association; that a verification or declaration which is signed by a person having color of authority to sign, is acceptable for the purpose of determining the timely filing of the paper; but that a properly signed substitute verification or declaration must be submitted before the application will be approved for publication or registration, as the case may be. It was indicated in the notice of proposed rulemaking that persons having color of authority to sign are those having first-hand knowledge of the truth of the statements in the verification or declaration; that in the case of a corporate applicant, a person having color of authority might include, within the contemplation of the amended section, managers or similar persons who are in positions of authority, although not actually officers, if they have first-hand knowledge of the truth of the statements in the application; and that an applicant's attorney ordinarily will not be considered a person having color of authority to sign, unless he/she is an officer.

One individual expressed his belief that the language "amendment of the verification or declaration will not be permitted" in the present and proposed rule could lead some people to believe that there is no way in which an amendment of a declaration or verification can be effected when, in fact, it can be effected by the submission of a substitute document. The individual suggested that the rule be revised to state that changes may not be made in the verification of declaration document already in the PTO file, but that any amendment would have to be made by the filing of a substitute or supplemental amendment.

Three organizations commented that the definition in the proposed rule of persons having color of authority to sign a verification or declaration could include many persons not authorized to act on behalf of the applicant. One of the organizations suggested that the proposed definition ("those having first-hand knowledge of the truth of the statements in the verification or declaration") should be clarified by adding "and who are authorized to act on behalf of the applicant."

Response: In response to the comment by the individual, the beginning of the final rule has been modified to read: "If the verification or declaration filed with the application is defective, the defect may be corrected only by the submission of a substitute or supplemental verification or declaration in accordance with § 2.20."

In response to the comments of the organizations, the definition of persons having color of authority to sign has been modified in the final rule to read: "Persons having color of authority to sign are those who have first-hand knowledge of the truth of the statements in the verification or declaration and who also have actual or implied authority to act on behalf of the applicant."

Comment: Section 2.77 was proposed to be added to provide, in part, that an application under section 1(b) of the Act may not be amended during the period between the issue date of the notice of allowance under section 13(b)(2) of the Act and the filing of the statement of use under § 2.88, except to delete specified goods or services.

Four organizations expressed their concern that the word "delete" may be unnecessarily limiting and may restrict

the ability of parties to negotiate settlement of potential conflicts. The organizations suggested that the rule be modified to allow amendments "to delete or restrict" the specified goods or services during this time period.

Response: An amendment seeking to restrict the specified goods or services would require examination by the Trademark Examining Attorney. However, the application file will not be in the possession of the Examining Attorney during the time between issuance of the notice of allowance and submission of the statement of use. Inasmuch as this rule applies only to the specified time period, it will not affect the settlement of oppositions or potential oppositions, which take place prior to issuance of the notice of allowance. Moreover, the last sentence of new § 2.77, which in the notice of proposed rulemaking read: "Other amendments filed during this period will not be considered, unless resubmitted at, or after, the time of filing the statement of use," has been modified to read: "Other amendments filed during this period will be placed in the application file and considered when the statement of use is examined." This change has been made so that the applicant will not have to resubmit the proposed amendment at the time of filing the statement of use. Thus, during the period covered by the rule, amendments restricting the goods may be filed for later consideration by the Trademark Examining Attorney at the time of examination of the statement of use. Accordingly, the proposed modification has not been adopted.

Comment: Section 2.83, which concerns the processing of conflicting marks, was proposed to be amended by revising paragraph (a) to delete a provision stating "a notice will be sent, if practicable, to the applicants involved informing them of the publication or issuance of the earliest filed mark," and by revising paragraph (b) to delete a provision stating "a notice will be sent, if practicable, to the applicants involved informing them of the publication or issuance of the application with the earliest date of execution."

One individual commented that interferences are sometimes declared, and that the rule ought to make provision for interferences so that the declaration of an interference cannot be challenged on the ground that there is no provision for interferences in the rules.

One individual commented that the rule should not be amended to delete the notice provisions presently set forth in paragraphs (a) and (b). The individual expressed his belief that such notice is helpful to applicants who do not subscribe to the "Official Gazette" and that "providing notice does not in any way inconvenience the PTO or add to the workload of Examiners who are aware of the conflicting applications and, as a matter of good practice, have both files before them when they act on either one."

Response: Provision is made in § 2.91 for the declaration of interferences.

The provisions concerning notice were proposed to be deleted because they do not conform to present practice. The Trademark Examining Attorney notifies applicants of conflicting applications during examination. To provide a second notice upon publication of the earlier filed, or earlier executed, application would require that a system be developed for monitoring the progress of that application and for sending the second notice. Thus, sending second notices would be unduly burdensome to the PTO.

Accordingly, the suggestion has not been adopted.

Comment: Section 2.84, which governs jurisdiction over published applications, was proposed to be revised to provide, in part, that after publication of an application under section 1(b) of the Act, the examiner may exercise jurisdiction over the application after issuance of the notice of allowance under section 13(b)(2) of the Act.

One individual suggested that the phrase "the examiner may exercise jurisdiction" be modified to read "the examiner must exercise jurisdiction." In this regard, the individual noted that after the issuance of the notice of allowance the examiner must exercise jurisdiction over the application to examine the statement of use, and that jurisdiction must also be exercised over requests for extensions of time to file a statement of use.

Response: The purpose of both present and proposed § 2.84 is to specify when an examiner is allowed to exercise jurisdiction over an application, not to specify when an examiner must exercise jurisdiction over an application. Accordingly, the proposed modification has not been adopted.

Comment: Section 2.86, which presently provides that an application may recite a plurality of goods or services comprised in a single class, provided the goods or services are specifically identified and the mark has actually been used in connection with all of the specified goods or services, was proposed to be amended by, *inter alia*, redesignating the present paragraph as (a); and to add, as an alternative to the requirement of use, a requirement that the applicant have a bona fide intention to use the mark on or in connection with all the specified goods or services.

Two organizations expressed their concern about the requirement that applicants state a bona fide intention to use the mark on all goods recited in the application. The organizations noted that registration will be granted to domestic applicants only for those goods for which actual use in commerce is made, but that foreign applicants could specify overly extensive lists of goods, secure registration for them, and, if no use occurs during the first six years of registration, simply re-file for these same goods to circumvent the requirements of section 8 of the Act. The organizations recommended that the PTO "require use at least somewhere for all goods specified prior to granting registrations to section 44 applicants."

One organization recommended that the beginning of the proposed paragraph, which states "an application may recite more than one item of goods, or more than one service comprised in a single class provided the goods or services are specifically identified and * * *," be revised by inserting thereafter the phrase "and in accordance with subsection (c) of this rule." Proposed subsection (c) provides that the applicant may not allege use as to certain goods or services and a bona fide intention to use as to other goods or services in the same application, regardless of the number of classes contained therein.

Response: To require "use at least somewhere for all goods specified prior to granting registration to section 44 foreign applicants" would be inconsistent both with the Act and the Paris Convention.

The PTO believes that the suggested modification of proposed paragraph (a) to include a reference to proposed paragraph (c) would not further clarify the rule and is unnecessary.

Accordingly, the suggested modifications have not been adopted.

Comment: Section 2.86(b), which governs multiple class applications, provides, in part, that "A single certificate of registration for the mark shall be issued."

One organization suggested that the phrase "unless the application is divided pursuant to Rule 2.87" be added to the provision.

Response: The suggested modification is adopted.

Comment: Sections 2.76 and 2.88 were proposed to be added to govern amendments to allege use under section 1(c) of the Act and statements of use under section 1(d) of the Act, respectively. Proposed paragraphs (d)

and (e) of the new sections required that an amendment to allege use and a statement of use be made in a separate paper from any other filing.

Three organizations and one individual expressed their belief that the proposed requirement would be unduly harsh since violation could result in the abandonment of the application.

Response: The proposed requirement has been withdrawn.

Comment: Sections 2.76(c) and 2.88(c) were proposed to be added to provide, *inter alia*, that if more than one item of goods or services is specified in an amendment to allege use or a statement of use, the dates of use required to be specified need be for only one of the items specified, provided the particular item to which the dates apply is designated.

One individual commented that under the proposed paragraphs dates of use are apparently not required to be stated for each class of goods or services. The individual questioned whether this was an inadvertent omission.

Response: The PTO did not intend to imply that dates of use did not need to be specified for each class of goods or services. A requirement for a specification of dates of use for each class has been included in the final rules.

Comment: Section 2.88(f) was proposed to be added to provide, in part, that if a statement of use does not comply with all of the requirements specified in paragraph (e) of the proposed section, applicant will be notified of the deficiency.

One organization recommended that the proposed paragraph be modified to require that applicant be given "a statement of reasons for finding a statement of use to be defective."

Response: The proposed paragraph specifically provides that "applicant will be notified of the deficiency." A "notification of a deficiency" is a description of the nature of the deficiency, i.e., of the reason why the statement of use was found to be defective. Accordingly, the suggested modification has not been adopted.

Comment: Section 2.88(e) was proposed to be added to specify minimum requirements (in addition to timeliness) for a statement of use, namely, the prescribed fee, one specimen or facsimile of the mark as used in commerce, and a verification or declaration signed by the applicant stating that the mark is in use in commerce, and specifying the date of the applicant's first use of the mark in commerce and the goods or services on or in connection with which the mark is used in commerce. Proposed § 2.88(f) provided, in part, that if a statement of use does not comply with the requirements of proposed paragraph (e), applicant may correct the deficiency only if the time permitted for applicant to file a statement of use has not expired; and that after the filing of a statement of use during a permitted time period for such filing, the applicant may not withdraw the statement to return to the previous status of awaiting submission of a statement of use.

Section 2.89, governing extensions of time for filing a statement of use, was proposed to be added to, *inter alia*, specify the requirements for a request for an extension of time for filing a statement of use; permit an applicant to file, during the six-month period in which a statement of use is filed, one last request for a six-month extension of time; and provide that any defect in an extension request may be corrected only if there is time remaining in the six-month period for filing a statement of use.

Comments relating to these proposed provisions and their interrelationship were submitted by six organizations, one firm and three individuals.

One organization commented that the proposed sections require an applicant to remedy defects in a statement of use or a request for an extension of time to file a statement of use "within the original or an extended six-month period" for filing a statement of use; and that failure to remedy a defect within the specified period causes the application to become abandoned in the case of a statement of use, or requires the applicant to file a petition to the Commissioner in the case of a request for extension of time. The organization expressed its concern that "an applicant's valuable trademark rights will be destroyed or jeopardized for minor informalities in a statement of use or request for an extension of time." The organization recommended that a new § 2.65(d) be added to provide, in effect, that when a timely filed statement of use "is a bona fide attempt to respond to a notice of allowance, and is substantially complete, but compliance with some requirement has been inadvertently omitted, opportunity to explain and supply the omission should be given before the question of abandonment is considered."

Another organization and a firm offered comments to the same effect and also expressed their belief that the provision in proposed § 2.89 for the filing of one last extension request during the six-month period in which a statement of use is filed is not "an acceptable solution" because, *inter alia*, an applicant would have to submit a fee for such a request which might otherwise not be needed, and because the extension request might be rejected as informal and, therefore, be useless.

Three other organizations and one individual recommended that the applicant be afforded an automatic one or two-month period to respond to a notice of a deficiency in a statement of use. One of these organizations commented that an applicant should not be forced to either risk abandonment, or undergo the inconvenience and expense of filing an additional and probably unnecessary request for an extension of time. This organization expressed its belief that the plain language of the Act "requires that the PTO permit the applicant to amend the statement of use regardless of the expiration of any extension period, including the last one;" and that section 1(d)(2) of the Act provides for an aggregate of 36 months for an applicant to file a statement of use.

One individual commented with respect to proposed § 2.88(g), that "it is not clear what will happen in cases where the statement of use is filed near the end of the total 36 months from the notice of allowance if the statement of use is deficient but does include the fee, a specimen and a verification or declaration of use."

One individual commented, in effect, that it is not clear why requirements for amendments to allege use and statements of use are specified in both paragraphs (b) and (e) of proposed §§ 2.76 and 2.88, respectively, and why the specified requirements vary.

One organization expressed its belief "that an intent-to-use applicant should be allowed to withdraw a statement of use and restore the application to its prior status;" that "such withdrawal, while prohibited by proposed § 2.88(f), is not prohibited by the statute;" and that allowance of such a withdrawal would parallel the permissible withdrawal of an amendment to allege use.

Response: Paragraphs (b) of proposed §§ 2.76 and 2.88 specify the requirements for a complete amendment to allege use and statement of use, respectively. Paragraphs (e) of the proposed sections specify the minimum requirements for such papers. The provisions of the proposed rules have been modified in the final rules to clarify this distinction. Moreover, the minimum requirements specified in proposed §§ 2.76(e) and 2.88(e) have been reduced in the final rule to the prescribed fee, at least one specimen or facsimile of the mark as used in commerce, and a verification or declaration signed by the

applicant stating that the mark is in use in commerce.

Section 1(d) of the Act sets forth certain minimum requirements for a statement of use. In view of the statutory requirements, § 2.88 provides that a timely statement of use which does not meet the minimum requirements specified in paragraph (e) may be corrected only if the time permitted for applicant to file a statement of use has not expired.

Further, section 1(d) of the Act requires that a statement of use be filed within six months after the issuance of the notice of allowance, and provides that the time for filing the statement of use may be further extended upon proper request, but that such time may not be extended beyond 36 months after the issuance of the notice of allowance. The Act, as amended, does not allow every applicant a period of 36 months from the notice of allowance in which to make use of its mark in commerce and file a statement of use; rather, only those applicants who file proper requests for five successive extensions of time, and are able to meet the specified requirements for such extensions, will have the benefit of the full 36-month period. Nor does the Act provide that an applicant may file a statement of use, then withdraw the statement of use and ask for an extension of time for filing a statement of use.

In view of the statutory requirements in section 1(d) of the Act, a statement of use must be filed within the six months after the issuance of a notice of allowance, or within an extension of time granted to applicant for filing a statement of use. Use of the mark in commerce must be made during such period. If the use upon which a statement of use is based is not valid trademark use, applicant may make a new use, and amend the statement of use to rely upon the new use, only if the new use is made prior to the expiration of applicant's time for filing a statement of use. Once a statement of use has been filed, applicant may not withdraw the statement of use and request an extension or a further extension of time for filing a statement of use. Section 1(d) of the Act permits amendment of the statement of use, but does not provide for withdrawal of the statement of use once it is filed.

The fears of some commenters that, under proposed § 2.88, an applicant's trademark rights would be destroyed or jeopardized for minor informalities in a statement of use, are not well-founded. The intent of § 2.88 is to permit a timely statement of use which meets the minimum requirements specified in paragraph (e) to be amended, in accordance with §§ 2.59 and 2.71 through 2.75, at any time during examination to meet any of the remaining requirements for a complete statement of use specified in paragraph (b) of the section or to overcome other refusals or requirements which may be raised by the examiner. See proposed §§ 2.88 (g) and (h) and final § 2.88(f). The time period for filing a statement of use and the right to amend a statement of use are independent of each other.

For example, under final § 2.88, a timely statement of use which meets the specified minimum requirements may be amended to, *inter alia:*

(1) Add or correct dates of use (provided that the amendment is in accordance with § 2.71(d), i.e., that it is properly verified and the amended dates are not subsequent to the expiration of the time allowed to applicant for the filing of a statement of use);

(2) Specify the type of commerce in which the mark is used;

(3) State the goods or services specified in the notice of allowance on or in connection with which the mark is in use (provided that the amendment is in accordance with § 2.88(i)(2), i.e., that it is supported by a verification that the mark was in use in commerce, on or in connection with each of the goods or services sought to be included, prior to the expiration of the time allowed to applicant for filing a statement of use);

(4) State the mode or manner in which the mark is used on or in connection with the goods or services;

(5) Substitute a statement of use verification signed by the applicant for a verification signed by a person having color of authority (see § 2.71(c)); and

(6) Submit substitute specimens (provided that the amendment is in accordance with § 2.59(b), i.e., that the use in commerce of any substitute specimen submitted is supported by applicant's verification that the substitute specimens were in use in commerce prior to the filing of the statement of use or prior to the time allowed to applicant for filing a statement of use).

Once the minimum requirements are met, the rules allowing amendment to a statement of use, in accordance with §§ 2.59 and 2.71 through 2.75, are more liberal than the proposal by several commenters suggesting an applicant should receive an automatic one to two-month period to respond to a notice of deficiency in a statement of use.

For the foregoing reasons, the modifications suggested by the commenters have not been adopted in § 2.88. The rule was revised to clarify the rule and reduce the minimum requirements for a statement of use.

Section 2.76, concerning amendments to allege use, has been revised to be consistent with § 2.88 as appropriate.

Comment: One individual questioned why, in a verification for an amendment to allege use or a statement of use, the applicant is required, under proposed §§ 2.76(b)(1) and 2.88(b)(1), respectively, to state that it believes it is the owner of the mark sought to be registered. The individual noted that there is no such requirement "for other types of applications provided for in the Act or the rules."

Response: Section 22 of the Act provides that registration on the Principal Register "shall be constructive notice of the registrant's claim of ownership [of the mark]." Therefore, the PTO believes that each application must contain a claim of ownership, and that ownership should be reaffirmed upon the filing of an allegation of use under § 2.76 or § 2.88.

Comments: Section 2.89(d)(2) was proposed to be added to provide that a showing of good cause for a request for an extension of time for filing a statement of use must include, in part, a statement of facts demonstrating ongoing efforts to make use of the mark in commerce on or in connection with each of the goods or services specified in applicant's verified statement of continued bona fide intention to use the mark in commerce. The proposed paragraph further provides that those efforts may include, without limitation, product or service research or development, market research, manufacturing activities, promotional activities, steps to acquire distributors, steps to obtain required governmental approval, or other similar activities.

One organization expressed its concern that this rule may be administered by the PTO to require an applicant to disclose details of highly sensitive or confidential market research or business plans. The organization noted that section 1(d)(2) of the Act requires only that applicant provide "a showing of good cause" to support a request for an extension of time. The organization suggested "facts demonstrating ongoing efforts to make use of the mark" could be sensitive or confidential market research or business information. It recommended that the first sentence of proposed § 2.89(d)(2) be amended to substitute the word "applicants" for the words "facts demonstrating." One individual submitted comments to the same general effect.

Response: The rule does not require a particular showing to establish good cause for a request for an extension of

time to file a statement of use. The suggested modification has been adopted in the final rule.

Comment: Section 2.89(f) was proposed to be added to provide, in part, that the goods or services specified in a request for an extension of time for filing a statement of use must conform to those goods or services identified in the notice of allowance; and that any goods or services specified in the notice of allowance which are omitted from the identification of goods or services in the request for extension of time will be presumed to be deleted and the applicant may not thereafter request that the deleted goods or services be reinserted in the application.

Section 2.89(g) was proposed to be added to provide, in part, that the applicant will be notified of the grant or denial of a request for an extension of time; that if, after denial of an extension request, there is time remaining in the existing six-month period for filing a statement of use, applicant may submit a substitute request for extension of time; and that otherwise, the only recourse available after denial of a request for an extension of time is a petition to the Commissioner in accordance with §§ 2.66 or 2.146.

One individual pointed out that proposed § 2.88(i)(2) provides that if any goods or services specified in the notice of allowance are omitted from the identification of goods or services in the statement of use, the examiner shall inquire about the discrepancy and permit the applicant to amend the statement of use to include any omitted goods or services, provided that the amendment is supported by a verification that the mark was in use in commerce, on or in connection with each of the goods or services sought to be included, prior to the expiration of the time allowed to applicant for filing a statement of use. The individual noted that there is no comparable provision in proposed § 2.89 relating to requests for extensions of time to file a statement of use. The individual commented that "an applicant could unwittingly forfeit rights by failing to specify all goods and services for which the extension is sought," and that "if Examiners can ask about the completeness of statements of use, they can ask about the completeness of extensions to file such statements."

Two organizations commented, with respect to proposed § 2.89(g), that it is unduly harsh and time consuming for the PTO to permit the only recourse from a denial of an extension request to be a petition to the Commissioner. The organizations recommended that the examiner should be required to state what is needed for acceptance of the extension request and reasonable time should be allowed for response. The organizations also recommended that the filing of a petition concerning the denial of an extension request should allow an automatic extension of time in connection with the application (subject to the caveat that the Act "appears to provide 36 month maximum pendency permitted for an 'intent to use' application regardless of the difficulty encountered in prosecution").

Response: Although § 2.88 includes certain provisions relating to the amendment of timely statements of use, § 2.89 includes no analogous provisions with respect to a request for an extension of time to file a statement of use. This is because the Act, as amended, specifically provides that a statement of use may be amended, but makes no provision for the amendment of an extension request. Moreover, the inclusion in § 2.89 of amendment provisions similar to those in § 2.88 would require that the PTO track not only extension period deadlines, but also deadlines for responding to PTO notifications of extension request deficiencies. This would create a serious administrative problem.

Furthermore, to avoid inadvertently omitting goods or services from a request for an extension of time to file a statement of use, the PTO permits and encourages applicants to identify goods or services in an extension request by incorporating by reference the goods or services listed in the notice of allowance.

The Act permits extension of the time for filing a statement of use only upon proper written request. The Act does not provide for an automatic extension of time upon the filing of a petition, pursuant to § 2.89(g), from the denial of an extension request.

Accordingly, the suggested modifications have not been adopted.

Comment: One organization recommended that the first sentence of proposed § 2.89(g), which provides that the applicant will be notified of the grant or denial of a request for an extension of time to file a statement of use, be modified by inserting at the end of the sentence the words "and if denied, the reasons for denial." The organization also noted that the rule fails to clarify when the new extension period will begin when a petition to the Commissioner from a denial of an extension request is granted.

Response: The organization's suggestion for modification of the first sentence of proposed § 2.89(g) has been adopted. It is understood that a denial would include the reasons for denial.

A six-month extension of time in which to file a statement of use will always run from the expiration of the preceding six-month period, regardless of whether applicant has been notified of the grant or denial of the request, or of a petition to the Commissioner relating thereto, prior to the expiration of the existing period. Accordingly, final § 2.89(g) includes the following new sentence: "If the petition is granted, the term of the requested six-month extension which was the subject of the petition will run from the date of the expiration of the previously existing six-month period for filing a statement of use."

Comment: Section 2.111(a), which pertains to the filing of petitions for cancellation, was proposed to be amended to provide, in part, for the filing of a petition to cancel a registration "in whole or in part." One individual expressed his concern that the phrase "in whole or in part" could perhaps be interpreted as a reference to a geographical cancellation. The individual suggested that it might be helpful to revise the paragraph to provide for cancelling the registration "for all or part of the goods or services."

The individual also suggested that § 2.101(b), which pertains to the filing of oppositions, should be amended to provide for opposing an application for "all or part of the goods or services."

Response: The language "in whole or in part" parallels the language of section 18 of the Act. Further, § 2.99(h) provides that the Board will consider and determine concurrent use rights only in the context of a concurrent use proceeding, and § 2.133(c) provides that geographic limitations will be considered and determined by the Board only in the context of a concurrent use proceeding. Accordingly, the suggestion pertaining to § 2.111(b) has not been adopted.

The language of § 2.101(a) parallels the language of section 13(a) of the Act. Modification of the section to provide for opposing an application for "all or part of the goods or services" is unnecessary in view of the Board's authority, under section 18 of the Act, to modify the application by limiting the goods or services specified therein. Accordingly, the suggestion pertaining to § 2.101(b) has not been adopted.

Comment: Section 2.129(d) was proposed to be added to provide that when a party to an inter partes proceeding before the Board cannot prevail without establishing constructive use pursuant to section 7(c) of the Act in an application under section 1(b) of the Act, the Board will enter a "declaratory

judgment" in favor of that party, subject to the party's establishment of constructive use; and that the time for filing an appeal or for commencing a civil action under section 21 of the Act shall run from the date of the declaratory judgment.

Four organizations and one individual commented variously that "declaratory judgment" is a term of art for a different type of proceeding; that use of the term "declaratory" is inconsistent with the language of sections 18 and 21(a)(4) of the Act, which refers only to "judgments"; and that a phrase such as "conditional judgment," "contingent judgment," or "judgment" should be substituted for the phrase "declaratory judgment."

One individual commented that the better procedure would be for the Board to acknowledge the rights of the intent-to-use applicant, but then suspend proceedings until after the intent-to-use applicant has established its right to a constructive date of first use, following which a final judgment could be issued.

One individual suggested that the language of the proposed paragraph should be clarified by inserting the phrase "but will prevail in whole or in part upon establishing constructive use" after the opening phrase "When a party to an inter partes proceeding before the Trademark Trial and Appeal Board cannot prevail without establishing constructive use pursuant to section 7(c) of the Act in an application under section 1(b) of the Act, * * *"

One individual expressed a belief that where a situation of the type described in the proposed paragraph arises in a cancellation or an interference proceeding, the opinion of the Board might be advisory, but that in an opposition proceeding it would not, because in such a proceeding there is "a case or controversy involving present rights of two parties." The individual suggested that the last sentence of the proposed paragraph be amended to read:

> The time for filing an appeal or for commencing a civil action under section 21 of the Act shall run from the date of the entry of the declaratory judgment in an opposition proceeding, and from the date of acceptance of a statement of use in all other inter partes proceedings.

Response: The PTO believes that the use of the term "judgment" is more appropriate in this situation. Accordingly, the word "declaratory" has been omitted from the final rule.

Sections 18 and 2l(a)(4) of the Act prohibit the entry of a final judgment in favor of an applicant under section 1(b) of the Act before the applicant's mark is registered in those cases where an applicant cannot prevail without establishing constructive use under section 7(c). If possible, the time for appeal should not be deferred until use has been established. If the time for appeal is deferred until after acceptance of the statement of use, appellant would be deprived of a speedy determination of the issues on appeal. Accordingly, the suggestions to defer the time for seeking judicial review have not been adopted.

The purpose of "intent-to-use" would be best accomplished if judicial review can occur promptly after entry of a judgment by the Board. Nevertheless, the PTO recognizes, as have other commentators, that there is an issue whether a Board decision is "ripe" for judicial review prior to the time an applicant under section 1(b) of the Act establishes its right to register its mark. This issue was called to the public's attention in the notice of proposed rulemaking. 54 FR at 19300. The PTO also published a notice in the Official Gazette calling attention to the issue and asking for comments. 1102 OG 58 (May 16, 1989). The Subcommittee on Courts, Civil Liberties and the Administration of Justice expressed concern with respect to any provision which permitted an intent-to-use applicant to sue before it made use of the mark and the mark was granted registration. "Permitting a plaintiff to sue before use occurs * * * raises serious questions about whether Federal jurisdiction and a case or controversy exists, and about whether such a case is 'ripe.'" See H.R. Rep. 1028, 100th Cong., 2d Sess., at 4 (1988).

Ultimately, the issue will be resolved by Federal courts. In order to permit early resolution of the issue, it has been decided to provide in § 2.129(d) that the 60-day time period for seeking judicial review runs from the date the Board enters its judgment.

With respect to the suggestion that the phrase "but will prevail in whole or in part upon establishing constructive use" be inserted in the rule, the PTO does not believe that the phrase is necessary or would serve to clarify the rule. Accordingly, the suggested modification has not been adopted.

Comment: One individual suggested that § 2.162, which governs the requirements for an affidavit or declaration during the sixth year after registration, should be amended to require that each affidavit or declaration include the current street address of the person submitting the declaration. The individual commented that "while many registrants currently do this, the fact remains that it is not required, and it should be mandatory."

Response: While the PTO encourages registrants to state their current address in a section 8 affidavit, it is not a statutory requirement for an acceptable affidavit and it would be an administrative burden to process substitute affidavits. Accordingly, the suggested modification has not been adopted. However, the "Trademark Manual of Examining Procedure" will be amended to recommend that this useful information be included in an affidavit or declaration under section 8 of the Act.

Comment: Section 2.162(f), which specifies certain of the requirements for an affidavit or declaration during the sixth year, was proposed to be revised to provide, in part, that if the registered mark is not in use in commerce on or in connection with the goods or services recited in the registration, the affidavit or declaration must recite facts to show that nonuse as to those goods or services is due to special circumstances which excuse such nonuse and is not due to any intention to abandon the mark as to those goods or services.

One organization suggested that after the phrase "on or in connection with," the phrase "any or all" should be substituted for the word "the."

Response: The suggested language could be construed to imply that an allegation of use on less than all of the goods or services will suffice to maintain the registration for all of the goods or services; or that if the affidavit or declaration does not include an allegation of use or excusable nonuse as to all of the goods or services, the affidavit or declaration will not be accepted and the registration will be cancelled in its entirety. In fact, in the latter situation, the affidavit or declaration would be accepted and those goods or services not included in the allegation of use or excusable nonuse would be deleted from the registration. Accordingly, the suggested modification has not been adopted.

Comments: Section 2.181, which concerns the terms of original registrations and renewals, was proposed to be amended by redesignating present paragraph (a) as (a)(1); revising redesignated paragraph (a)(1) to provide that registrations issued under the Act prior to November 16, 1989, whether on the Principal Register or on the Supplemental Register, remain in force for twenty years from their date of issue or renewal, if that date is prior to November 16, 1989, and may be renewed for periods of ten (rather than twenty) years from the expiring period unless previously cancelled or surrendered; and adding new paragraph

(a)(2) to provide that registrations issued under the Act on or after November 16, 1989, whether on the Principal Register or on the Supplemental Register, remain in force for ten years, and may be renewed for periods of ten years from the expiring period unless previously cancelled or surrendered.

Four organizations and two individuals commented that the renewal term provisions in the proposed rule are ambiguous because "renewal" may be deemed to take place either (a) on the twentieth anniversary of the registration's issuance, or (b) when a proper renewal application is filed, or (c) when the renewal application is processed and a renewal certificate is issued. They recommended that the rule be revised and clarified to provide that the anniversary of the date of the original registration will control the length of the renewal term.

One organization recommended that, if the rule is not amended to reflect the aforesaid comments, the words "or renewed" should be inserted in proposed paragraphs (a) (1) and (2) of the rule after the words "Registrations issued."

Response: The PTO believes that the date of the grant of the renewal application controls whether the term of renewal of a registration is 20 years or ten years. Accordingly, the recommendation that the rule be modified to provide that the anniversary of the date of the original registration will control the length of the renewal term, has not been adopted. However, with respect to registrations due to expire before November 16, 1989, the PTO will do everything possible to maximize the chance that the renewal will be granted prior to November 16, 1989, so that the term of renewal will be twenty years. Registrations due to expire on or after November 16, 1989, will be renewed, on or after that date, for periods of ten years from the date of expiration, regardless of the filing date of the renewal application.

The recommendation that the words "or renewed" be inserted at the beginning of paragraphs (a) (1) and (2) after the words "Registrations issued" has been adopted and the paragraphs have been further modified for purposes of clarity. Specifically, the word "expiration" has been substituted in paragraph (a)(1) for the words "renewal, if that date is prior to November 16, 1989" and the phrase "from their date of issue or expiration" has been inserted in paragraph (a)(2) after the words "remain in force for ten years."

Comment: Section 2.185(a)(1) was proposed to be revised to liberalize certain requirements for the recordation in the PTO of assignments.

One organization recommended that, since any documents affecting title to registrations and applications are recorded pursuant to this rule, the words "and other documents affecting title" should be added to the section title. The organization also recommended that the proposed rule be revised and reorganized to eliminate lengthy, confusing and redundant wording. The organization submitted a suggested substitute draft of the rule.

Response: To permit further review of the language of this section, the proposal is withdrawn.

Comment: Several comments were submitted which do not relate to any rule amendment proposed in the notice of proposed rulemaking.

Response: To the extent that the comments suggest changes to existing rules, the changes cannot be made without affording members of the public an opportunity to comment.

Environmental, Energy, and Other Considerations

The rule change will not have a significant impact on the quality of the human environment or the conservation of energy resources.

The rule change is in conformity with the requirements of the Regulatory Flexibility Act (Pub. L. 96–354), Executive Orders 12291 and 12612, and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration, that the rule change will not have a significant adverse economic impact on a substantial number of small entities (Regulatory Flexibility Act, Pub. L. 96–354) because the rule change includes no additional or increased fees for existing filings. Public Law 100–667 creates a new statutory right to file an application based upon a bona fide intention to use a mark in commerce ("intent-to-use"). The rule change includes fees for intent-to-use applications. However, filing an intent-to-use application under the new law is permissive. Such a filing will reduce the substantial burden of securing and protecting trademark rights by enabling small entities to obtain trademark rights prior to the use of a mark and the expending of funds in relation thereto. Thus, substantive rights to use valuable trademarks are not adversely affected and, in some instances, can be established prior to the expenditure of large amounts of funds.

The Patent and Trademark Office has determined that this rule change is not a major rule under Executive Order 12291. The annual effect to the economy will be less than $100 million. There will be no major increase in costs or prices for consumers, individual industries, federal, state or local government agencies, or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The PTO has also determined that this notice has no Federalism implications affecting the relationship between the National Government and the States as outlined in Executive Order 12612.

The rule change will not impose any additional burden under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. in relation to any existing filings. However, Public Law 100–667 creates a new additional basis for filing an application, as well as certain other new filings in relation thereto, namely, an amendment to allege use under section 1(c) of the Act, a statement of use under section 1(d) of the Act, and requests for extensions of time, under section 1(d) of the Act, to file a statement of use. The public reporting burden for these new collections of information is estimated to vary from .25 hours to .50 hours per filing, with an average of .35 hours per filing, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments regarding the burden estimate or any other aspect of these collections of information, including suggestions for reducing this burden, to the Commissioner of Patents and Trademarks, Office of Management and Organization, Washington, DC 20231; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Paperwork Reduction Project 0651–0023.

List of Subjects

37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of information, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

37 CFR Part 2

Administrative practice and procedure, Courts, Lawyers, Trademarks.

For the reasons set forth in the preamble and pursuant to the authority contained in section 41 of the Act (15 U.S.C. 1123), parts 1 and 2 of title 37 of the Code of Federal Regulations are amended as set forth below.

PART 1—RULES OF PRACTICE IN PATENT CASES

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

Authority: 35 U.S.C. 6, unless otherwise noted.

2. Section 1.1 is amended by adding new paragraph (h) to read as follows:

§ 1.1 All communications to be addressed to Commissioner of Patents and Trademarks.

* * * * *

(h) In applications under section 1(b) of the Trademark Act, 15 U.S.C. 1051(b), all statements of use filed under section 1(d) of the Act, and requests for extensions of time therefor, should be additionally marked "Box ITU."

3. Section 1.8 is amended by adding new paragraphs (a)(2)(xiv) through (a)(2)(xvi) to read as follows:

§ 1.8 Certificate of Mailing.

(a) * * *

(2) * * *

(xiv) In an application under section 1(b) of the Trademark Act (15 U.S.C. 1051(b)), the filing of a statement of use under § 2.88 (15 U.S.C. 1051(d)).

(xv) In an application under section 1(b) of the Trademark Act (15 U.S.C. 1051(b)), the filing of a request, under § 2.89 (15 U.S.C. 1051(d)), for an extension of time to file a statement of use under § 2.88 (15 U.S.C. 1051(d)).

(xvi) In an application under section 1(b) of the Trademark Act (15 U.S.C. 1051(b)), the filing of an amendment to allege use in commerce under § 2.76 (15 U.S.C. 1051(c)).

* * * * *

PART 2—RULES OF PRACTICE IN TRADEMARK CASES

4. The authority citation for part 2 continues to read as follows:

Authority: 15 U.S.C. 1123; 35 U.S.C. 6, unless otherwise noted.

5. Section 2.2 is added to read as follows:

§ 2.2 Definitions.

(a) *The Act* as used in this part means the Trademark Act of 1946, 60 Stat. 427, as amended, codified in 15 U.S.C. 1051 et seq.

(b) *Entity* as used in this part includes both natural and juristic persons.

6. In section 2.6 the introductory text is republished and new paragraphs (u) and (v) are added to read as follows:

§ 2.6 Trademark fees.

The following fees and charges are established by the Patent and Trademark Office for trademark cases:

* * * * *

(u) For filing an amendment to allege use under section 1(c) of the Act or a statement of use under section 1(d)(1) of the Act, per class—100.00

(v) For filing a request under section 1(d)(2) of the Act for a six-month extension of time for filing a statement of use under section 1(d)(1) of the Act, per class—100.00

7. Section 2.18 is revised to read as follows:

§ 2.18 Correspondence, with whom held.

Correspondence will be sent to the applicant or a party to a proceeding at its address unless papers are transmitted by an attorney at law, or a written power of attorney is filed, or written authorization of other person entitled to be recognized is filed, or the applicant or party designates in writing another address to which correspondence is to be sent, in which event correspondence will be sent to the attorney at law transmitting the papers, or to the attorney at law designated in the power of attorney, or to the other person designated in the written authorization, or to the address designated by the applicant or party for correspondence. Correspondence will continue to be sent to such address until the applicant or party, or the attorney at law or other authorized representative of the applicant or party, indicates in writing that correspondence is to be sent to another address. Correspondence will be sent to the domestic representative of a foreign applicant unless the application is being prosecuted by an attorney at law or other qualified person duly authorized, in which event correspondence will be sent to the attorney at law or other qualified person duly authorized. Double correspondence will not be undertaken by the Patent and Trademark Office, and if more than one attorney at law or other authorized representative appears or signs a paper, the Office reply will be sent to the address already established in the file until another correspondence address is specified by the applicant or party or by the attorney or other authorized representative of the applicant or party.

8. Section 2.21 is amended by revising paragraphs (a)(5) and (a)(6) to read as follows:

§ 2.21 Requirements for receiving a filing date.

(a) * * *

(5) A basis for filing:

(i) A date of first use of the mark in commerce, and at least one specimen or facsimile of the mark as used, in an application under section 1(a) of the Act, or

(ii) A claim of a bona fide intention to use the mark in commerce and a certification or certified copy of the foreign registration on which the application is based in an application under section 44(e) of the Act, or

(iii) A claim of a bona fide intention to use the mark in commerce and a claim of the benefit of a prior foreign application in an application filed in accordance with section 44(d) of the Act, or

(iv) A claim of a bona fide intention to use the mark in commerce in an application under section 1(b) of the Act;

(6) A verification or declaration in accordance with § 2.33(b) signed by the applicant;

* * * * *

9. Section 2.24 is revised to read as follows:

§ 2.24 Designation of representative by foreign applicant.

If an applicant is not domiciled in the United States, the applicant must designate by a written document filed in the Patent and Trademark Office the name and address of some person resident in the United States on whom may be served notices or process in proceedings affecting the mark. If this document does not accompany or form part of the application, it will be required and registration refused unless it is supplied. Official communications of the Patent and Trademark Office will be addressed to the domestic representative unless the application is being prosecuted by an attorney at law or other qualified person duly authorized, in which event Official communications will be sent to the attorney at law or other qualified person duly authorized. The mere designation of a domestic representative does not authorize the person designated to prosecute the application unless qualified under paragraph (a), (b) or (c) of § 10.14 of this subchapter and authorized under § 2.17(b).

10. Section 2.31 is revised to read as follows:

§ 2.31 Application must be in English.

The application must be in the English language and plainly written on but one side of the paper. It is preferable that the application be on lettersize (i.e., 8½ inches, 21.6 cm., by 11 inches, 27.9 cm.) paper, typewritten double spaced, with at least a one and one-half inch (3.8 cm.) margin on the left-hand side and top of the page.

11. Section 2.33 is amended by revising the section title, revising paragraphs (a)(1)(ii), (a)(1)(iv), (a)(1)(v), (a)(1)(vi), (a)(1)(vii), and (a)(1)(viii), redesignating paragraph (a)(1)(ix) as (a)(1)(x), revising redesignated paragraph (a)(1)(x), adding a new paragraph (a)(1)(ix), revising paragraphs (a)(2), (b), and (c), and adding new paragraph (d) to read as follows:

§ 2.33 Requirements for written application.

(a)(1) The application shall include a request for registration and shall specify:

* * * * *

(ii) The citizenship of the applicant; if the applicant is a partnership, the state or nation under the laws of which the partnership is organized and the names and citizenship of the general partners or, if the applicant is a corporation or association, the state or nation under the laws of which the corporation or association is organized;

* * * * *

(iv) In an application under section 1(a) of the Act, that the applicant has adopted and is using the mark shown in the accompanying drawing, or, in an application under section 1(b) or 44 of the Act, that the applicant has a bona fide intention to use the mark shown in the accompanying drawing in commerce;

(v) In an application under section 1(a) of the Act, the particular goods or services on or in connection with which the mark is used or, in an application under section 1(b) or 44 of the Act, the particular goods or services on or in connection with which the applicant has a bona fide intention to use the mark, which in an application under section 44 may not exceed the scope of the goods or services covered by the foreign application or registration;

(vi) The class of goods or services according to the official classification, if known to the applicant;

(vii) In an application under section 1(a) of the Act, the date of applicant's first use of the mark as a trademark or service mark on or in connection with goods or services specified in the application and the date of applicant's first use in commerce of the mark as a trademark or service mark on or in connection with goods or services specified in the application, specifying the nature of such commerce (see § 2.38);

(viii) In an application under section 44(e) of the Act for registration of a mark duly registered in the applicant's country of origin, as that term is defined in section 44(c), accompanying the application, a certificate of the trademark office of the applicant's country of origin showing that the mark has been registered in such country and also showing the mark, the goods or services for which the mark is registered, the date of filing of the application on the basis of which registration was granted and that said registration is in full force and effect and, if the certificate is not in the English language, a translation thereof;

(ix) In an application claiming the benefit of a foreign application in accordance with section 44(d) of the Act, compliance with the requirements of § 2.39;

(x) In an application under section 1(a) of the Act, the mode, manner or method of applying, affixing or otherwise using the mark on or in connection with the goods or services specified or, in an application under section 1(b) of the Act, the intended mode, manner or method of applying, affixing or otherwise using the mark on or in connection with the goods or services specified.

(2) If more than one item of goods or services is specified in the application, the dates of use required in paragraph (a)(1)(vii) of this section need be for only one of the items specified, provided the particular item to which the dates apply is designated.

* * * * *

(b)(1) In an application under section 1(a) of the Act, the application must include averments to the effect that the applicant is believed to be the owner of the mark sought to be registered; that the mark is in use in commerce, specifying the nature of such commerce; that no other entity to the best of the declarant's knowledge and belief, has the right to use such mark in commerce, either in the identical form or in such near resemblance as to be likely, when applied to the goods or services of such other entity, to cause confusion, or to cause mistake, or to deceive; that the specimens or facsimiles show the mark as used on or in connection with the goods or services; and that the facts set forth in the application are true; or

(2) In an application under section 1(b) or 44 of the Act, the application must include averments to the effect that the applicant is believed to be the owner of the mark sought to be registered; that the applicant has a bona fide intention to use the mark in commerce on or in connection with the specified goods or services; that no other entity, to the best of the declarant's knowledge and belief, has the right to use such mark in commerce, either in the identical form or in such near resemblance as to be likely, when applied to the goods or services of such other entity, to cause confusion, or to cause mistake, or to deceive; and that the facts set forth in the application are true.

(c) For an application for the registration of a mark for goods or services falling within multiple classes, see § 2.86.

(d) An applicant may not file under both sections 1(a) and 1(b) of the Act in a single application, nor may an applicant in an application under section 1(a) of the Act amend that application to seek registration under section 1(b) of the Act.

12. Section 2.38(a) is revised to read as follows:

§ 2.38 Use by predecessor or by related companies.

(a) If the first use, the date of which is required by paragraph (a)(1)(vii) of § 2.33, was by a predecessor in title, or by a related company (sections 5 and 45 of the Act), and such use inures to the benefit of the applicant, the date of such first use may be asserted with a statement that such first use was by the predecessor in title or by the related company as the case may be.

* * * * *

13. Section 2.39 is revised to read as follows:

§ 2.39 Priority claim based on foreign application.

(a) An application claiming the benefit of a foreign application in accordance with section 44(d) of the Act shall specify the filing date and country of the first regularly filed foreign application or, if the application is based upon a subsequent regularly filed application in the same foreign country, the application shall so state and shall show that any prior filed application has been withdrawn, abandoned or otherwise disposed of, without having been laid open to public inspection and without having any rights outstanding, and has not served as a basis for claiming a right of priority.

(b) Before the application can be approved for publication, a basis for registration under section 1(a), 1(b) or 44(e) of the Act must be established.

14. Section 2.41 is revised to read as follows:

§ 2.41 Proof of distinctiveness under section 2(f).

(a) When registration is sought of a mark which would be unregistrable by reason of section 2(e) of the Act but which is said by applicant to have become distinctive in commerce of the goods or services set forth in the application, applicant may, in support of registrability, submit with the application, or in response to a request for evidence or to a refusal to register, affidavits, or declarations in accordance with § 2.20, depositions, or other appropriate evidence showing duration, extent and nature of use in commerce and advertising expenditures in connection therewith (identifying types of media and attaching typical advertisements), and affidavits, or declarations in accordance with § 2.20, letters or statements from the trade or public, or both, or other appropriate evidence tending to show that the mark distinguishes such goods.

(b) In appropriate cases, ownership of one or more prior registrations on the Principal Register or under the Act of 1905 of the same mark may be accepted as prima facie evidence of distinctiveness. Also, if the mark is said to have become distinctive of applicant's goods by reason of substantially exclusive and continuous use in commerce thereof by applicant for the five years before the date on which the claim of distinctiveness is made, a showing by way of statements which are verified or which include declarations in accordance with § 2.20, in the application may, in appropriate cases, be accepted as prima facie evidence of distinctiveness. In each of these situations, however, further evidence may be required.

15. Section 2.44 is revised to read as follows:

§ 2.44 Collective mark.

(a) In an application to register a collective mark under section 1(a) of the Act, the application shall specify and contain all applicable elements required by the preceding sections for trademarks, but shall, in addition, specify the class of persons entitled to use the mark, indicating their relationship to the applicant, and the nature of the applicant's control over the use of the mark.

(b) In an application to register a collective mark under section 1(b) or 44 of the Act, the application shall specify and contain all applicable elements required by the preceding sections for trademarks, but shall, in addition, specify the class of persons intended to be entitled to use the mark, indicating what their relationship to the applicant will be, and the nature of the control applicant intends to exercise over the use of the mark.

16. Section 2.45 is revised to read as follows:

§ 2.45 Certification mark.

(a) In an application to register a certification mark under section 1(a) of the Act, the application shall specify and contain all applicable elements required by the preceding sections for trademarks. It shall, in addition, specify the manner in which and the conditions under which the certification mark is used; it shall allege that the applicant exercises legitimate control over the use of the mark and that the applicant is not engaged in the production or marketing of the goods or services to which the mark is applied.

(b) In an application to register a certification mark under section 1(b) or 44 of the Act, the application shall specify and contain all applicable elements required by the preceding sections for trademarks. It shall, in addition, specify the manner in which and the conditions under which the certification mark is intended to be used; it shall allege that the applicant intends to exercise legitimate control over the use of the mark and that the applicant will not engage in the production or marketing of the goods or services to which the mark is applied.

17. Section 2.47 is revised to read as follows:

§ 2.47 Supplemental Register.

(a) In an application to register on the Supplemental Register under section 23 of the Act, the application shall so indicate and shall specify that the mark has been in lawful use in commerce, specifying the nature of such commerce, by the applicant.

(b) In an application to register on the Supplemental Register under section 44 of the Act, the application shall so indicate. The statement of lawful use in commerce may be omitted.

(c) A mark in an application to register on the Principal Register under section 1(b) of the Act is eligible for registration on the Supplemental Register only after an acceptable amendment to allege use under § 2.76 or statement of use under § 2.88 has been timely filed.

(d) An application for registration on the Supplemental Register must conform to the requirements for registration on the Principal Register under section 1(a) of the Act, so far as applicable.

18. Section 2.51 is revised to read as follows:

§ 2.51 Drawing required.

(a)(1) In an application under section 1(a) of the Act, the drawing of the trademark shall be a substantially exact representation of the mark as used on or in connection with the goods; or

(2) In an application under section 1(b) of the Act, the drawing of the trademark shall be a substantially exact representation of the mark as intended to be used on or in connection with the goods specified in the application, and once an amendment to allege use under § 2.76 or a statement of use under § 2.88 has been filed, the drawing of the trademark shall be a substantially exact representation of the mark as used on or in connection with the goods; or

(3) In an application under section 44 of the Act, the drawing of the trademark shall be a substantially exact representation of the mark as it appears in the drawing in the registration certificate of a mark duly registered in the country of origin of the applicant.

(b)(1) In an application under section 1(a) of the Act, the drawing of a service mark shall be a substantially exact representation of the mark as used in the sale or advertising of the services; or

(2) In an application under section 1(b) of the Act, the drawing of a service mark shall be a substantially exact representation of the mark as intended to be used in the sale or advertising of the services specified in the application and, once an amendment to allege use under § 2.76 or a statement of use under § 2.88 has been filed, the drawing of the service mark shall be a substantially exact representation of the mark as used in the sale or advertising of the services; or

(3) In an application under section 44 of the Act, the drawing of a service mark shall be a substantially exact representation of the mark as it appears in the drawing in the registration certificate of a mark duly registered in the country of origin of applicant.

(c) The drawing of a mark may be dispensed with in the case of a mark not capable of representation by a drawing, but in any such case the application must contain an adequate description of the mark.

(d) Broken lines should be used in the drawing of a mark to show placement of the mark on the goods, or on the packaging, or to show matter not claimed as part of the mark, or both, as appropriate. In an application to register a mark with three-dimensional features, the drawing shall depict the mark in perspective in a single rendition.

(e) If the application is for the registration of only a word, letter or numeral, or any combination thereof, not depicted in special form, the drawing may be the mark typed in capital letters on paper, otherwise complying with the requirements of § 2.52.

19. Section 2.52 is amended by revising paragraphs (a), (d) and (e) to read as follows:

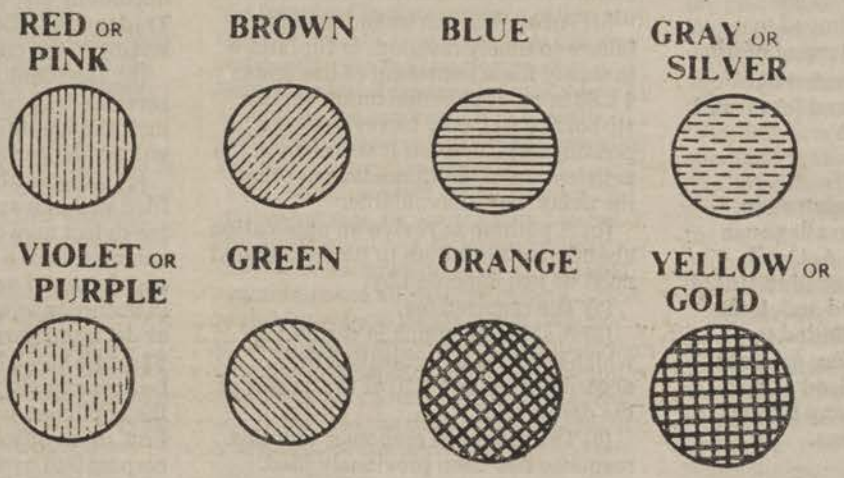
§ 2.52 Requirements for drawings.

(a) *Character of drawing.* All drawings, except as otherwise provided, must be made with the pen or by a process which will provide high definition upon reproduction. A photolithographic reproduction or printer's proof copy may be used if otherwise suitable. Every line and letter, including color lining and lines used for shading, must be black. All lines must be clean, sharp, and solid, and must not be fine or crowded. Gray tones or tints may not be used for surface shading or any other purpose. The requirements of this paragraph are not necessary in the case of drawings permitted and filed in accordance with paragraph (e) of § 2.51.

* * * * *

(d) *Heading.* Across the top of the drawing, beginning one inch (2.5 cm.) from the top edge and not exceeding one third of the sheet, there must be placed a heading, listing in separate lines, applicant's complete name; applicant's post office address; the dates of first use of the mark and first use of the mark in commerce in an application under section 1(a) of the Act; the priority filing date of the relevant foreign application in an application claiming the benefit of a prior foreign application in accordance with section 44(d) of the Act; and the goods or services recited in the application or a typical item of the goods or services if a number of items are recited in the application. This heading should be typewritten. If the drawing is in special form, the heading should include a description of the essential elements of the mark.

(e) *Linings for color.* Where color is a feature of a mark, the color or colors employed may be designated by means of conventional linings as shown in the following color chart:



20. Section 2.53 is revised to read as follows:

§ 2.53 Transmission of drawings.

Drawings transmitted to the Patent and Trademark Office, other than those typed in accordance with § 2.51(e), should be sent flat, protected by a sheet: of heavy binder's board, or should be rolled for transmission in a suitable mailing tube to prevent mutilation or folding.

21. Section 2.56 is revised to read as follows:

§ 2.56 Specimens.

An application under section 1(a) of the Act, an amendment to allege use under § 2.76, and a statement of use under § 2.88 must each include three specimens of the trademark as used on or in connection with the goods in commerce. The specimens shall be duplicates of the labels, tags, or containers bearing the trademark, or the displays associated with the goods and bearing the trademark (or if the nature of the goods makes use of such specimens impracticable then on documents associated with the goods or their sale), when made of suitable flat material and of a size not to exceed 8½ inches (21.6 cm.) wide and 11 inches (27.9 cm.) long.

22. Section 2.57 is revised to read as follows:

§ 2.57 Facsimiles.

(a) When, due to the mode of applying or affixing the trademark to the goods, or to the manner of using the mark on the goods, or to the nature of the mark, specimens as above stated cannot be furnished, three copies of a suitable photograph or other acceptable reproduction, not to exceed 8½ inches (21.6 cm.) wide and 11 inches (27.9 cm.) long, and clearly and legibly showing the mark and all matter used in connection therewith, shall be furnished.

(b) A purported facsimile which is merely a reproduction of the drawing submitted to comply with § 2.51 will not be considered to be a facsimile depicting the mark as used on or in connection with the goods or in connection with the services.

23. Section 2.59 is added to read as follows:

§ 2.59 Filing substitute specimens.

(a) In an application under section 1(a) of the Act, the applicant may submit substitute specimens of the mark as used on or in connection with the goods, or in the sale or advertising of the services, provided that any substitute specimens submitted are supported by applicant's affidavit or declaration in accordance with § 2.20 verifying that the substitute specimens were in use in

commerce at least as early as the filing date of the application. The verification requirement shall not apply if the specimens are duplicates or facsimiles, such as photographs, of specimens already of record in the application.

(b) In an application under section 1(b) of the Act, after filing either an amendment to allege use under § 2.76 or a statement of use under § 2.88, the applicant may submit substitute specimens of the mark as used on or in connection with the goods, or in the sale or advertising of the services, provided that the use in commerce of any substitute specimens submitted is supported by applicant's affidavit or declaration in accordance with § 2.20. In the case of a statement of use under § 2.88, the applicant must verify that the substitute specimens were in use in commerce prior to the filing of the statement of use or prior to the expiration of the time allowed to applicant for filing a statement of use.

24. Section 2.61 is amended by revising paragraphs (a) and (c) to read as follows:

§ 2.61 Action by examiner.

(a) Applications for registration, including amendments to allege use under section 1(c) of the Act, and statements of use under section 1(d) of the Act, will be examined and, if the applicant is found not entitled to registration for any reason, applicant will be notified and advised of the reasons therefor and of any formal requirements or objections.

* * * * *

(c) Whenever it shall be found that two or more parties whose interests are in conflict are represented by the same attorney, each party and also the attorney shall be notified of this fact.

25. Section 2.64 is amended by adding new paragraph (c) to read as follows:

§ 2.64 Final action.

* * * * *

(c)(1) If an applicant in an application under section 1(b) of the Act files an amendment to allege use under § 2.76 during the six-month response period after issuance of a final action, the examiner shall examine the amendment. The filing of such an amendment will not extend the time for filing an appeal or petitioning the Commissioner.

(2) If the amendment to allege use under § 2.76 is acceptable in all respects, the applicant will be notified of its acceptance.

(3) If, as a result of the examination of the amendment to allege use under § 2.76, the applicant is found not entitled to registration for any reason not previously stated, applicant will be notified and advised of the reasons and of any formal requirements or refusals. The Trademark Examining Attorney shall withdraw the final action previously issued and shall incorporate all unresolved refusals or requirements previously stated in the new non-final action.

26. Section 2.65 is amended by adding new paragraph (c) to read as follows:

§ 2.65 Abandonment.

* * * * *

(c) If an applicant in an application under section 1(b) of the Act fails to timely file a statement of use under § 2.88, the application shall be deemed to be abandoned.

27. Section 2.66 is revised to read as follows:

§ 2.66 Revival of abandoned applications.

(a) An application abandoned for failure to timely respond, or for failure to timely file a statement of use under § 2.88 in an application under section 1(b) of the Act, may be revived as a pending application if it is shown to the satisfaction of the Commissioner that the delay was unavoidable.

(b) A petition to revive an application abandoned for failure to timely respond must be accompanied by:

(1) The required fee,

(2) A showing which is verified or which includes a declaration in accordance with § 2.20 of the causes of the delay, and

(3) The proposed response, unless a response has been previously filed.

(c) A petition to revive an application abandoned for failure to timely file a statement of use under § 2.88 in an application under section 1(b) of the Act must be accompanied by:

(1) The required petition fee,

(2) A showing which is verified or which includes a declaration in accordance with § 2.20 of the causes of the delay,

(3) The required fees for the number of requests (in accordance with § 2.89 for extensions of time to file a statement of use) which should have been filed if the application had not been abandoned, and

(4) Either a statement of use in accordance with § 2.88 (unless the same has been previously filed) or a request in accordance with § 2.89 for an extension of time to file a statement of use.

(d) The petition must be filed promptly. No petition to revive will be granted in an application under section 1(b) of the Act if granting the petition would permit the filing of a statement of use more than 36 months after the issuance of a notice of allowance under section 13(b)(2) of the Act.

28. Section 2.69 is revised to read as follows:

§ 2.69 Compliance with other laws.

When the sale or transportation of any product for which registration of a trademark is sought is regulated under an Act of Congress, the Patent and Trademark Office may make appropriate inquiry as to compliance with such Act for the sole purpose of determining lawfulness of the commerce recited in the application.

29. Section 2.71 is revised to read as follows:

§ 2.71 Amendments to correct informalities.

(a) The application may be amended to correct informalities, or to avoid objections made by the Patent and Trademark Office, or for other reasons arising in the course of examination.

(b) The identification of goods or services may be amended to clarify or limit the identification, but additions will not be permitted.

(c) If the verification or declaration filed with the application is defective, the defect may be corrected only by the submission of a substitute or supplemental verification or declaration in accordance with § 2.20. A verification or declaration required under §§ 2.21(a)(6), 2.76(e)(3) or 2.88(e)(3), to be properly signed, must be signed by the applicant, a member of the applicant firm, or an officer of the applicant corporation or association. A verification or declaration which is signed by a person having color of authority to sign, is acceptable for the purpose of determining the timely filing of the paper. Persons having color of authority to sign are those who have first-hand knowledge of the truth of the statements in the verification or declaration and who also have actual or implied authority to act on behalf of the applicant. However, a properly signed substitute verification or declaration must be submitted before the application will be approved for publication or registration, as the case may be.

(d)(1) No amendment to the dates of use will be permitted unless the amendment is supported by applicant's affidavit or declaration in accordance with § 2.20 and by such showing as may be required.

(2) In an application under section 1(a) of the Act, no amendment to specify a date of use which is subsequent to the filing date of the application will be permitted.

(3) In an application under section 1(b) of the Act, after the filing of a statement of use under § 2.88, no amendment will be permitted to the statement of use to recite dates of use which are subsequent to the expiration of the time allowed to applicant for filing a statement of use.

30. Section 2.72 is revised to read as follows:

§ 2.72 Amendments to description or drawing of the mark.

(a) Amendments may not be made to the description or drawing of the mark if the character of the mark is materially altered. The determination of whether a proposed amendment materially alters the character of the mark will be made by comparing the proposed amendment with the description or drawing of the mark as originally filed.

(b) In applications under section 1(a) of the Act, amendments to the description or drawing of the mark may be permitted only if warranted by the specimens (or facsimiles) as originally filed, or supported by additional specimens (or facsimiles) and a supplemental affidavit or declaration in accordance with § 2.20 alleging that the mark shown in the amended drawing was in use prior to the filing date of the application.

(c) In applications under section 1(b) of the Act, amendments to the description or drawing of the mark, which are filed after submission of an amendment to allege use under § 2.76 or a statement of use under § 2.88, may be permitted only if warranted by the specimens (or facsimiles) filed, or supported by additional specimens (or facsimiles) and a supplemental affidavit or declaration in accordance with § 2.20 alleging that the mark shown in the amended drawing is in use in commerce. In the case of a statement of use under § 2.88, applicant must verify that the mark shown in the amended drawing was in use in commerce prior to the filing of the statement of use or prior to the expiration of the time allowed to applicant for filing a statement of use.

(d) In applications under section 44 of the Act, amendments to the description or drawing of the mark may be permitted only if warranted by the description or drawing of the mark in the foreign registration certificate.

31. Section 2.73 is revised to read as follows:

§ 2.73 Amendment to recite concurrent use.

(a) An application under section 1(a) of the Act may be amended so as to be treated as an application for a concurrent registration, provided the application as amended satisfies the requirements of § 2.42. The examiner will determine whether the application, as amended, is acceptable.

(b) An application under section 1(b) of the Act may not be amended so as to be treated as an application for a concurrent registration until an acceptable amendment to allege use under § 2.76 or statement of use under § 2.88 has been filed in the application, after which time such an amendment may be made, provided the application as amended satisfies the requirements of § 2.42. The examiner will determine whether the application, as amended, is acceptable.

32. Section 2.75 is revised to read as follows:

§ 2.75 Amendment to change application to different register.

(a) An application for registration on the Principal Register under section 1(a) or 44 of the Act may be changed to an application for registration on the Supplemental Register and vice versa by amending the application to comply with the rules relating to the appropriate register, as the case may be.

(b) An application under section 1(b) of the Act may be amended to change the application to a different register only after submission of an acceptable amendment to allege use under § 2.76 or statement of use under § 2.88. When such an application is changed from the Principal Register to the Supplemental Register, the effective filing date of the application is the date of the filing of the allegation of use under section 1(c) or 1(d) of the Act.

33. Section 2.76 is added to read as follows:

§ 2.76 Amendment to allege use.

(a) An application under section 1(b) of the Act may be amended to allege use of the mark in commerce under section 1(c) of the Act at any time between the filing of the application and the date the examiner approves the mark for publication or the date of expiration of the six-month response period after issuance of a final action. Thereafter, an allegation of use may be submitted only as a statement of use under § 2.88 after the issuance of a notice of allowance under section 13(b)(2) of the Act. If an amendment to allege use is filed outside the time period specified in this paragraph, it will be returned to the applicant.

(b) A complete amendment to allege use must include:

(1) A verified statement that the applicant is believed to be the owner of the mark sought to be registered and that the mark is in use in commerce, specifying the date of the applicant's first use of the mark and first use of the mark in commerce, the type of commerce, those goods or services specified in the application on or in connection with which the mark is in use in commerce and the mode or manner in which the mark is used on or in connection with such goods or services;

(2) Three specimens or facsimiles, conforming to the requirements of §§ 2.56, 2.57 and 2.58, of the mark as used in commerce; and

(3) The fee prescribed in § 2.6.

(c) An amendment to allege use may be filed only when the applicant has made use of the mark in commerce on or in connection with all of the goods or services, as specified in the application, for which applicant will seek registration in that application unless the amendment to allege use is accompanied by a request in accordance with § 2.87 to divide out from the application the goods or services to which the amendment pertains. If more than one item of goods or services is specified in the amendment to allege use, the dates of use required in paragraph (b)(1) of this section need be for only one of the items specified in each class, provided the particular item to which the dates apply is designated.

(d) The title "Amendment to allege use under § 2.76" should appear at the top of the first page of the paper.

(e) The Office will review a timely filed amendment to allege use to determine whether it meets the following minimum requirements:

(1) The fee prescribed in § 2.6;

(2) At least one specimen or facsimile of the mark as used in commerce; and

(3) A verification or declaration signed by the applicant stating that the mark is in use in commerce.

(f) A timely filed amendment to allege use which meets the minimum requirements specified in paragraph (e) of this section will be examined in accordance with §§ 2.61 through 2.69. If, as a result of the examination of the amendment to allege use, applicant is found not entitled to registration for any reason not previously stated, applicant will be so notified and advised of the reasons and of any formal requirements or refusals. The notification shall restate or incorporate by reference all unresolved refusals or requirements previously stated. The amendment to allege use may be amended in accordance with §§ 2.59 and 2.71 through 2.75. If the amendment to allege use is acceptable in all respects, the applicant will be notified of its acceptance. The filing of such an

amendment shall not constitute a response to any outstanding action by the Trademark Examining Attorney.

(g) If the amendment to allege use is filed within the permitted time period but does not meet the minimum requirements specified in paragraph (e) of this section, applicant will be notified of the deficiency. The deficiency may be corrected provided the mark has not been approved for publication or the six-month response period after issuance of a final action has not expired. If an acceptable amendment to correct the deficiency is not filed prior to approval of the mark for publication or prior to the expiration of the six-month response period after issuance of a final action, the amendment will not be examined.

(h) An amendment to allege use may be withdrawn for any reason prior to approval of a mark for publication or expiration of the six-month response period after issuance of a final action.

34. Section 2.77 is added to read as follows:

§ 2.77 Amendments between notice of allowance and statement of use.

An application under section 1(b) of the Act may not be amended during the period between the issuance of the notice of allowance under section 13(b)(2) of the Act and the filing of a statement of use under § 2.88, except to delete specified goods or services. Other amendments filed during this period will be placed in the application file and considered when the statement of use is examined.

35. The undesignated center heading for §§ 2.80 through 2.84 is revised to read as follows:

Publication and Post Publication

36. Section 2.81 is amended by revising the section title, redesignating the present paragraph as (a), revising redesignated paragraph (a), and adding new paragraph (b) to read as follows:

§ 2.81 Post publication.

(a) Except in an application under section 1(b) of the Act for which no amendment to allege use under § 2.76 has been submitted and accepted, if no opposition is filed within the time permitted or all oppositions filed are dismissed, and if no interference is declared and no concurrent use proceeding is instituted, the application will be prepared for issuance of the certificate of registration as provided in § 2.151.

(b) In an application under section 1(b) of the Act for which no amendment to allege use under § 2.76 has been submitted and accepted, if no opposition is filed within the time permitted or all oppositions filed are dismissed, and if no interference is declared, a notice of allowance will issue. The notice of allowance will state the serial number of the application, the name of the applicant, the correspondence address, the mark, the identification of goods or services, and the issue date of the notice of allowance. The mailing date that appears on the notice of allowance will be the issue date of the notice of allowance. Thereafter, the applicant shall submit a statement of use as provided in § 2.88.

37. Section 2.82 is revised to read as follows:

§ 2.82 Marks on Supplemental Register published only upon registration.

In the case of an application for registration on the Supplemental Register the mark will not be published for opposition but if it appears, after examination or reexamination, that the applicant is entitled to have the mark registered, a certificate of registration will issue as provided in § 2.151. The mark will be published in the "Official Gazette" when registered.

38. Section 2.83 is amended by revising paragraphs (a) and (b) to read as follows:

§ 2.83 Conflicting marks.

(a) Whenever an application is made for registration of a mark which so resembles another mark or marks pending registration as to be likely to cause confusion or mistake or to deceive, the mark with the earliest effective filing date will be published in the "Official Gazette" for opposition if eligible for the Principal Register, or issued a certificate of registration if eligible for the Supplemental Register.

(b) In situations in which conflicting applications have the same effective filing date, the application with the earliest date of execution will be published in the "Official Gazette" for opposition or issued on the Supplemental Register.

* * * * *

39. Section 2.84 is revised to read as follows:

§ 2.84 Jurisdiction over published applications.

(a) The examiner may exercise jurisdiction over an application up to the date the mark is published in the "Official Gazette." After publication of an application under section 1(a) or 44 of the Act the examiner may, with the permission of the Commissioner, exercise jurisdiction over the application. After publication of an application under section 1(b) of the Act, the examiner may exercise jurisdiction over the application after the issuance of the notice of allowance under section 13(b)(2) of the Act. After publication, and prior to issuance of a notice of allowance in an application under section 1(b), the examiner may, with the permission of the Commissioner, exercise jurisdiction over the application.

(b) After publication, but before the printing of the certificate of registration in an application under section 1(a) or 44 of the Act, or before the printing of the notice of allowance in an application under section 1(b) of the Act, an application which is not the subject of an *inter partes* proceeding before the Trademark Trial and Appeal Board may be amended if the amendment does not necessitate republication of the mark or issuance of an Office action. Otherwise, an amendment to such an application may be submitted only upon petition to the Commissioner to restore jurisdiction of the application to the examiner for consideration of the amendment and further examination. The amendment of an application which is the subject of an *inter partes* proceeding before the Trademark Trial and Appeal Board is governed by § 2.133.

40. Section 2.86 is revised to read as follows:

§ 2.86 Application may include multiple goods or services comprised in single class or multiple classes.

(a) An application may recite more than one item of goods, or more than one service, comprised in a single class, provided the goods or services are specifically identified and the applicant either has used the mark on or in connection with all of the specified goods or services, or has a bona fide intention to use the mark on or in connection with all of the specified goods or services.

(b) An application also may be filed to register the same mark for goods and/or services comprised in multiple classes, provided the goods or services are specifically identified; a fee equaling the sum of the fees for filing an application in each class is submitted; and the application includes either dates of use and three specimens for each class, or a statement of a bona fide intention to use the mark on or in connection with all of the goods or services specified in each class. An amendment to allege use under § 2.76 or a statement of use under § 2.88, filed in a multiple class application under section 1(b) of the Act, must include, for each class, the required fee, dates of use and three specimens. A single certificate of

registration for the mark shall be issued, unless the application is divided pursuant to § 2.87.

(c) The applicant may not allege use as to certain goods or services and a bona fide intention to use as to other goods or services in the same application, regardless of the number of classes contained therein.

41. Section 2.87 is revised to read as follows:

§ 2.87 Dividing an application.

(a) An application may be physically divided into two or more separate applications upon submission by the applicant of a request therefor, in accordance with paragraph (c) of this section. In the case of a request to divide out some, but not all, of the goods or services in a class, a fee for each new separate application to be created by the division must be submitted. Any outstanding time period for action by the applicant in the original application at the time of the division will be applicable to each new separate application created by the division.

(b) A request to divide an application may be filed at any time between the filing of the application and the date the Trademark Examining Attorney approves the mark for publication or the date of expiration of the six-month response period after issuance of a final action; or during an opposition, upon motion granted by the Trademark Trial and Appeal Board. Additionally, a request to divide an application under section 1(b) of the Act may be filed with a statement of use under § 2.88 or at any time between the filing of a statement of use and the date the Trademark Examining Attorney approves the mark for registration or the date of expiration of the six-month response period after issuance of a final action.

(c) A request to divide an application should be made in a separate paper from any other amendment or response in the application. The title "Request to divide application." should appear at the top of the first page of the paper.

42. A new undesignated center heading, and two new sections, designated §§ 2.88 and 2.89, are added to read as follows:

Post Notice of Allowance

§ 2.88 Filing statement of use after notice of allowance.

(a) In an application under section 1(b) of the Act, a statement of use, required under section 1(d) of the Act, must be filed within six months after issuance of a notice of allowance under section 13(b)(2) of the Act, or within an extension of time granted under § 2.89. A statement of use that is filed prior to issuance of a notice of allowance is premature, will not be considered, and will be returned to the applicant.

(b) A complete statement of use must include:

(1) A verified statement that the applicant is believed to be the owner of the mark sought to be registered and that the mark is in use in commerce, specifying the date of the applicant's first use of the mark and first use of the mark in commerce, the type of commerce, those goods or services specified in the notice of allowance on or in connection with which the mark is in use in commerce and the mode or manner in which the mark is used on or in connection with such goods or services;

(2) Three specimens or facsimiles, conforming to the requirements of §§ 2.56, 2.57 and 2.58, of the mark as used in commerce; and

(3) The fee prescribed in § 2.6.

(c) The statement of use may be filed only when the applicant has made use of the mark in commerce on or in connection with all of the goods or services, as specified in the notice of allowance, for which applicant will seek registration in that application, unless the statement of use is accompanied by a request in accordance with § 2.87 to divide out from the application the goods or services to which the statement of use pertains. If more than one item of goods or services is specified in the statement of use, the dates of use required in paragraph (b)(1) of this section need be for only one of the items specified in each class, provided the particular item to which the dates apply is designated.

(d) The title "Statement of use under § 2.88." should appear at the top of the first page of the paper.

(e) The Office will review a timely filed statement of use to determine whether it meets the following minimum requirements:

(1) The fee prescribed in § 2.6;

(2) At least one specimen or facsimile of the mark as used in commerce;

(3) A verification or declaration signed by the applicant stating that the mark is in use in commerce.

(f) A timely filed statement of use which meets the minimum requirements specified in paragraph (e) of this section will be examined in accordance with §§ 2.61 through 2.69. If, as a result of the examination of the statement of use, applicant is found not entitled to registration, applicant will be notified and advised of the reasons and of any formal requirements or refusals. The statement of use may be amended in accordance with §§ 2.59 and 2.71 through 2.75. If the statement of use is acceptable in all respects, the applicant will be notified of its acceptance.

(g) If the statement of use does not meet the minimum requirements specified in paragraph (e) of this section, applicant will be notified of the deficiency. If the time permitted for applicant to file a statement of use has not expired, applicant may correct the deficiency. After the filing of a statement of use during a permitted time period for such filing, the applicant may not withdraw the statement to return to the previous status of awaiting submission of a statement of use, regardless of whether it is in compliance with paragraph (e) of this section.

(h) The failure to timely file a statement of use which meets the minimum requirements specified in paragraph (e) of this section shall result in the abandonment of the application.

(i)(1) The goods or services specified in a statement of use must conform to those goods or services identified in the notice of allowance. An applicant may specify the goods or services by stating "those goods or services identified in the notice of allowance" or, if appropriate, "those goods or services identified in the notice of allowance except * * *" followed by an identification of the goods or services to be deleted.

(2) If any goods or services specified in the notice of allowance are omitted from the identification of goods or services in the statement of use, the Trademark Examining Attorney shall inquire about the discrepancy and permit the applicant to amend the statement of use to include any omitted goods or services, provided that the amendment is supported by a verification that the mark was in use in commerce, on or in connection with each of the goods or services sought to be included, prior to the expiration of the time allowed to applicant for filing a statement of use.

(3) The statement of use may be accompanied by a separate request to amend the identification of goods or services in the application, as stated in the notice of allowance, in accordance with § 2.71(b).

(j) The statement of use may be accompanied by a separate request to amend the drawing in the application, in accordance with §§ 2.51 and 2.72.

§ 2.89 Extensions of time for filing a statement of use.

(a) The applicant may request a six-month extension of time to file the statement of use required under § 2.88 by submitting:

(1) A written request, before the expiration of the six-month period following the issuance of a notice of allowance under section 13(b)(2) of the Act;

(2) The fee prescribed in § 2.6; and

(3) A verified statement by the applicant that the applicant has a continued bona fide intention to use the mark in commerce, specifying those goods or services identified in the notice of allowance on or in connection with which the applicant has a continued bona fide intention to use the mark in commerce.

(b) The applicant may request further six-month extensions of time for filing the statement of use by submitting:

(1) A written request, prior to the expiration of a previously granted extension of time;

(2) The fee prescribed in § 2.6;

(3) A verified statement by the applicant that the applicant has a continued bona fide intention to use the mark in commerce, specifying those goods or services identified in the notice of allowance on or in connection with which the applicant has a continued bona fide intention to use the mark in commerce; and

(4) A showing of good cause, as specified in paragraph (d) of this section.

(c) Extensions of time under paragraph (b) of this section will be granted only in six-month increments and may not aggregate more than 24 months.

(d) The showing required by paragraph (b)(4) of this section must include:

(1) An allegation that the applicant has not yet made use of the mark in commerce on all the goods or services specified in the notice of allowance on or in connection with which the applicant has a continued bona fide intention to use the mark in commerce, and

(2) A statement of applicant's ongoing efforts to make use of the mark in commerce on or in connection with each of the goods or services specified in the verified statement of continued bona fide intention to use required under paragraph (b) of this section. Those efforts may include, without limitation, product or service research or development, market research, manufacturing activities, promotional activities, steps to acquire distributors, steps to obtain required governmental approval, or other similar activities. In the alternative, a satisfactory explanation for the failure to make such efforts must be submitted.

(e)(1) At the time of the filing of a statement of use, or during any time remaining in the existing six-month period in which a statement of use is filed, applicant may file one request, in accordance with paragraph (a) or (b) of this section, for a six-month extension of time for filing a statement of use, provided that the time requested would not extend beyond 36 months from the issuance of the notice of allowance. Thereafter, applicant may not request any further extensions of time.

(2) A request for an extension of time that is filed at the time of the filing of a statement of use, or during any time remaining in the existing six-month period in which a statement of use is filed, must comply with all the requirements of paragraph (a) of this section, if it is applicant's first extension request, or paragraph (b) of this section, if it is a second or subsequent extension request. However, in a request under paragraph (b) of this section, applicant may satisfy the requirement for a showing of good cause by asserting that applicant believes that it has made valid use of the mark in commerce, as evidenced by the submitted statement of use, but that if the statement of use is found by the Patent and Trademark Office to be fatally defective, applicant will need additional time in which to file a new statement of use.

(f) The goods or services specified in a request for an extension of time for filing a statement of use must conform to those goods or services identified in the notice of allowance. Any goods or services specified in the notice of allowance which are omitted from the identification of goods or services in the request for extension of time will be presumed to be deleted and the applicant may not thereafter request that the deleted goods or services be reinserted in the application. If appropriate, an applicant may specify the goods or services by stating "those goods or services identified in the notice of allowance" or "those goods or services identified in the notice of allowance except * * *" followed by an identification of the goods or services to be deleted.

(g) The applicant will be notified of the grant or denial of a request for an extension of time, and of the reasons for a denial. Failure to notify the applicant of the grant or denial of the request prior to the expiration of the existing period or requested extension does not relieve the applicant of the responsibility of timely filing a statement of use under § 2.88. If, after denial of an extension request, there is time remaining in the existing six-month period for filing a statement of use, applicant may submit a substitute request for extension of time. Otherwise, the only recourse available after denial of a request for an extension of time is a petition to the Commissioner in accordance with §§ 2.66 or 2.146. A petition from the denial of a request for an extension of time to file a statement of use shall be filed within one month from the date of mailing of the denial of the request. If the petition is granted, the term of the requested six-month extension which was the subject of the petition will run from the date of the expiration of the previously existing six-month period for filing a statement of use.

43. Section 2.99 is amended by revising paragraph (g) and adding new paragraph (h) to read as follows:

§ 2.99 Application to register as concurrent user.

* * * * *

(g) Registrations and applications to register on the Supplemental Register and registrations under the Act of 1920 are not subject to concurrent use registration proceedings. Applications to register under section 1(b) of the Act of 1946 are subject to concurrent use registration proceedings only after an acceptable amendment to allege use under § 2.76 or statement of use under § 2.88 has been filed.

(h) The Trademark Trial and Appeal Board will consider and determine concurrent use rights only in the context of a concurrent use registration proceeding.

44. Section 2.101 is amended by revising paragraph (b) to read as follows:

§ 2.101 Filing an opposition.

* * * * *

(b) Any entity which believes that it would be damaged by the registration of a mark on the Principal Register may oppose the same by filing an opposition, which should be addressed to the Trademark Trial and Appeal Board. The opposition need not be verified, and may be signed by the opposer or the opposer's attorney or other authorized representative.

* * * * *

45. Section 2.111 is amended by revising paragraph (b) to read as follows:

§ 2.111 Filing petition for cancellation.

* * * * *

(b) Any entity which believes that it is or will be damaged by a registration may file a petition, which should be addressed to the Trademark Trial and Appeal Board, to cancel the registration in whole or in part. The petition need not be verified, and may be signed by the petitioner or the petitioner's attorney

or other authorized representative. The petition may be filed at any time in the case of registrations on the Supplemental Register or under the Act of 1920, or registrations under the Act of 1881 or the Act of 1905 which have not been published under section 12(c) of the Act, or on any ground specified in section 14 (c) or (e) of the Act. In all other cases the petition and the required fee must be filed within five years from the date of registration of the mark under the Act or from the date of publication under section 12(c) of the Act.

* * * * *

46. Section 2.129 is amended by adding new paragraph (d) to read as follows:

§ 2.129 Oral argument; reconsideration.

* * * * *

(d) When a party to an inter partes proceeding before the Trademark Trial and Appeal Board cannot prevail without establishing constructive use pursuant to section 7(c) of the Act in an application under section 1(b) of the Act, the Trademark Trial and Appeal Board will enter a judgment in favor of that party, subject to the party's establishment of constructive use. The time for filing an appeal or for commencing a civil action under section 21 of the Act shall run from the date of the entry of the judgment.

47. Section 2.133 is revised to read as follows:

§ 2.133 Amendment of application or registration during proceedings.

(a) An application involved in a proceeding may not be amended in substance nor may a registration be amended or disclaimed in part, except with the consent of the other party or parties and the approval of the Trademark Trial and Appeal Board, or except upon motion.

(b) If, in an inter partes proceeding, the Trademark Trial and Appeal Board finds that a party whose application or registration is the subject of the proceeding is not entitled to registration in the absence of a specified restriction to the involved application or registration, the Trademark Trial and Appeal Board will allow the party time in which to file a request that the application or registration be amended to conform to the findings of the Trademark Trial and Appeal Board, failing which judgment will be entered against the party.

(c) Geographic limitations will be considered and determined by the Trademark Trial and Appeal Board only in the context of a concurrent use registration proceeding.

(d) A plaintiff's pleaded registration will not be restricted in the absence of a counterclaim to cancel the registration in whole or in part, except that a counterclaim need not be filed if the registration is the subject of another proceeding between the same parties or anyone in privity therewith.

48. Section 2.161 is revised to read as follows:

§ 2.161 Cancellation for failure to file affidavit or declaration during sixth year.

Any registration under the provisions of the Act and any registration published under the provisions of section 12(c) of the Act (§ 2.153) shall be cancelled as to any goods or services recited in the registration at the end of six years following the date of registration or the date of such publication, unless within one year next preceding the expiration of such six years the registrant shall file in the Patent and Trademark Office an affidavit or declaration in accordance with § 2.20 setting forth those goods or services recited in the registration on or in connection with which the mark is in use in commerce and attaching a specimen or facsimile showing current use of the mark, or an affidavit or declaration under § 2.20 showing that its nonuse as to any goods or services recited in the registration is due to special circumstances which excuse such nonuse and is not due to any intention to abandon the mark as to those goods or services.

49. Section 2.162 is amended by revising paragraphs (e), (f), and (g) to read as follows:

§ 2.162 Requirements for affidavit or declaration during sixth year.

* * * * *

(e) State that the registered mark is in use in commerce, list the goods or services recited in the registration on or in connection with which the mark is in use in commerce, and specify the nature of such commerce (except under paragraph (f) of this section). The statement must be accompanied by a specimen or facsimile, for each class of goods or services, showing current use of the mark. If the specimen or facsimile is found to be deficient, a substitute specimen or facsimile may be submitted and considered even though filed after the sixth year has expired, provided it is supported by an affidavit or declaration pursuant to § 2.20 verifying that the specimen or facsimile was in use in commerce prior to the expiration of the sixth year;

(f) If the registered mark is not in use in commerce on or in connection with the goods or services recited in the registration, recite facts to show that nonuse as to those goods or services is due to special circumstances which excuse such nonuse and is not due to any intention to abandon the mark as to those goods or services. If the facts recited are found insufficient, further evidence or explanation may be submitted and considered even though filed after the sixth year has expired; and

(g) Contain the statement of use in commerce or statement as to nonuse and appropriate specimen or facsimile, as required in paragraphs (e) and (f) of this section, for each class to which the affidavit or declaration pertains in this registration.

50. Section 2.181(a) is revised to read as follows:

§ 2.181 Term of original registrations and renewals.

(a)(1) Registrations issued or renewed under the Act, prior to November 16, 1989, whether on the Principal Register or on the Supplemental Register, remain in force for twenty years from their date of issue or expiration, and may be renewed for periods of ten years from the expiring period unless previously cancelled or surrendered.

(2) Registrations issued or renewed under the Act on or after November 16, 1989, whether on the Principal Register or on the Supplemental Register, remain in force for ten years from their date of issue or expiration, and may be renewed for periods of ten years from the expiring period unless previously cancelled or surrendered.

* * * * *

51. Section 2.187 is revised to read as follows:

§ 2.187 Certificate of registration may issue to assignee.

The certificate of registration may be issued to the assignee of the applicant, or in a new name of applicant, provided that the party makes a written request in the application record, by the time the application is being prepared for issuance of the certificate of registration, and an appropriate document is of record in the Assignment Search Room of the Patent and Trademark Office. If the assignment or name change document is not of record in the Assignment Search Room, then the written request must state that the document has been filed for recordation. The address of the assignee must be made of record in the application file and in the recorded document.

Dated: August 2, 1989.

Donald J. Quigg,

Assistant Secretary and Commissioner of Patents and Trademarks.

[FR Doc. 89-21210 Filed 9-8-89; 8:45 am]

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federal register

Monday
September 11, 1989

Part IV

Department of the Treasury

Customs Service

19 CFR Parts 162 and 171

Seizure of Property for Possession of Controlled Substances; Final Rule

Department of Justice

Office of the Attorney General
Drug Enforcement Administration

21 CFR Part 1316

Anti-Drug Abuse Act of 1988; Expedited Forfeiture Procedures for Certain Property; Final Rule

Department of Transportation

Coast Guard

33 CFR Part 1

Summons in Lieu of Seizure of Commercial Fishing Industry Vessels; Final Rule

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 162 and 171

[T.D. 89-86]

Seizure of Property for Possession of Controlled Substances

AGENCY: U.S. Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to provide certain expedited procedures when property is seized due to violations involving the possession of personal use quantities of controlled substances. The procedures comply with the requirements of the Anti-Drug Abuse Act of 1988. The regulations set forth procedures allowing an owner or interested party whose property was seized due to a violation involving possession of a personal use quantity of a controlled substance to have the property returned promptly if he can establish his innocence. The regulations also require, when a violation involving the possession of personal use quantities of a controlled substance is committed on a commercial fishing industry vessel that is proceeding to or from a fishing area or intermediate port of call or is actively engaged in fishing operations, that a summons to appear be issued in lieu of seizure of the vessel. These regulations have been prepared in conjunction with the Attorney General and the Secretary of Transportation; regulations from these Departments on this subject area also appear in today's Federal Register.

EFFECTIVE DATE: October 11, 1989.

FOR FURTHER INFORMATION CONTACT: Harriett D. Blank, Regulatory Procedures and Penalties Division, (202) 566-8317.

SUPPLEMENTARY INFORMATION:

Background

Section 6079 of the Anti-Drug Abuse Act of 1988 (Pub. L. 100-690, title VI) (the Act) requires the Attorney General and the Secretary of the Treasury to prescribe regulations to minimize the adverse impact caused by prolonged detention of property seized for civil forfeiture for violations involving the possession of personal use quantities of a controlled substance pursuant to section 596 of the Tariff Act of 1930 (19 U.S.C. 1595a(a)), section 511(a) of the Controlled Substance Act (21 U.S.C. 881(a)), or section 2 of the Act of August 9, 1939 (53 Stat. 1291; 49 U.S.C. App. 782). Pursuant to section 6079, such seized property shall be promptly returned where an owner can establish: (1) A valid, good faith interest in the property; (2) that he did not know of or consent to the violation; and (3) that he had no knowledge or reason to believe that the property was being or would be used in violation of law, or that if he at any time had, or should have had knowledge that the property would be used in a violation, that he did what reasonably could be expected to prevent the violation.

Section 6079 also provides that the Attorney General, Secretary of the Treasury and the Secretary of Transportation shall provide joint regulations providing for issuance of a summons to appear in lieu of seizure of a commercial fishing industry vessel for violations involving the possession of personal use quantities of a controlled substance. These regulations are to apply when the violation is committed on a commercial fishing industry vessel that is proceeding to or from a fishing area or intermediate port of call or is actually engaged in fishing operations.

Representatives of the Department of Justice on behalf of the Attorney General, the U.S. Coast Guard on behalf of the Secretary of Transportation and the U.S. Customs Service on behalf of the Secretary of the Treasury developed, in accordance with section 6079 of the Act, proposed regulations which were published in the Federal Register (54 FR 14242) on April 10, 1989.

Eleven comments were received by Customs in response to its Notice of Proposed Rulemaking. Customs exchanged the comments it received with the Coast Guard and the Department of Justice. A discussion of the comments and our responses follows:

Discussion of Comments

Comment: Proposed § 171.53 provided that Customs will attempt to make a final administrative determination regarding the disposition of property seized for particular statutory violations involving the possession of personal use quantities of a controlled substance within 21 days of the seizure. If such a determination is not made within 21 days, Customs shall determine, within 20 days after receiving a timely submitted petition for expedited procedures, whether a petitioner established his right to have the property returned or whether Customs should proceed with the administrative forfeiture action. Several commenters stated that this proposed procedure is contrary to the purpose of section 6079, which is to require Customs to make a final determination in 21 days or release the property. The commenters stated that § 171.53 actually provides Customs with 40 days during which to make a final determination.

Response: We do not agree. Customs is unable to make a final determination until it receives a petition for expedited procedures establishing the elements required by the Act. The regulations provide that Customs will attempt to make a final determination within 21 days, but this is entirely dependent upon the receipt of petitions. Because the names and addresses of interested parties who should be notified of a seizure are not always known to Customs immediately, and because interested parties who are not in possession of their conveyances at the time of seizure do not always petition promptly, there are frequent delays in the administrative process which are entirely outside of Customs control. If Customs were required to make a final determination 21 days after seizure, it would be forced to deny relief when petitions are not received shortly after seizure. Parties submitting petitions which may otherwise have been granted would be forced to submit supplemental petitions or to unnecessarily file claim and cost bonds requesting judicial determinations. The procedure proposed by Customs is more flexible giving the petitioner a reasonable period of time in which to submit his petition. Further, if the petitioner does submit his petition on the same day of the seizure, Customs will make a final determination within 20 days.

Comment: A commenter stated that "personal use quantity" should be defined as that quantity which can be easily concealed upon the body or personal effects of an individual rather than a quantity that is based on weight.

Response: We do not agree. It is possible to conceal on a person or in personal effects amounts of controlled substances which are clearly for non-personal use. We believe that the use of weight as a criterion while, at the same time, allowing certain other variables to be taken into consideration is a preferable way to determine whether an amount of controlled substance possessed by an individual is a personal use quantity.

Comment: Some commenters complained that the proposed procedures are harsh in that a seizure may be imposed upon an innocent owner. They also took issue with the proposed regulations assuming guilt and requiring an owner to prove his innocence before a conveyance is returned.

Response: When a conveyance is seized because of a violation involving

the possession of a personal use quantity of a controlled substance, long-standing statutory authority specifies that the burden of proof is upon the claimant to prove his innocence. Section 1615 of title 19, United States Code (19 U.S.C. 1615), provides this unique allocation of the burden of proof in all forfeiture actions for drug-related offenses as it considers the property the "guilty" party. The purpose of the proposed procedures is to protect the interests of innocent owners by allowing them to prove their innocence as expeditiously as possible.

Comment: One commenter stated that the Anti-Drug Abuse Act required new alternative procedures to expedite release of seized property and the substitute res procedure set forth in proposed § 171.54 should not be considered a new procedure as it is already available. Further, the commenter indicated that proposed § 171.54 was a little unclear and specifically questioned under what circumstances could an offer to post a substitute res not be accepted.

Response: The substitute res procedure contained in proposed § 171.54 is distinct and separate from the expedited procedures. The alternative expedited procedures required by the statute were set forth in paragraphs (a) and (b) of proposed § 171.53. Release, pending a final determination, upon the deposit of the domestic value of seized merchandise, is well-established Customs procedure and is effected pursuant to 19 U.S.C. 1614. The substitute res is not mandatory. We included the substitute res procedures in these regulations for the convenience of innocent owners who may wish to consider all the ways they may obtain release of their property expeditiously. We believe, however, that some clarification is needed regarding the substitute res provision. The substitute res is not a bond; it is the actual payment of the appraised value of the property and it may be posted at any time up until a conveyance has been administratively forfeited. We stated in the proposal that the payment may be in the form of cash, irrevocable letter of credit, or a traveler's check or money order made payable to U.S. Customs. We now believe that an additional category of payment, certified funds such as a certified check, should be added. Finally, we are changing the language in § 171.54 to more clearly reflect that an offer to post a substitute res may not be accepted by Customs when the seized conveyance that is in Customs custody is evidence of violation of law or has other characteristics that particularly suit it for use in illegal activities.

Comment: A commenter suggested that, in the case of commercial vessels appraised at very high values, the substitution of substantial bonds, rather than the equivalent of the domestic value of the vessel, be permitted to obtain release of the vessel prior to a final determination.

Response: The Act does not require such a provision. However, Customs may choose, as it has in some past cases, to release such large vessels, pending a final determination, upon the execution of a constructive seizure agreement which requires no deposit, or upon other terms which protect the government's interest.

Comment: One commenter suggested that a demonstration of company compliance with Federal mandatory drug testing regulations be specified to constitute prima facie evidence that a company established the element set forth in proposed § 171.52(c)(3)—that it did not know or consent to the illegal use of the property or, in the event that it knew or should have known of the illegal use, it did what reasonably could be expected to prevent the violation.

Response: We do not agree. However, compliance with federal mandatory drug-testing regulations may be considered in determining whether § 171.52(c)(3) has been satisfied.

Comment: Some commenters were concerned that Customs will consider arrest and/or conviction records of persons in possession of controlled substances as evidence of possession for other than personal use. They stated that innocent owners may not know of the criminal records of all lessees, employees, and acquaintances who may be on board their conveyance.

Response: A determination of whether a controlled substance is possessed solely for purposes of personal use is a determination of subjective intent based upon the totality of the circumstances. Customs will take many factors into account, including the quantity of controlled substances possessed, in determining whether the possessor of the controlled substance intended to distribute. This operates both to the advantage of interested parties and the government. It must be stressed that a person's prior arrest or conviction record for drug offenses will not necessarily be determinative of whether the drugs were possessed for personal use; it is merely one factor Customs will consider. It should also be noted that one may still be found to be an innocent owner even though persons on the conveyance had drug-related criminal records.

Comment: A commenter questioned why hearsay (proposed § 171.52(b)(6)(ii)(C) and (F)) should be permitted to be introduced as a means of denying the right to an expedited proceeding.

Response: Hearsay is admissible in administrative proceedings. As noted earlier, the issue of whether a controlled substance is possessed solely for purposes of personal use involves a determination of subjective intent. Hearsay may be considered in determining that intent. Further, as stated earlier, many factors may be considered in determining whether the possessor of a controlled substance intended to use the controlled substance for personal use. The types of statements discussed in § 171.52(b)(6)(ii)(C) and (F) are just two of the factors that may be considered.

Comment: A commenter stated that proposed § 171.51(b)(5), by stating that holding primary and direct title to property may not constitute a sufficient beneficial interest in the property to support a petition, may be disqualifying some innocent lienholders.

Response: We agree. Accordingly, we are deleting the last sentence of § 171.51(b)(5).

Comment: A commenter stated that the definition of "normal and customary manner" in proposed § 171.51(b)(4) is too restrictive.

Response: We disagree. We believe that the reasonable and prudent standard combined with consideration of established norms, standards and customs is a broad definition permitting Customs to consider a large number of factors. What is "normal and customary" will vary with the circumstances of individual cases, and there may be cases in which mere compliance with an industry "norm" or customary industry practice, for example, would not be viewed by an objective person as reasonable, normal or customary under the circumstances.

Comment: A commenter suggested that the term "sweepings" as used in proposed § 171.51(b)(6)(ii) should be clarified so as to exclude substances other than controlled substances and to reflect a collective amount of sweepings.

Response: The term "sweepings" as used in both the Act and the proposed regulations has a clear meaning which does not include substances other than controlled substances. Further, the term "sweepings" clearly relates to small quantities which are actually evidence of larger quantities having been carried on board.

Comment: Some commenters wished to see the applicability of the provisions for issuance of a summons to appear expanded to different kinds of vessels other than those included within the definition of commercial fishing industry vessels set forth in proposed § 171.51(b)(2). One commenter stated that the term "commercial fishing industry vessel" meant to embrace private-for-hire and charter sport fishing vessels and headboats.

Response: Section 6079 of the Act specifies that the summons to appear in lieu of physical seizure is applicable to "a commercial fishing industry vessel as defined in § 2101(11a), (11b), and (11c) of title 46, United States Code." The definition set forth in proposed § 171.51(b)(2) is totally consistent with the definition in section 2101(11a), (11b) and (11c) of title 46, United States Code. The definition does not include sport-fishing vessels, headboats, or vessels in the barge and towing industry. Customs is not statutorily required to provide the summons to appear in lieu of seizure procedure to other vessels. However, Customs is not prohibited by the Act from expanding the procedures to other kinds of vessels. Any policy decisions to expand the summons to appear procedure to other vessels will be based on Customs experience under these regulations.

Comment: One commenter asked that the regulations include a definition of what constitutes "proceeding to or from a fishing area or intermediate port of call." It was also suggested that the definition include times when a vessel has been outfitted for a voyage whether or not it is still in port.

Response: The language at issue has been taken directly from the statute and is unambiguous on its face. There is no reason to give the terms "proceeding to or from" other than their literal meaning. The literal meaning cannot be said to include times when the vessel is in port.

Comment: One commenter suggested that the regulations clarify the provision in the summons that requires a commercial fishing industry vessel to report to the port designated in the summons to take into account unique geographic factors confronted in Alaska.

Response: We do not agree that such clarification belongs in the regulations. Local ports have been instructed to workout appropriate operational details in unique and/or unusual circumstances.

Comment: A commenter stated that the regulations should not specify, as they did in § 171.52(e)(3), that a statement of the facts and circumstances, supported by satisfactory evidence, should be included in a petition because § 171.52(c)(1)–(3) specifies the statutory elements of proof. The commenter stated that § 171.52(e)(3) requires more than section 6079 of the Act.

Response: We do not agree. The section, as written, makes it clear that a petitioning party may not obtain return of the seized conveyance by merely citing § 171.52(c)(1)–(3) verbatim. Evidence is required to support the assertions.

Comment: A commenter suggested that the regulations address the treatment of cargo carried on board a commercial vessel that is seized.

Response: We disagree. Cargo is not part of a vessel. It is, therefore, not subject to forfeiture and may be returned to its owner. Customs already has procedures for the disposition of cargo on seized vessels.

Other Changes

Based on a change being made to the Department of Justice regulations on this subject because of a comment, Customs has decided to modify § 171.52(c) to reflect that petitioners also may establish in their petition any statutory rights or defenses beyond those encompassed by the three elements specified in section 6079(b)(2) of the Act.

Conclusion

After careful consideration of all the comments received and further review of the matter, it has been determined that the amendments, with the modifications discussed above, should be adopted.

Regulatory Flexibility Act

It is hereby certified that this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, the analysis requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), are not applicable to these amendments.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in section 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Drafting Information

The principal author of this document was Harold M. Singer, Regulations and Disclosure Law Branch, U.S. Customs Service; however, personnel from other offices participated in its development.

List of Subjects in 19 CFR Parts 162 and 171

Administrative practice and procedures, Law enforcement, Penalties, Seizures and forfeiture.

Amendments to the Regulations

Parts 162 and 171, Customs Regulations (19 CFR parts 162 and 171), are amended as set forth below:

PART 162—RECORDKEEPING, INSPECTION, SEARCH AND SEIZURE

1. The general authority citation of part 162, Customs Regulations, and the specific authority citation for § 162.22, Customs Regulations are revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1624.

* * * * *

Section 162.22 also issued under 18 U.S.C. 546; 19 U.S.C. 1459, 1460, 1594, 1595a, 1701, 1703–1708.

* * * * *

2. Section 162.22(b) is revised to read as follows:

§ 162.22 Seizure of conveyances.

* * * * *

(b) *Facilitating importation contrary to law.* Except as provided in § 171.52(b), every vessel, vehicle, animal, aircraft, or other thing, which is being or has been used in, or to aid or facilitate, the importation, bringing in, unlading, landing, removal, concealing, harboring or subsequent transportation of any article which is being, or has been introduced or attempted to be introduced into the United States contrary to law, shall be seized and held subject to forfeiture. Any person who directs, assists financially or otherwise, or is in any way concerned in any such unlawful activity shall be liable to a penalty equal to the value of the article or articles involved.

* * * * *

3. Section 162.31(a) is amended by adding a sentence at the end of the paragraph to read as follows:

§ 162.31 Notice of fine, penalty, or forfeiture incurred.

(a) *Notice.* * * * For violations involving the possession of personal use quantities of a controlled substance, also see § 171.55.

* * * * *

PART 171—FINES, PENALTIES, AND FORFEITURES

1. The contents of part 171 are amended by adding the contents of subpart F to read as follows:

Subpart F—Expedited Petitioning Procedures

Sec.

171.51 Application and definitions.
171.52 Petition for expedited procedures in an administrative forfeiture proceeding.

Sec.
171.53 Ruling on petition of expedited procedures.
171.54 Substitute res in an administrative forfeiture action.
171.55 Notice provisions.

2. The general authority citation for part 171 is revised and a specific citation added for subpart F to read as follows:

Authority: 19 U.S.C. 66, 1592, 1618, 1624.
* * * * *
d. Subpart F also issued under 19 U.S.C. 1595a, 1605, 1614, Pub. L. 100–690.

3. Section 171.12(b) is revised to read as follows:

§ 171.12 Filing of petition.
* * * * *
(b) *When filed.* If a petitioner seeks expedited relief under subpart F of this part, a petition must be filed within the time frame stated in § 171.52(d). Otherwise, unless additional time has been authorized as provided in § 171.15, petitions for relief shall be filed within 30 days from the date of the mailing of notice of fine, penalty, or forfeiture incurred.
* * * * *

4. Part 171 is amended by adding a new subpart F consisting of §§ 171.51 through 171.55, to read as follows:

Subpart F—Expedited Petitioning Procedures

§ 171.51 Application and definitions.

(a) *Application.* The following definitions, regulations, and criteria are designed to establish and implement procedures required by section 6079 of the Anti-Drug Abuse Act of 1988, Public Law 100–690, title VI (102 Stat. 4181). They are intended to supplement existing law and procedures relative to the forfeiture or property under the identified statutory authority. The provisions of these regulations do not affect the existing legal and equitable rights and remedies of those with an interest in property seized for forfeiture, nor do these provisions relieve interested parties from their existing obligations and responsibilities in pursuing their interests through such courses of action. These regulations are intended to reflect the intent of Congress to minimize the adverse impact occasioned by the prolonged detention of property subject to forfeiture due to violations of law involving possession of personal use quantities of controlled substances. The definition of personal use quantities of controlled substance as contained herein is intended to distinguish between those quantities small in amount which are generally considered to be possessed for personal consumption and not for distribution, and those larger quantities generally considered to be subject to distribution.

(b) *Definitions.* As used in this subpart, the following terms shall have the meanings specified:

(1) *Appraised value.* "Appraised value" has the meaning given in § 162.43(a) of this chapter.

(2) *Commercial fishing industry vessel.* "Commercial fishing industry vessel" means a vessel that:

(i) Commercially engages in the catching, taking, or harvesting of fish or an activity that can reasonably be expected to result in the catching, taking, or harvesting of fish;

(ii) Commercially prepares fish or fish products other than by gutting, decapitating, gilling, skinning, shucking icing, freezing, or brine chilling; or

(iii) Commercially supplies, stores, refrigerates, or transports fish, fish products, or materials directly related to fishing or the preparation of fish to or from a fishing, fish processing, or fish tender vessel or fish processing facility.

(3) *Controlled substance.* "Controlled substance" has the meaning given in 21 U.S.C. 802.

(4) *Normal and customary manner.* "Normal and customary manner" means that inquiry suggested by particular facts and circumstances which would customarily be undertaken by a reasonably prudent individual in a like or similar situation. Actual knowledge of such facts and circumstances is unnecessary, and implied, imputed, or constructive knowledge is sufficient. An established norm, standard, or custom is persuasive but not conclusive or controlling in determining whether a petitioner acted in a normal and customary manner to ascertain how property would be used by another legally in possession of the property.

(5) *Owner or interested party.* "Owner or interested party" means one having a legal and possessory interest in the property seized for foreiture or one who was in legal possession of the property at the time of seizure and is entitled to legal possession at the time of granting the petition of expedited procedure. This includes a lienholder, to the extent of his interest in the property, whose claim is in writing (except for a maritime lien which need not be in writing), unless the collateral is in the possession of the secured party. The agreement securing such a lien must create or provide for a security interest in the collateral, describe the collateral and be signed by the debtor.

(6) *Personal use quantities.* "Personal use quantities" means possession of controlled substances in circumstances where there is no evidence of intent to distribute, or to facilitate the manufacturing, compounding, processing, delivering, importing or exporting of any controlled substance. A quantity of a controlled substance is presumed to be for personal use if the amounts possessed do not exceed the quantities set forth in paragraph (b)(6)(i) of this section if there is no evidence of illicit drug trafficking or distribution such as, but not limited to the factors set forth in paragraph (b)(6)(ii) of this section. The possession of a narcotic, a depressant, a stimulant, a hallucinogin or a cannabis-controlled substance will be considered in excess of personal use quantities if the dosage unit amount possessed provides the same or greater equivalent efficacy as described in paragraph (b)(6)(i) of this section.

(i) *Quantities presumed to be for personal use unless evidence of illicit drug trafficking of distribution exists.* (A) One gram of a mixture of substance containing a detectable amount of heroin;

(B) One gram of a mixture of substance containing a detectable amount of—

(*1*) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivations of ecgonine or their salts have been removed;

(*2*) Cocaine, its salts, optional and geometric isomers, and salts of isomers;

(*3*) Ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

(*4*) Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in paragraphs (b)(6)(i)(B) (*1*) through (*3*) of this section;

(C) ⅒th gram of a mixture of substances described in paragraph (b)(6)(i)(B) of this section which contains cocaine base;

(D) ⅒th gram of mixture of substance containing a detectable amount of phencyclidine (PCP);

(E) 500 micrograms of a mixture of substance containing a detectable amount of lysergic acid diethylamide (LSD);

(F) One ounce of a mixture of substance containing a detectable amount of marihuana; or

(G) One gram of methamphetamine, its salts, isomers, and salts of its isomers, or one gram of a mixture of substances containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers.

(ii) *Evidence of possession for other than personal use.* Quantities shall not be considered to be for personal use if sweepings are present or there is other evidence of possession for other than personal use such as:

(A) Evidence such as drug scales, drug distribution paraphernalia, drug records, drug packaging material, method of drug packaging, drug "cutting" agents and other equipment, that indicates an intent to process, package or distribute a controlled substance;

(B) Information from reliable sources indicating possession of a controlled substance with intent to distribute;

(C) The arrest and/or conviction record of the person or persons in actual or constructive possession of the controlled substance for offenses under Federal, State or local law that indicates an intent to distribute a controlled substance;

(D) The controlled substance is related to large amounts of cash or any amount of prerecorded government funds;

(E) The controlled substance is possessed under circumstances that indicate such a controlled substance is a sample intended for distribution in anticipation of a transaction involving large quantities, or is part of a larger delivery; or

(F) Statements by the possessor, or otherwise attributable to the possessor, including statements of conspirators, that indicate possession with intent to distribute.

(7) *Property.* "Property" means property subject to forfeiture under 21 U.S.C. 881(a) (4), (6), and (7); 19 U.S.C. 1595a, and 49 U.S.C. App. 782.

(8) *Seizing agency.* "Seizing agency" means the Federal agency which has seized the property or adopted the seizure of another agency, and has the responsibility for administratively forfeiting the property.

(9) *Sworn to.* "Sworn to" refers to the oath as provided by 28 U.S.C. 1746 or as notarized in accordance with state law.

§ 171.52 Petition for expedited procedures in an administrative forfeiture proceeding.

(a) *Procedures for violations involving possession of controlled substance in personal use quantities.* The usual procedures for petitions for relief when property is seized are set forth in subpart B of this part. However, where property is seized for administrative forfeiture pursuant to 21 U.S.C. 881(a) (4), (6) or (7), 19 U.S.C. 1595a and/or 49 U.S.C. App. 782 due to violations involving controlled substances in personal use quantities, a petition may be filed pursuant to paragraphs (c) and (d) of this section to seek expedited procedures for release of the property. A petition filed pursuant to this subpart shall also serve as a petition for relief filed under subpart B of this part. The petition may be filed by an owner or interested party.

(b) *Commercial fishing industry vessels.* Where a commercial fishing industry vessel proceeding to or from a fishing area or intermediate port of call or actually engaged in fishing operations is subject to seizure for administrative forfeiture for a violation of law involving controlled substances in personal use quantities, a summons to appear shall be issued in lieu of a physical seizure. The vessel shall report to the port designated in the summons no later than the date specified in the summons. When a commercial fishing industry vessel reports, the appropriate Customs officer shall, depending on the facts and circumstances, either issue another summons to appear at a time deemed appropriate, execute a constructive seizure agreement prusuant to 19 U.S.C. 1605, or take physical custody of the vessel. When a summons to appear has been issued, the seizing agency may be authorized to institute administrative forfeiture as if the vessel had been physically seized. When a summons to appear has been issued, the owner or interested party may file a petition for expedited procedures pursuant to subsection (a); the provisions of subsection (a) and other provisions in this subpart relating to a petition for expedited release shall apply as if the vessel had been physically seized.

(c) *Elements to be established in petition.* (1) The petition for expedited procedures shall establish that:

(i) The petitioner has a valid, good faith interest in the seized property as owner or otherwise;

(ii) The petitioner reasonably attempted to ascertain the use of the property in a normal and customary manner; and

(iii) The petitioner did not know or consent to the illegal use of the property or, in the event that the petitioner knew or should have known of the illegal use, the petitioner did what reasonably could be expected to prevent the violation.

(2) In addition, the petitioner may submit evidence to establish that he has statutory rights or defenses such that he would prevail in a judicial proceeding on the issue of forfeiture.

(d) *Manner of filing.* A petition for expedited procedures must be filed in a timely manner to be considered by Customs. To be filed in a timely manner, the petition must be received by Customs within 20 days from the date the notice of seizure was mailed, or in the case of a commercial fishing industry vessel for which a summons to appear is issued, 20 days from the original date when the vessel is required to report. The petition must be sworn to by the petitioner and signed by the petitioner or his attorney at law. If the petitioner is a corporation, the petition may be sworn to by an officer or responsible supervisory employee thereof and signed by that individual or an attorney at law representing the corporation. Both the envelope and the request must be clearly marked "PETITION FOR EXPEDITED PROCEDURES." The petition shall be addressed to the U.S. Customs Service and filed in triplicate with the district director for the district in which the property was seized, or for commercial fishing industry vessels, with the district director having jurisdiction over the port to which the vessel was required to report.

(e) *Contents of petition.* The petition shall include the following:

(1) A complete description of the property, including identification numbers, if any, and the date and place of the violation and seizure;

(2) A description of the petitioner's interest in the property, supported by the documentation, bills of sale, contracts, mortgages, or other satisfactory documentary evidence; and

(3) A statement of the facts and circumstances relied upon by the petitioner to justify expedited return of the seized property, supported by satisfactory evidence.

§ 171.53 Ruling on petition for expedited procedures.

(a) *Final administrative determination.* Upon receipt of a petition filed pursuant to § 171.52, Customs shall determine first whether a final administrative determination of the case can be made within 21 days of the seizure. If such a final administrative determination is made within 21 days, no further action need be taken under this subpart.

(b) *Determination within 20 days.* If no such final administrative determination is made within 21 days of the seizure, Customs shall within 20 days after the receipt of the petition make a determination as follows:

(1) If Customs determines that the factors listed in § 171.52(c) have been established, it shall terminate the administrative proceedings and release the property from seizure, or in the case of a commercial fishing industry vessel for which a summons has been issued, but not yet answered, dismiss the summons. The property shall not be returned if it is evidence of a violation of law.

(2) If Customs determines that the factors listed in § 171.52(c) have not been established, it shall proceed with the administrative forfeiture.

§ 171.54 Substitute res in an administrative forfeiture action.

(a) *Substitute res.* Where property is seized for administrative forfeiture for a violation involving controlled substances in personal use quantities, the owner or interested party may offer to post an amount equal to the appraised value of the property (the res) to obtain release of the property. The offer, which may be tended at any time subsequent to seizure and up until the completion of administrative forfeiture proceedings, must be in the form of cash, irrevocable letter of credit, certified funds such as a certified check, traveler's check(s), or money order made payable to U.S. Customs. Unless the property is evidence of a violation of law or has other characteristics that particularly suit it for use in illegal activities, it will be released to the owner or interested party subsequent to tender of the substitute res.

(b) *Forfeiture of res.* If a substitute res is posted and it is determined that the property should be administratively forfeited, the res will be forfeited in lieu of the property.

§ 171.55 Notice provisions.

(a) *Special notice provision.* At the time of seizure of property defined in § 171.51, written notice must be provided to the possessor of the property regarding applicable statutes and Federal regulations including the procedures established for the filing of a petition for expedited procedures as set forth in section 6079 of the Anti-Drug Abuse Act of 1988 and implementing regulations.

(b) *Notice provision.* The notice as required by section 1607 of Title 19, United States Code and applicable regulations shall be made at the earliest practicable opportunity after determining ownership of, or interest in, the seized property and shall include a statement of the applicable law under which the property is seized and a statement of the circumstances of the seizure sufficiently precise to enable an owner or interested party to identify the date, place and use of acquisition which makes the property subject to forfeiture.

William von Raab,

Commissioner of Customs.

Approved: September 1, 1989.

Salvatore R. Martoche,

Assistant Secretary of the Treasury.

[FR Doc. 89-21211 Filed 9-8-89; 8:45 am]

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DEPARTMENT OF JUSTICE

Office of the Attorney General

Drug Enforcement Administration

21 CFR Part 1316

[Order No. 1363-89]

Anti-Drug Abuse Act of 1988; Expedited Forfeiture Procedures for Certain Property

AGENCY: Office of the Attorney General, Drug Enforcement Administration, Department of Justice.

ACTION: Final rule.

SUMMARY: Section 6079 of the Anti-Drug Abuse Act of 1988 (Pub. L. 100-690) requires the Attorney General and the Secretary of the Treasury to prescribe regulations for expedited administrative procedures for seizures under section 511(a)(4), (6) and (7) of the Controlled Substances Act (21 U.S.C. 881(a)(4), (6) and (7)); section 596 of the Tariff Act of 1930 (19 U.S.C. 1595a(a)); and section 2 of the Act of August 9, 1939 (53 Stat. 1291; 49 U.S.C. App. 782) for violations involving the possession of personal use quantities of a controlled substance. Section 6079 further requires that the Attorney General, the Secretary of the Treasury, and the Secretary of Transportation prescribe joint regulations providing for issuance of a summons to appear in lieu of seizure of a commercial fishing industry vessel as defined in section 2101(11a), (11b), and (11c) of title 46, United States Code, for violations involving the possession of personal use quantities of a controlled substance. These regulations would apply when a violation is committed on a commercial fishing industry vessel that is proceeding to or from a fishing area or intermediate port of call or is actively engaged in fishing operations.

The Department of Justice, on behalf of the Attorney General, has consulted with the U.S. Customs Service, acting on behalf of the Secretary of the Treasury, and the U.S. Coast Guard, acting on behalf of the Secretary of Transportation, in formulating consistent and compatible regulations to carry out section 6079.

Section 6080 of the Anti-Drug Abuse Act of 1988 requires the Attorney General to prescribe regulations providing for: (1) The expedited release, in certain cases, of conveyances seized for drug-related offenses during the pendency of civil judicial forfeiture proceedings against the conveyance; (2) the expedited filing of complaints against conveyances seized for drug-related offenses; and (3) the release, except in certain specified circumstances, of any such conveyance to any owner who provides security in the form of a bond in an amount equal to the value of the conveyance.

The Department of Justice, on behalf of the Attorney General and in consultation with the United States Customs Service and United States Coast Guard, published a Notice of Proposed Rulemaking in the **Federal Register** on April 10, 1989. (54 FR 14246). On that same date, the United States Customs Service and the United States Coast Guard published separate Notices of Proposed Rulemaking in the **Federal Register** to carry out their respective responsibilities under section 6079. (54 FR 14242 and 54 FR 14250).

Various comments have been received in response to these Notices of Proposed Rulemaking. The Department of Justice has reviewed the comments received by all of the agencies and is today responding to those comments and promulgating its Final Rule. The United States Customs Service and the United States Coast Guard are also responding to comments and promulgating Final Rules which are being published separately in today's **Federal Register.**

EFFECTIVE DATE: October 11, 1989.

FOR FURTHER INFORMATION CONTACT: Harry S. Harbin, Associate Director, Asset Forfeiture Office, Criminal Division, (202) 786-4950.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal person involved in drafting this Final Rule is Harry S. Harbin, Associate Director, Asset Forfeiture Office, Criminal Division.

Discussion of Comments

Seven comments were received in response to the Notices of Proposed Rulemaking published by the Department of Justice, the United States Customs Service and the United States Coast Guard. Several of the comments were duplicates that were sent either to two or to all three agencies. Copies of all of the comments were exchanged by the three agencies.

Applicable Time Periods

Several comments complained that § 1316.93 of the Proposed Regulation allows the Department of Justice more time to make a decision on a petition filed in an administrative forfeiture action than section 6079 of the Anti-Drug Abuse Act of 1988 (ADAA) provides for. We disagree.

Section 6079 of the ADAA specifies that the regulations shall "provide for a

final administrative determination of the case within 21 days of seizure, or provide a procedure by which the defendant can obtain release of the property pending a final determination of the case". It is virtually impossible in most cases for the Department of Justice to make a "final administrative determination" of a forfeiture case within 21 days of seizure. Title 19, United States Code, section 1607 requires the publication of notice of seizure and intention to forfeit for at least three successive weeks prior to issuance of a declaration of administrative forfeiture. Thus, in order to make a "final administrative determination of the case" within 21 days of seizure, publication of notice would have to commence on the day of seizure—a demand which is virtually impossible to meet given the realities of the newspaper publishing industry.

Moreover, notice by publication is the most minimal form of notice that will satisfy the requirements of due process. The Department of Justice makes every reasonable effort to identify the record owners of all property seized for forfeiture and to provide these owners with actual notice of seizure and intention to forfeit prior to issuance of a declaration of administrative forfeiture. In some cases (particularly those involving absentee owners), it is simply impossible to identify and provide actual notice to all record owners within 21 days of seizure. These owners would be foreclosed from filing petitions or challenging the administrative forfeiture if they did not receive notice via publication and failed to file their petitions prior to issuance of the determination of administrative forfeiture 21 days after seizure. The only recourse for such owners would be to file a petition for remission or mitigation pursuant to title 19, United States Code, section 161. We do not believe that Congress intended this result.

Even if the words were more loosely interpreted to mean that the seizing agency must rule on a petition for release within 21 days of seizure, the result would be untenable. First, as just explained, many owners would not receive notice in time to file their petitions within 21 days of seizure. These owners would be foreclosed from the expedited release procedures under section 6079 of the ADAA by virtue of the strict 21-day limit established in the statute. Second, this interpretation would leave the system open to abuse by non-innocent owners who could file their petitions on the 21st day after seizure and leave the government no time to investigate or determine the accuracy of their representations. Again, we do not believe that Congress intended either of these results.

It should be noted that the regulations nonetheless provide for a "final administrative determination of the case" within 21 days of seizure to allow for the rare case in which such determinations are possible without offending due process or opening the system to abuse. *See* § 1316.93(a). To avoid the foregoing problems, however, the Department of Justice also implemented the second alternative under section 6079(b)(2) of the ADAA by devising a "procedure by which a claimant can obtain release of the property", in an expedited manner, "pending a final determination of the case." This procedure allows an owner to file a petition for expedited release of the property at any time from the date of seizure through the twentieth day following first publication of the notice of seizure. *See* § 1316.92(d). This is more time than would be possible if the government were required to make a final administrative determination of the case within 21 days of seizure.

More importantly, the regulations require the seizing agency to make a decision on the petition within 20 days of the filing of the petition, regardless of when the petition is filed. *See* § 1316.93(b). Thus, an owner may file a petition on the day of seizure, even if notice of seizure has not been published, and the seizing agency must make a decision within 20 days. On the other hand, an owner may wait until the twentieth day following first publication of the notice of seizure to file the petition and the seizing agency must still make its decision within 20 days. It is the owner, not the government, who controls the timing of release under this procedure and, in no case, is the seizing agency allowed more than 20 days after filing to make its decision.

The procedure adopted by the Department of Justice provides greater safeguards to owners while, at the same time, limiting the decision-making period to twenty-days following filing of the petition. We feel that this procedure "minimize[s] the adverse impact caused by prolonged detention", while limiting the potential for abuse of the system by non-innocent owners.

It should be noted that these procedures differ somewhat from the procedures in the Final Rule being implemented by the United States Customs Service. Under the Final Rule of the Customs Service, a petition must be filed within 20 days from the date the notice of seizure was mailed, or in the case of a commercial fishing industry vessel for which a summons to appear is issued, 20 days from the original date when the vessel is required to report. Under the Justice Department regulations, the petition must be filed within 20 days from the date of the first publication of the notice of seizure. This difference reflects the differing administrative practices of the Customs Service and the seizing agencies of the Department of Justice.

Burden of Proof/"Presumption of Guilt"

Several comments complained that the regulations violated due process by imposing the burden of proof on the petitioning owner, instead of the seizing agency, with respect to the factors specified in §§ 1316.92(c) and 1316.95(b). Another comment objected to the requirement in § 1316.92(e)(3) that petitions contain a statement of facts and circumstances supporting the petition instead of a mere recitation of the elements specified in section 6079(b) of the ADAA. These comments simply misconceive the unique allocation of burden of proof in civil forfeiture actions. Title 19, United States Code, section 1615—which governs all forfeiture actions for drug-related offenses—specifies that the burden of proof in such actions shall lie upon the claimant. This is as it should be since the only issue of guilt in such *in rem* cases is the "guilt" of the property, which the government must establish by probable cause. *See* 19 U.S.C. 1615. The "innocent owner" defense is an affirmative statutory defense, under certain provisions of the drug statutes, which the owner must establish by a preponderance of the evidence.

It should be noted that several provisions of section 6079(b) of the ADAA consistently reflect this historical allocation of the burden of proof. Thus, subsection 6072(b)(2)(B) expressly states that the owner must establish a valid, good faith interest in the property as owner or otherwise. Similarly, subsection 6079(b)(2)(C) states that the owner must establish the factors identified therein. More importantly, northing on the face of either section 6079 or 6080 even remotely suggests a congressional intent to reverse or modify the traditional allocation of burden of proof in civil forfeiture cases for drug-related offenses.

Summons in Lieu of Seizure

Section 1316.92(b) implements section 6079(d) of the ADAA which specifically provides for the promulgation of joint regulations "providing for issuance of a summons to appear in lieu of seizure of a commercial fishing industry vessel as

defined in section 2101 (11a), (11b) and (11c) of title 46, United States Code, for violations involving personal use quantities of a controlled substance." Section 1316.91(b) defines the term "commercial fishing industry vessel" consistent with its definition in section 2101 (11a), (11b) and (11c) of title 46, United States Code.

Several comments urged that this definition be expanded to include vessels that are not "commercial fishing industry vessels" as defined in the statute. We disagree. Section 6079(d) clearly specifies the scope of applicability for issuance of a summons in lieu of seizure: To "a commercial fishing industry vessel as defined in section 2101 (11a), (11b) and (11c) of title 46, United States Code". There is no ambiguity in the terms of the statute and the statute does not extend its provisions to any other kinds of vessels. Moreover, section 6079(d) specifically provides that the *in rem* jurisdiction of the district court "shall not be affected by the use of a summons under this section". It does not appear from the face of the statute that this jurisdictional safeguard would apply in cases involving any other kinds of vessels. Thus, we have decided not to amend the regulations in question.

One comment suggested including a definition of what constitutes "proceeding to or from a fishing area or intermediate port of call". It was also suggested that the definition include the time when a vessel has been outfitted for a voyage whether or not it is still in port. We disagree. The language at issue is taken directly from the statute and is unambiguous on its face. There is no reason to give the term "proceeding to or from" any meaning other than its literal meaning. That literal meaning cannot be said to include the time when the vessel is in port.

Normal and Customary Manner

Several comments objected to that part of the definition of "Normal and Customary Manner" in § 1316.91(h) which states that "[a]n established norm, standard, or custom is persuasive but not conclusive or controlling in determining whether an owner acted in a normal and customary manner to ascertain how property would be used by another legally in possession of the property" as too restrictive. We disagree.

The thrust of the statute is to grant certain rights to owners who acted reasonably in ascertaining how their property would be used by another in possession. The statutory provision in question merely provides that the property shall not be returned to the owner in any case in which the owner did not act in a normal or customary manner to ascertain how the property will be used. What is "normal and customary" will vary with the circumstances of the individual case, and there may be cases in which mere compliance with an industry "norm" or customary industry practice, for example, would not be viewed by an objective person as resonable, normal or customary under the circumstances. Thus, we have decided to retain this provision which states that compliance with an established norm, custom or standard will be deemed persuasive, but not controlling, in determining whether a person acted in a normal or customary manner.

Substitute Res Bond

Section 6080 of the ADAA created a new Federal statute codified at 21 U.S.C. 881–1. Subsection (d) of this statute provides that, except in certain specified instances, any owner of a conveyance seized for a drug-related offense may obtain release of the conveyance pending judicial forfeiture by providing security in the form of a bond to the Attorney General in an amount equal to the value of the conveyance. This requirement is reflected in § 1316.98. A decision was made to extend this alternative release procedure to owners facing administrative forfeiture actions in the circumstances specified in section 6079 of the ADAA as well. The availability of this alternative release procedure for administrative forfeitures is reflected in § 1316.94. This provision merely formalizes an existing practice among the seizing agencies.

Several comments were recieved which appear to interpret § 1316.94 not as an alternative to the petition procedures specified in §§ 1316.92 and 1316.93, but as a precondition to use of those procedures. This is simply not the case. An owner of property described in title 21, United States Code, section 881(a) (4), (6) and (7), which has been seized for a drug-related offense involving personal use quantities of a controlled substance, may seek expedited release of the property through two alternative procedures. First, the owner may file a timely petition under §§ 1316.92 and 1316.93 and seek return of the property based upon the owner's innocence. This procedure does not require the posting of a bond of any kind. Second, the owner may, at any time prior to issuance of the declaration of administrative forfeiture, post a substitute res bond in an amount equal to the value of the property and obtain its release pursuant to § 1316.94. This latter alternative permits an owner to obtain release of the property immediately after seizure without filing a petition or making any showing of innocence. It is intended as an alternative to the petition procedures in §§ 1316.92 and 1316.93, not as a prerequisite to those procedures.

One comment advocated that the regulations be amended to provide for return of the substitute res bond if the seizing agency fails to decide a petition within twenty-one days. The substitute res bond is intended to be a true substitute for the property seized. Thus, when the owner of property posts a substitute res bond to obtain release of the property immediately after seizure and also files a timely petition under the procedures set forth in § 1316.92, a ruling will be made on the petition within twenty days and the substitute res bond shall be returned to the owner or retained for administrative forfeiture in accordance with § 1316.93. When the owner posts a substitute res bond to obtain release of the property immediately after seizure and also files a claim and cost bond and petition pursuant to § 1316.95, the substitute res bond shall be returned to the owner if the United States Attorney does not rule on the petition within twenty days in accordance with § 1316.96(b).

Sections 1316.94(a) and 1316.98(a), as originally proposed, specified that the substitute res bond must be in the form of a traveler's check or money order. Several comments advocated that other forms of payment be authorized. After reviewing these comments, we have decided to amend §§ 1316.94(a) and 1316.98(a) to allow for posting of the bond in the form of a cashier's check or an irrevocable letter of credit. In order to provide security to the seizing agency and to prevent abuse of the substitute res bond procedure, a sentence has been added to §§ 1316.94(a) and 1316.98(a) specifying that a bond in the form of a cashier's check will be considered as paid once the check has been accepted for payment by the financial institution which furnished the check. Other suggested means for posting the substitute res bond were rejected because of security concerns.

"Personal Use Quantities"

Several comments were directed at the proposed regulatory definition of the term "personal use quantities". Before addressing these comments, we wish to note that section 6079(e) of the ADAA specifically provides that "personal use quantities of a controlled substance shall not include sweepings or other evidence of non-personal use amounts".

The regulatory definition of the term "personal use quantities" is set forth in § 1316.91(j). This definition specifically provides that the term "personal use quantities" shall not include "sweepings" and it sets forth a list of "other evidence" which may be considered in determining whether or not a controlled substance is possessed for personal use only. *See* § 1316.91(j)(1). It also formulates a presumption that the possession of controlled substances is for personal use only when the amounts possessed do not exceed a certain specified quantity and there are no other indicia of illicit drug trafficking or distribution. *See* § 1316.91(j)(2).

Several comments complained of the inclusion of "[t]he arrest and/or conviction record of the person or persons in * * * possession of the controlled substance for offenses * * * that [indicate] an intent to distribute a controlled substance" as "other evidence" which may be considered in determining whether a controlled substance is possessed solely for purposes of personal use in any given case. *See* § 1316.91(j)(1)(iii). After considering these comments, we have decided to retain this provision in the Final Rule. First, it must be emphasized that a determination of whether a controlled substance is possessed solely for purposes of personal use is a determination of subjective intent based upon the totality of the circumstances. Among the more reliable indicia of a person's intent is his or her past record with respect to the illegal distribution of controlled substances. Second, a person's prior arrest or conviction record for drug offenses is not necessarily determinative of whether a controlled substance is possessed solely for purposes of personal use. It is but one of several factors which may be considered in determining a person's subjective intent.

Several comments noted that it is difficult for the owner of a conveyance to know the arrest and/or conviction records of all employees, lessees, acquaintances or other persons who may be on or in possession of a conveyance at any given time. This observation confuses the issue of an owner's innocence with the issue of whether a controlled substance is possessed solely for purposes of personal use. The knowledge of the owner as to the arrest and/or conviction record of the person in possession of a controlled substance is simply irrelevant to an administrative determination of whether the controlled substance is possessed for personal use only. Moreover, a determination that a controlled substance was possessed solely for purposes of personal use does not foreclose the owner from seeking expedited release of the conveyance pursuant to the procedures specified in §§ 1316.95 and 1316.96 or through the substitute res bond procedures specified in §§ 1316.94 and 1316.98. Finally, the owner's lack of knowledge as to the arrest and/or conviction record of the person in possession of the controlled substance is not necessarily determinative of the owner's innocence under the criteria specified in § 1316.95(b) nor is it necessarily determinative of any rights or defenses that the owner may assert in a judicial forfeiture action.

Several comments objected to the fact that the criteria specified in § 1316.91(j)(1) allow for use of various forms of hearsay in determining whether, in a particular case, the controlled substance was possessed solely for purposes of personal use. These forms of hearsay include "[i]nformation from reliable sources indicating possession of a controlled substance with intent to distribute" and "statements attributable to the possessor, including statements of conspirators, that indicate possession with intent to distribute". However, section 6079 of the ADAA merely requires an administrative determination as to whether an owner is entitled to the expedited release procedures specified thereunder. Hearsay is freely admissible in administrative proceedings. *See Richardson* v. *Perales*, 402 U.S. 389, 407–08 (1971). As noted earlier, the issue of whether a controlled substance is possessed solely for purposes of personal use involves a determination of subjective intent. We believe that hearsay evidence may properly be considered in determining that intent. And it is worth reiterating that a determination that a controlled substance was not possessed solely for purposes of personal use—whether based upon information from reliable sources or upon hearsay statements attributable to the possessor—does not foreclose the owner from seeking expedited release of the property under either the procedures specified in §§ 1316.94 and 1316.95 or the substitute res bond procedures specified in §§ 1316.94 and 1316.98.

One comment suggested that the definition of "personal use quantities" be defined as quantities that can be easily concealed upon the body or personal effects of an individual. We disagree. Enormous quantities of controlled substances can easily be concealed upon the person, or in the personal effects, of an individual. In one very recent decision, two defendants were discovered with six and one-half pounds of cocaine concealed in tightly wrapped packages taped to the small of their backs; the bundles were inconspicuous and the defendants were stopped only because one of them engaged in suspicious behavior. *See United States* v. *Charleus*, 871 F.2d 265 (2d Cir. 1989). This is but one recent example; many cases of "personal concealment" involve far larger quantities of controlled substances. The quantities specified in § 1316.91(j)(2)(i)–(vii) are quantities which, in the experience of the Drug Enforcement Administration, are generally consistent with possession of a controlled substance for purposes of personal use.

Section 6079(e) of the ADAA specifically provides that the term "personal use quantities" shall not include "sweepings". One comment suggested that only when the "sweepings" exceed the "personal use" amounts specified in § 1316.91(j)(2)(i)–(vii) should the owner be barred from utilizing the expedited release procedures under section 6079. We disagree. It is not unusual for a conveyance, which has been used to transport significant quantities of a controlled substance, to contain only "sweepings" of the controlled substance after the illicit cargo has been unloaded or the controlled substances have been destroyed in an effort to avoid seizure or arrest. *See generally United States* v. *"Monkey"*, 725 F.2d 1007 (5th Cir. 1984) (ship involved in major marijuana smuggling operation contained only "sweepings" at time of seizure). We feel that the owners of such conveyances should not be eligible for the expedited release procedures under section 6079 even where the aggregate amount of the sweepings is less than the presumptive "personal use quantity" specified for the substance in § 1316.91(j)(2).

"Owner"

One comment criticized the definition of "owner" in § 1316.91(i) as one having a legal and possessory interest in the property seized for forfeiture on the ground that this definition would exclude many innocent lienholders from obtaining prompt release of seized property. We disagree. Lienholders with an immediate right to possession of the seized property would qualify as an "owner" under this definition. The definition necessarily excludes other lienholders in order to avoid problems in which multiple petitions are filed with respect to a single asset by persons

claiming a property interest in the asset. Section 1316.91(i) goes on to provide that "[e]ven though one may hold primary and direct title to the property seized, such person may not have sufficient actual beneficial interest in the property to support a petition as owner if the facts indicate that another person had dominion and control over the property" (emphasis supplied). The purpose of this limitation is not to exclude innocent lienholders with immediate possessory interests in the property seized; it is to exclude "straw owners" from obtaining expedited release of the property. The limitation is discretionary and will be applied on a case-by-case basis. It is not the intent of the Department of Justice to disqualify any bona fide lienholder with an immediate right to possession of the seized asset from filing a petition under these regulations.

Section 1316.92(c)(2)

Several comments noted that § 1316.92(c)(2) of the Proposed Rule appeared to require proof of a factor not provided for in the statutory language of section 6079(b)(2) of the ADAA: That the petitioner had statutory rights or defenses, that would show to a substantial probability that the owner would prevail on the issue of forfeiture. By adding this factor, the Department did not intend to add to the burden of persons filing petitions for expedited release under § 1316.92. Rather, this factor was inserted to provide certain petitioners with an additional basis for obtaining expedited release of their property.

In order to clarify this intent, the factor in question has been removed from the provisions of § 1316.92(c) and a new paragraph (d) has been added which allows petitioners the opportunity to establish statutory rights or defenses beyond those encompassed by the criteria specified in section 6079(b)(2) of the ADAA.

Section 1316.95(b)(3)

One comment complained that the requirement in § 1316.95(b)(3)—that an owner demonstrate that he/she "reasonably attempted to ascertain the use of the conveyance in a normal and customary manner"—constitutes an improper attempt to "lift" a requirement out of section 6079(b)(2) and include it as a requirement in petitions filed pursuant to section 6080 of the ADAA. We agree that the requirement in question constitutes a statutory element applicable to petitions filed pursuant to section 6079(b)(2) of the ADAA but we disagree that inclusion of this element as a requirement for petitions filed pursuant to section 6080 is in any way improper.

Section 6080 of the ADAA requires the Attorney General, *inter alia*, "to make a determination on a petition [for release of a conveyance seized for a drug-related offense] expeditiously, including a determination of any rights or defenses available to a petitioner." *See* 21 U.S.C. 881–1(a)(1). The statute is silent as to what must be included in a petition filed thereunder and does not confine the discretion of the Attorney General in any way. It merely specifies that "[t]he Attorney General shall prescribe regulations to carry out this section." *See* 21 U.S.C. 881–1(a)(4). Thus, the Attorney General has broad discretion to determine the requirements for petitions filed under the statute.

It is not unreasonable to include, as a requirement for petitions filed under section 6080, a provision that the owner establish that he/she "reasonably attempted to ascertain the use of the conveyance in a normal and customary manner." It seems logical to impose, as to owners of conveyances seized for *any* drug-related offenses, the same threshold requirement which must be met by owners seeking release of property seized for drug-related offenses involving only personal use quantities of a controlled substance.

Moreover, a demonstration that the owner reasonably attempted to ascertain the use of the conveyance in a normal and customary manner is directly relevant to the "determination of [the] rights or defenses available to the [owner]" as required by section 6080. One's "conscious indifference" to the use of a conveyance is sufficient, without more, to negate any common law "innocent owner" defense. *See, e.g., United States* v. *1966 Beechcraft Aircraft Model King Air*, 777 F.2d 947, 952 (4th Cir. 1985). Similarly, one who avoids knowledge concerning the illegal use of a conveyance by "sticking his head in the sand" cannot prevail on a statutory innocent owner defense. *See United States* v. *1980 Red Ferrari*, 827 F.2d 477, 480 (9th Cir. 1987) (rejecting "innocent owner" defense under 21 U.S.C. 881(a)(6)). The requirement in question is certainly relevant to the issue, under 21 U.S.C. 881(a)(4)(C), of whether the owner acted with knowledge or willful blindness as to the illegal use of the conveyance and it clearly may be relevant in determining whether a common carrier either consented or was privy to the illegal use of a conveyance. Because the requirement specified in § 1316.95(b)(3) is not barred by the language of section 6080 and because it is clearly relevant to the determination of rights or defenses which may be available to the petitioner, we feel that its inclusion in the regulations is both rational and proper.

Section 1316.96(d)

One comment noted that § 1316.96(d), as set forth in the Proposed Rule, specified that "[i]f, within 20 days, the United States Attorney * * * advises the petitioner that there is not enough available information to make a decision on the petition, the Government shall retain possession of the conveyance until the owner provides a substitute res bond * * * or until the forfeiture is finalized". This comment correctly noted that this provision directly contradicts that part of section 6080 of the ADAA which provides that "[i]f the Attorney General does not grant or deny a petition * * * within 20 days after the date on which the petition is filed, the conveyance shall be returned to the owner pending further forfeiture proceedings". Section 1316.96(d) has been amended to conform with the statutory language.

Seizure of Cargo

One comment advocated that there be a specific provision in the Final Rule for release of any cargo carried on board a conveyance that is seized for forfeiture. The relevant statutes do not require inclusion of such a provision. The release of cargo from seized conveyances is currently handled by the seizing agencies on a case-by-case basis. This will continue to be the case after the Final Rule becomes effective.

Notice Provisions

Due to a typing error, § 1316.99 was misnumbered in the Proposed Rule as § 1316.19. This error has been corrected. The first sentence of § 1316.99(a) has also been amended to reflect the distinction between the expedited release procedures under section 6079 of the ADAA, which apply to property identified in § 1316.91 that is seized for violations involving personal use quantities of a controlled substance, and the procedures under section 6080 of the ADAA, which apply to conveyances seized for drug-related offenses. This amendment is consistent with the intent of Congress and states more precisely the categories of cases to which the "special notice provision" applies.

An erroneous reference was made to a "petition for substitute res bond" in this section as published in the Proposed Rule. There are no "petitions" for substitute res bonds. Rather, the owner of property seeking its expedited release

pursuant to § 1316.94 or § 1316.98 need only establish his identity as owner of the property, post a bond satisfactory in form, and the property will be released to the owner as provided therein unless the property is evidence of violation of law or has design or other characteristics that particularly suit it for use in illegal activities.

Technical Amendments

A citation to section 1316.92(e) was inadvertently omitted from the definition of "Sworn to" in § 1316.91(n) of the Proposed Rule. The word "industry" was inadvertantly omitted from the phrase "commercial fishing industry vessel" in § 1316.93(b)(1) of the Proposed Rule. These omissions are corrected in the Final Rule. A reference to "property" was added to the phrase "property or conveyance" in § 1316.99(b) to more clearly specify the scope of the standard notice provisions.

Conclusion

After due consideration of the comments noted above, the Department of Justice has adopted the proposal as originally set forth, except for the amendments noted above.

Regulatory Flexibility Act/Executive Order 12281

As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a substantial impact on small business entities. 5 U.S.C. 604(B). It is not a major rule within the meaning of Executive Order No. 12291 of February 17, 1981.

List of Subjects in 21 CFR Part 1316

Administrative practice and procedure, Drug traffic control, Seizures and forfeitures.

Amendment

By virtue of the authority vested in me by law, including 28 U.S.C. 509, 510 and sections 6079 and 6080 of the Anti-Drug Abuse Act of 1988, Public Law No. 100–690, 102 Stat. 4181, title 21, chapter II, of the Code of Federal Regulations is amended as follows:

PART 1316—[AMENDED]

1. The authority citation for part 1316 is revised to read as follows:

Authority: 21 U.S.C. 822, 871, 872, 880, 881, 881–1, 883, 958, 965; 19 U.S.C. 1606, 1607, 1608, 1610, 1613, 1618; 28 U.S.C. 509, 510; Pub. L. No. 100–690, sec. 6079, 6080.

2. A new subpart F is added to part 1316 to read as follows:

Subpart F—Expedited Forfeiture Proceedings for Certain Property

Sec.

1316.90 Purpose and scope.
1316.91 Definitions.
1316.92 Petition for expedited release in an administrative forfeiture action.
1316.93 Ruling on petition for expedited release in an administrative forfeiture action.
1316.94 Posting of substitute res in an administrative forfeiture action.
1316.95 Petition for expedited release of a conveyance in a judicial forfeiture action.
1316.96 Ruling on a petition for expedited release of a conveyance in a judicial forfeiture action.
1316.97 Initiating judicial forfeiture proceeding against a conveyance within 60 days of the filing of a claim and cost bond.
1316.98 Substitute res bond in a judicial forfeiture action against a conveyance.
1316.99 Notice provisions.

Subpart F—Expedited Forfeiture Proceedings for Certain Property

§ 1316.90 Purpose and scope.

(a) The following definitions, regulations, and criteria are designed to establish and implement procedures required by sections 6079 and 6080 of the Anti-Drug Abuse Act of 1988, Public Law No. 100–690 (102 Stat. 4181). They are intended to supplement existing law and procedures relative to the forfeiture of property under the identified statutory authority. The provisions of these regulations do not affect the existing legal and equitable rights and remedies of those with an interest in property seized for forfeiture, nor do these provisions relieve interested parties from their existing obligations and responsibilities in pursuing their interests through such courses of action. These regulations are intended to reflect the intent of Congress to minimize the adverse impact on those entitled to legal or equitable relief occasioned by the prolonged detention of property subject to forfeiture due to violations of law involving personal use quantities of controlled substances, and conveyances seized for drug-related offenses. The definition of personal use quantities of a controlled substance as contained herein is intended to distinguish between those quantities small in amount which are generally considered to be possessed for personal consumption and not for further distribution, and those larger quantities generally considered to be subject to further distribution.

(b) In this regard, for violations involving the possession of personal use quantities of a controlled substance, section 6079(b)(2) requires either that administrative forfeiture be completed within 21 days of the seizure of the property, or alternatively, that procedures are established that provide a means by which an individual entitled to relief may initiate an expedited administrative review of the legal and factual basis of the seizure for forfeiture. Should an individual request relief pursuant to these regulations and be entitled to the return of the seized property, such property shall be returned immediately following that determination, and the administrative forfeiture process shall cease. Should the individual not be entitled to the return of the seized property, however, the administrative forfeiture of that property shall proceed. The owner may, in any event, obtain release of property pending the administrative forfeiture by submitting to the agency making the determination, property sufficient to preserve the government's vested interest for purposes of the administrative forfeiture.

(c) Section 6080 requires a similar expedited review by the Attorney General or his representative in those instances where a conveyance is being forfeited in a civil judicial proceeding following its seizure for a drug-related offense.

§ 1316.91 Definitions.

As used in this subpart, the following terms shall have the meanings specified:

(a) The term "Appraised Value" means the estimated domestic price at the time of seizure at which such or similar property is freely offered for sale.

(b) The term "Commercial Fishing Industry Vessel" means a vessel that:

(1) Commercially engages in the catching, taking, or harvesting of fish or an activity that can reasonably be expected to result in the catching, taking, or harvesting of fish;

(2) Commercially prepares fish or fish products other than by gutting, decapitating, gilling, skinning, shucking, icing, freezing, or brine chilling; or

(3) Commercially supplies, stores, refrigerates, or transports fish, fish products, or materials directly related to fishing or the preparation of fish to or from a fishing, fish processing, or fish tender vessel or fish processing facility.

(c) The term "Controlled Substance" has the meaning given in section 802 of title 21, United States Code (U.S.C.).

(d) The term "Drug-Related Offense" means any proscribed offense which involves the possession, distribution, manufacture, cultivation, sale, transfer, or the attempt or conspiracy to possess, distribute, manufacture, cultivate, sell or

transfer any substance the possession of which is prohibited by Title 21, U.S.C.

(e) The term "Immediately" means within 20 days of the filing of a petition for expedited release by an owner.

(f) The term "Interested Party" means one who was in legal possession of the property at the time of seizure and is entitled to legal possession at the time of the granting of the petition for expedited release. This includes a lienholder (to the extent of his interest in the property) whose claim is in writing (except for a maritime lien which need not be in writing), unless the collateral is in the possession of the secured party. The agreement securing such lien must create or provide for a security interest in the collateral, describe the collateral, and be signed by the debtor.

(g) The term "Legal and Factual Basis of the Seizure" means a statement of the applicable law under which the property is seized, and a statement of the circumstances of the seizure sufficiently precise to enable an owner or other interested party to identify the date, place, and use or acquisition which makes the property subject to forfeiture.

(h) The term "Normal and Customary Manner" means that inquiry suggested by particular facts and circumstances which would customarily be undertaken by a reasonably prudent individual in a like or similar situation. Actual knowledge of such facts and circumstances is unnecessary, and implied, imputed, or constructive knowledge is sufficient. An established norm, standard, or custom is persuasive but not conclusive or controlling in determining whether an owner acted in a normal and customary manner to ascertain how property would be used by another legally in possession of the property. The failure to act in a normal and customary manner as defined herein will result in the denial of a petition for expedited release of the property and is intended to have the desirable effect of inducing owners of the property to exercise greater care in transferring possession of their property.

(i) The term "Owner" means one having a legal and possessory interest in the property seized for forfeiture. Even though one may hold primary and direct title to the property seized, such person may not have sufficient actual beneficial interest in the property to support a petition as owner if the facts indicate that another person had dominion and control over the property.

(j) The term "Personal Use Quantities" means possession of controlled substances in circumstances where there is no other evidence of an intent to distribute, of to facilitate the manufacturing, compounding, processing, delivering, importing or exporting of any controlled substance. Evidence of personal use quantities shall not include sweepings or other evidence of possession of quantities of a controlled substance for other than personal use.

(1) Such other evidence shall include:

(i) Evidence, such as drug scales, drug distribution paraphernalia, drug records, drug packaging material, method of drug packaging, drug "cutting" agents and other equipment, that indicates an intent to process, package or distribute a controlled substance;

(ii) Information from reliable sources indicating possession of a controlled substance with intent to distribute;

(iii) The arrest and/or conviction record of the person or persons in actual or constructive possession of the controlled substance for offenses under Federal, State or local law that indicates an intent to distribute a controlled substance;

(iv) The controlled substance is related to large amounts of cash or any amount of prerecorded government funds;

(v) The controlled substance is possessed under circumstances that indicate such a controlled substance is a sample intended for distribution in anticipation of a transaction involving large quantities, or is part of a larger delivery; or

(vi) Statements by the possessor, or otherwise attributable to the possessor, including statements of conspirators, that indicate possession with intent to distribute.

(2) Possession of a controlled substance shall be presumed to be for personal use when there are no indicia of illicit drug trafficking or distribution such as, but not limited to, the factors listed above and the amounts do not exceed the following quantities:

(i) One gram of a mixture of substance containing a detectable amount of heroin;

(ii) One gram of a mixture or substance containing a detectable amount of—

(A) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivations of ecgonine or their salts have been removed;

(B) Cocaine, its salts, optical and geometric isomers, and salts of isomers;

(C) Ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

(D) Any compound, mixture or preparation which contains any quantity of any of the substances referred to in paragraphs (j)(2)(ii)(A) through (j)(2)(ii)(C) of this section;

(iii) 1/10th gram of a mixture or substance described in paragraph (j)(2)(ii) of this section which contains cocaine base;

(iv) 1/10th gram of a mixture or substance containing a detectable amount of phencyclidine (PCP);

(v) 500 micrograms of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

(vi) One ounce of a mixture of substance containing a detectable amount of marihuana;

(vii) One gram of methamphetamine, its salts, isomers, and salts of its isomers, or one gram of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers.

(3) The possession of a narcotic, a depressant, a stimulant, a hallucinogen or cannabis-controlled substance will be considered in excess of personal use quantities if the dosage unit amount possessed provides the same or greater equivalent efficacy as described in paragraph (j)(2) of this section.

(k) The term "Property" means property subject to forfeiture under title 21, U.S.C., sections 881(a) (4), (6), and (7); title 19, U.S.C., section 1595a, and; title 49, U.S.C. App., section 782.

(l) The term "Seizing Agency" means the Federal agency which has seized the property or adopted the seizure of another agency, and has the responsibility for administratively forfeiting the property;

(m) The term "Statutory Rights or Defenses to the Forfeiture" means all legal and equitable rights and remedies available to a claimant of property seized for forfeiture.

(n) The term "Sworn to" as used in §§1316.92(e) and 1316.95(c) refers to the oath as provided by Title 28, U.S.C., section 1746.

§ 1316.92 Petition for expedited release in an administrative forfeiture action.

(a) Where property is seized for administrative forfeiture involving controlled substances in personal use quantities the owner may petition the seizing agency for expedited release of the property.

(b) Where property described in paragraph (a) of this section is a commercial fishing industry vessel proceeding to or from a fishing area or intermediate port of call or actually engaged in fishing operations, which would be subject to seizure for administrative forfeiture for a violation of law involving controlled substances in personal use quantities, a summons to appear shall be issued in lieu of a

physical seizure. The vessel shall report to the port designated in the summons. The seizing agency shall be authorized to effect administrative forfeiture as if the vessel had been physically seized. Upon answering the summons to appear on or prior to the last reporting date specified in the summons, the owner of the vessel may file a petition for expedited release pursuant to paragraph (a) of this section and the provisions of paragraph (a) of this section and other provisions in this subpart pertaining to a petition for expedited release shall apply as if the vessel had been physically seized.

(c) The owner filing the petition for expedited release shall establish the following:

(1) The owner has a valid, good faith interest in the seized property as owner or otherwise;

(2) The owner reasonably attempted to ascertain the use of the property in a normal and customary manner; and

(3) The owner did not know or consent to the illegal use of the property, or in the event that the owner knew or should have known of the illegal use, the owner did what reasonably could be expected to prevent the violation.

(d) In addition to those factors listed in paragraph (c) of this section, if an owner can demonstrate that the owner has other statutory rights or defenses that would cause the owner to prevail on the issue of forfeiture, such factors shall also be considered in ruling on the petition for expedited release.

(e) A petition for expedited release must be filed in a timely manner to be considered by the seizing agency. In order to be filed in a timely manner, the petition must be received by the appropriate seizing agency within 20 days from the date of the first publication of the notice of seizure. The petition must be executed and sworn to by the owner and both the envelope and the request must be clearly marked "PETITION FOR EXPEDITED RELEASE." Such petition shall be filed in triplicate with the Special Agent in Charge of the Drug Enforcement Administration (DEA) or Federal Bureau of Investigation (FBI) field office in the judicial district in which the property was seized, depending upon which agency seized the property. The petition shall be addressed to the Director of the FBI or to the Administrator of the DEA, depending upon which agency seized the property.

(f) The petition shall include the following:

(1) A complete description of the property, including identification numbers, if any, and the date and place of seizure;

(2) The petitioner's interest in the property, which shall be supported by title documentation, bills of sale, contracts, mortgages, or other satisfactory documentary evidence; and

(3) A statement of the facts and circumstances, to be established by satisfactory proof, relied upon by the petitioner to justify expedited release of the seized property.

§ 1316.93 Ruling on petition for expedited release in an administrative forfeiture action.

(a) Upon receipt of a petition for expedited release filed pursuant to § 1316.92(a), the seizing agency shall determine first whether a final administrative determination of the case, without regard to the provisions of this subpart, can be made within 21 days of the seizure. If such a final administrative determination is made within 21 days, no further action need be taken under this subpart.

(b) If no such final administrative determination is made within 21 days of the seizure, the following procedure shall apply. The seizing agency shall, within 20 days after the receipt of the petition for expedited release, determine whether the petition filed by the owner has established the factors listed in § 1316.92(c) and:

(1) If the seizing agency determines that those factors have been established, it shall terminate the administrative proceedings and return the property to the owner (or in the case of a commercial fishing industry vessel for which a summons has been issued shall dismiss the summons), except where it is evidence of a violation of law; or

(2) If the seizing agency determines that those factors have not been established, the agency shall proceed with the administrative forfeiture.

§ 1316.94 Posting of substitute res in an administrative forfeiture action.

(a) Where property is seized for administrative forfeiture involving controlled substances in personal use quantities, the owner may obtain release of the property by posting a substitute res with the seizing agency. The property will be released to the owner upon the payment of an amount equal to the appraised value of the property if it is not evidence of a violation of law or has design or other characteristics that particularly suit it for use in illegal activities. This payment must be in the form of a traveler's check, a money order, a cashier's check or an irrevocable letter of credit made payable to the seizing agency. A bond in the form of a cashier's check will be considered as paid once the check has been accepted for payment by the financial institution which issued the check.

(b) If a substitute res is posted and the property is administratively forfeited, the seizing agency will forfeit the substitute res in lieu of the property.

§ 1316.95 Petition for expedited release of a conveyance in a judicial forfeiture action.

(a) Where a conveyance has been seized and is being forfeited in a judicial proceeding for a drug-related offense, the owner may petition the United States Attorney for an expedited release of the conveyance.

(b) The owner filing the petition for expedited release shall establish the following:

(1) The owner has a valid, good faith interest in the seized conveyance as owner or otherwise;

(2) The owner has statutory rights or defenses that would show to a substantial probability that the owner would prevail on the issue of forfeiture;

(3) The owner reasonably attempted to ascertain the use of the conveyance in a normal and customary manner; and

(4) The owner did not know or consent to the illegal use of the conveyance; or in the event that the owner knew or should have known of the illegal use, the owner did what reasonably could be expected to prevent the violation.

(c) A petition for expedited release must be filed in a timely manner in order to be considered by the United States Attorney. To be considered as filed in a timely manner, the petition must be received by the appropriate United States Attorney within 20 days from the date of the first publication of the notice of the action and arrest of the property, or within 30 days after filing of the claim, whichever occurs later. The petition must be executed and sworn to by the owner, and both the envelope and the request must be clearly marked "PETITION FOR EXPEDITED RELEASE." Such petition shall be filed in triplicate and addressed to and filed with the United States Attorney prosecuting the conveyance for forfeiture with a copy to the seizing agency.

(d) The petition shall include the following:

(1) A complete description of the

conveyance, including the identification number, and the date and place of seizure;

(2) The petitioner's interest in the conveyance, which shall be supported by bills of sale, contracts, mortgages, or other satisfactory documentary evidence; and,

(3) The facts and circumstances, to be established by satisfactory proof, relied upon by the petitioner to justify expedited release of the seized conveyance.

§ 1316.96 Ruling on a petition for expedited release of a conveyance in a judicial forfeiture action.

(a) Upon receipt of a petition for expedited release filed pursuant to § 1316.95, the United States Attorney shall rule on the petition within 20 days of receipt. A petition shall be deemed filed on the date it is received by the United States Attorney.

(b) If the United States Attorney does not rule on the petition for expedited release within 20 days after the date on which it is filed, the conveyance shall be returned to the owner or interested party pending further forfeiture proceedings, except where it is evidence of a violation of law. Release of conveyance under provisions of this paragraph shall not affect the forfeiture action with respect to that conveyance.

(c) Upon a favorable ruling on the petition for expedited release, the United States Attorney shall, where necessary, move to terminate the judicial proceedings against the conveyance and immediately direct the return of the conveyance except where it is evidence of a violation of law.

(d) If, within 20 days, the United States Attorney denies the petition for expedited release, the government shall retain possession of the conveyance until the owner provides a substitute res bond pursuant to § 1316.98 or the forfeiture is finalized.

§ 1316.97 Initiating judicial forfeiture proceeding against a conveyance within 60 days of the filing of a claim and cost bond.

(a) The United States Attorney shall file a complaint for forfeiture of the conveyance within 60 days of the filing of the claim and cost bond.

(b) Upon the failure of the United States Attorney to file a complaint for forfeiture of a conveyance within 60 days unless the court extends the 60-day period following a showing of good cause, or unless the owner and the United States Attorney agree to such an extension, the court shall order the return of the conveyance and the return of any bond.

§ 1316.98 Substitute res bond in a judicial forfeiture action against a conveyance.

(a) Where a conveyance is being forfeited in a judicial proceeding for a drug-related offense, the owner may obtain release of the property by filing a substitute res bond with the seizing agency. The conveyance will be released to the owner upon the payment of a bond in the amount of the appraised value of the conveyance if it is not evidence of a violation of law or has design or other characteristics that particularly suit it for use in illegal activities. This bond must be in the form of a traveler's check, a money order, a cashier's check or an irrevocable letter of credit made payable to the Department of Justice or to the United States Customs Service depending on which agency seized the conveyance. A bond in the form of a cashier's check will be considered as paid once the check has been accepted for payment by the financial institution which issued the check.

(b) If a substitute res bond is filed and the conveyance is judicially forfeited, the court will forfeit the bond in lieu of the property.

§ 1316.99 Notice provisions.

(a) *Special notice provision.* At the time of seizure of property defined in § 1316.91 for violations involving the possession of personal use quantities of a controlled substance and conveyances seized pursuant to § 1316.95, written notice must be provided to the possessor of the property regarding applicable statutes and Federal regulations including the procedures established for the filing of a petition for expedited release and for the posting of a substitute res bond as set forth in sections 6079 and 6080 of the Anti-Drug Abuse Act of 1988 and implementing regulations.

(b) *Standard notice provision.* The standard notice to the owner as required by title 19, U.S.C., section 1607 and applicable regulations, shall be made at the earliest practicable opportunity after determining ownership of the seized property or conveyance and shall include the legal and factual basis of the seizure.

Dated: August 18, 1989.

Dick Thornburgh,

Attorney General.

[FR Doc. 89-20305 Filed 9-8-89; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 1

[CGD 89-003]

RIN 2115-AO20

Summons in Lieu of Seizure of Commercial Fishing Industry Vessels

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: These regulations provide for issuance of a summons to appear in lieu of seizure of a commercial fishing industry vessel for violations involving the possession of personal use quantities of a controlled substance. The Anti-Drug Abuse Amendments Act of 1988 requires the Attorney General, the Secretary of the Treasury, and the Secretary of Transportation to issue such regulations. These regulations require, when a violation involving the possession of personal use quantities of a controlled substance is committed on a commercial fishing industry vessel that is proceeding to or from a fishing area or intermediate port of call or is actively engaged in fishing operations, that a summons to appear be issued in lieu of seizure of the vessel.

EFFECTIVE DATE: October 11, 1989.

FOR FURTHER INFORMATION CONTACT: Commander Gerald A. Gallion, Office of the Chief Counsel, (202) 267-1534.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal person involved in the drafting of this final rule is Commander Gerald A. Gallion, Office of the Chief Counsel.

Background

Section 6079 of the Anti-Drug Amendments Act of 1988 (Pub. L. 100-690) requires the Attorney General and the Secretary of the Treasury to prescribe regulations for expedited administrative procedures for seizures under section 511(a) (4), (6), and (7) of the Controlled Substances Act (21 U.S.C. 881(a) (4), (6), and (7)); section 596 of the Tariff Act of 1930 (19 U.S.C. 1595a(a)); and section 2 of the Act of August 9, 1939 (53 Stat. 1291; 49 U.S.C. App. 782) for violations involving the possession of personal use quantities of a controlled substance. Section 6079 further requires that the Attorney General, the Secretary of the Treasury, and the Secretary of Transportation prescribe joint regulations providing for issuance of a summons to appear in lieu of seizure of a commercial fishing industry vessel, as defined in section

2101 (11a), (11b), and (11c) of title 46, United States Code, for violations involving the possession of personal use quantities of a controlled substance. These regulations are to apply when a violation is committed on a commercial fishing industry vessel that is proceeding to or from a fishing area or intermediate port of call or is actively engaged in fishing operations. Section 6079 further provides that these regulations shall not interfere with existing authority to arrest an individual for drug-related offenses or to release that individual into the custody of the master.

The Coast Guard, on behalf of the Secretary of Transportation, has consulted with the U.S. Customs Service, acting on behalf of the Secretary of the Treasury, and the Department of Justice, acting on behalf of the Attorney General, in formulating consistent and compatible regulations to carry out section 6079. Customs Service and Department of Justice final rules are published separately in this Federal Register issue.

The Coast Guard exercises broad authority under 14 U.S.C. 89 on the high seas and waters over which the United States has jurisdiction to prevent, detect and suppress violations of the laws of the United States. That authority includes searches, seizures, and arrests for violations of the laws cited in section 6079 of the Anti-Drug Abuse Amendments Act of 1988. Coast Guard law enforcement action, then, may include the seizure of a commercial fishing industry vessel for a violation involving the possession of personal use quantities of a controlled substance.

These regulations apply to commercial fishing industry vessels, as defined in section 2101 (11a), (11b), and (11c) of title 46, United States Code. These definitions address fishing vessels, fish processing vessels, and fish tender vessels, all of which are commercially engaged in activities related to the catching, processing, transporting, or storing of fish. Sport fishermen are not affected by the provisions of these regulations.

These regulations provide, when a commercial fishing industry vessel is subject to seizure for a violation involving the possession of a personal use quantity of a controlled substance, that the Coast Guard will issue a summons to appear in lieu of seizing the vessel, if that vessel is proceeding to or from a fishing area or intermediate port of call or is actively engaged in fishing operations. What constitutes a "personal use quantity" for determining whether or not a summons should be issued is defined in Customs Service regulations (19 CFR part 171). That definition and a parallel one in Department of Justice regulations (21 CFR 1316.91) govern all regulations developed to implement section 6079 of the Anti-Drug Abuse Amendments Act of 1988. In that the Coast Guard, after escorting a seized vessel into U.S. waters, routinely transfers custody of the vessel to the Customs Service for appropriate disposition, including forfeiture to the United States, the summons to be issued in lieu of seizure will be that prescribed in Customs regulations (19 CFR 171.52).

Discussion of Comments

On April 10, 1989, the Coast Guard published a Notice of Proposed Rulemaking for the issuance of a summons in lieu of seizure (54 FR 14250). Proposed Customs Service and Department of Justice regulations for expedited administrative procedures for seizures, including provisions for the issuance of a summons in lieu of seizure, were published separately in the same issue of the Federal Register (54 FR 14242 and 14246). Three comments were received on the Coast Guard proposal.

Two comments recommended extending the coverage of the regulations to provide for issuance of a summons in lieu of seizure to vessels other than commercial fishing industry vessels. One advocated expansion to include sport fishing vessels and headboats; another encouraged extension to vessels in the barge and towing industry. We disagree. These regulations implement the requirements of section 6079 of the Anti-Drug Abuse Amendments Act of 1988. That statute clearly specifies the scope of applicability of the requirement for issuance of a summons in lieu of seizure: to "a commercial fishing industry vessel as defined in section 2101 (11a), (11b), and (11c) of title 46, United States Code." There is no ambiguity in the terms of the statute, and those terms do not encompass sport fishing vessels, headboats, or vessels in the barge and towing industry. To expand the applicability of the summons in lieu of seizure requirement would exceed the legislative mandate.

One comment suggested including a definition of what constitutes "proceeding to or from a fishing area or intermediate port of call." It was also suggested that the definition include times when a vessel has been outfitted for a voyage whether or not it is still in port. The Coast Guard disagrees. Again, the language at issue has been taken directly from the statute and is unambiguous on its face. There is no reason to give the terms "proceeding to or from" other than their literal meaning. That literal meaning cannot be said to include times when the vessel is in port.

In view of the above, the Coast Guard is adopting the proposed rule as a final rule, without change.

E.O. 12291

This final rule is considered to be non-major under Executive Order 12291 and non-significant under the DOT regulatory policies and procedures (44 FR 11034, February 26, 1979). The economic impact of this rule has been found to be so minimal that further evaluation is unnecessary.

Regulatory Flexibility Act

The final rule affects the owners of commercial fishing industry vessels. In that the rule provides for issuance of a summons in lieu of seizing such a vessel engaged in fishing or in transit to or from a fishing area, it bestows a financial benefit on the owner of a vessel subject to seizure because of a violation of law involving a personal use quantity of a controlled substance. Rather than seizing the vessel as it currently has the authority to do, and thus depriving its owner of the income associated with its voyage, the Coast Guard will issue a summons to appear. Accordingly, the Coast Guard certifies that the final rule will not have a 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 1

Administrative practice and procedure, Authority delegations (Government agencies), Drug traffic control, Freedom of information, Penalties.

For the reasons set forth in the preamble, part 1 of title 33 of the Code of Federal Regulations is amended as set forth below:

PART 1—GENERAL PROVISIONS

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

Authority: 14 U.S.C. 633; 49 U.S.C. 322; Sec. 6079(d), Pub. L. 100-690, 102 Stat. 4181; 49 CFR 1.45(b), 1.46; section 1.01-70 also issued under the authority of E.O. 12316, 46 FR 42237.

2. Section 1.07–100 is added to read as follows:

§ 1.07–100 Summons in lieu of seizure of commercial fishing industry vessels.

(a) As used in this section, the following terms have the meanings specified:

(1) *Commercial fishing industry vessel* means a fishing vessel, a fish processing vessel, or a fish tender vessel as defined in 46 U.S.C. 2101 (11a), (11b), or (11c), respectively.

(2) *Personal use quantity* means a quantity of a controlled substance as specified in 19 CFR 171.51.

(b) When a commercial fishing industry vessel is subject to seizure for a violation of 21 U.S.C. 881(a)(4), (6), or (7); of 19 U.S.C. 1595a(a); or of 49 U.S.C. App. 782 and the violation involves the possession of a personal use quantity of a controlled substance, the vessel shall be issued a summons to appear as prescribed in subpart F of 19 CFR part 171 in lieu of seizure, provided that the vessel is:

(1) Proceeding to or from a fishing area or intermediate port of call; or

(2) Actively engaged in fishing operations.

Dated: August 4, 1989.

W. T. Leland,

Chief, Office of Law Enforcement and Defense Operations.

[FR Doc. 89–18604 Filed 9–8–89; 8:45 am]

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federal register

Monday
September 11, 1989

Part V

Department of Health and Human Services

Agency for Toxic Substances and Disease Registry

Decision Guide for Identifying Substance-Specific Data Needs Related to Toxicological Profiles; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR-11]

Decision Guide for Identifying Substance-Specific Data Needs Related to Toxicological Profiles

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Public Health Service (PHS), Department of Health and Human Services (HHS).

ACTION: Request for Public Comment on the Decision Guide for Identifying Substance-Specific Data Needs Related to Toxicological Profiles.

SUMMARY: This notice announces the Decision Guide for Identifying Substance-Specific Data Needs Related to Toxicological Profiles. Section 104(i)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund), as amended by the Superfund Amendments and Reauthorization Act (SARA) (Pub. L. 99-499), requires that ATSDR prepare (1) a list of hazardous substances found at NPL sites (in order of priority), (2) toxicological profiles of those substances, and (3) a research program to fill data gaps associated with the substances. The priority list of substances was published in the **Federal Register** on April 17, 1987 and October 20, 1988 (52 FR 12866 and 53 FR 41280). The availability of the first 10 final toxicological profiles was published in the **Federal Register** on April 6, 1989 and June 23, 1989 (54 FR 14037 and 54 FR 26417). As the first step in preparing a research program, ATSDR has developed a Decision Guide. This Decision Guide, as approved by the Agency's Board of Scientific Counselors, is published below. Public comment is invited.

DATE: Comments concerning this notice must be received by October 26, 1989.

ADDRESSES: Comments on this notice should bear the docket control number ATSDR-11 and should be submitted to Mr. Edward Skowronski, Research Analysis Branch, Agency for Toxic Substances and Disease Registry, Mailstop E-29, 1600 Clifton Road, NE., Atlanta, Georgia 30333.

Comments on this notice will be available for public inspection at the Agency for Toxic Substances and Disease Registry, Building 37, Executive Park Drive, Atlanta, Georgia 30329, from 8 a.m. until 4:30 p.m., Monday through Friday, except for legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Skowronski, Research Analysis Branch, Agency for Toxic Substances and Disease Registry, Mailstop E-29, 1600 Clifton Road, NE., Atlanta, Georgia 30333. *Telephone:* 404-639-0730.

SUPPLEMENTARY INFORMATION:

Administrative Record: ATSDR has established a public version of this record with materials pertaining to this notice (ATSDR docket control number-11). The public file is available for inspection during the times and at the address given in the section entitled Address of this notice.

Decision Guide for Identifying Substance-Specific Data Needs Related to Toxicological Profiles

I. Background

Created by the original Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA or Superfund), the Agency for Toxic Substances and Disease Registry (ATSDR) of the Public Health Service (PHS) is responsible for implementing health related authorities of Superfund. Among the original responsibilities delegated to ATSDR by this Act was to establish and maintain an inventory of literature, research, and studies on the health effects of toxic substances.

It was the sense of Congress that more complete toxicological and health effects data were needed to determine the potential threat to human health due to exposure to hazardous substances. Toward that end, Congress expanded ATSDR's mandates with several significant new responsibilities in the Superfund Amendments and Reauthorization Act of 1986 (SARA) including: (A) listings of hazardous substances, (B) preparation of toxicological profiles, and (C) initiation of research to fill research needs. The legislative mandates in CERCLA as amended underlying these three responsibilities are discussed below.

A. Listings of Hazardous Substances

Section 104(i)(2)(A). This section directs ATSDR and the Environmental Protection Agency (EPA) to jointly prepare a list of the substances most commonly found at sites on the National Priorities List and that pose the most significant risk to human health. The statute requires:

- First list of 100 priority substances to be prepared by April 17, 1987;
- Second List of 100 priority substances to be prepared by October 17, 1988;
- An additional 25 priority substances to be added annually.

B. Preparation of Toxicological Profiles

Section 104(i)(2)(A). ATSDR is directed to prepare a toxicological profile for each substance on these lists of priority substances in accordance with a given schedule. In addition, this section of CERCLA requires ATSDR to:

- Update each profile, at a minimum, every 3 years;
- Determine whether adequate information on health effects is available for each substance or in the process of development and, where appropriate, identify the toxicological testing needs for each substance.

C. Research

Section 104(i)(5)(A). For each substance on the list, ATSDR should consult with EPA and other PHS agencies to assess whether adequate information on the health effects of each substance is available.

For any substance for which adequate information is not available, ATSDR, in conjunction with National Toxicology Program (NTP) is required to assure the initiation of a program of research designed to determine the health effects (and techniques for developing methods to determine such health effects) for each substance. Where possible, the program should develop methods to determine the health effects of such a substance in combination with other substances with which it is commonly found.

Such a program shall include, to the extent necessary to supplement existing information, but shall not be limited to—

(i) Laboratory and other studies to determine short, intermediate, and long-term health effects;

(ii) Laboratory and other studies to determine organ-specific, site-specific, and system-specific acute and chronic toxicity;

(iii) Laboratory and other studies to determine the manner in which such substances are metabolized or to otherwise develop an understanding of the biokinetics of such substances; and

(iv) Where there is possibility of obtaining human data, the collection of such information.

Section 104(i)(5)(C). In developing and implementing a research program, ATSDR is required to coordinate with EPA and NTP to avoid duplicating research being conducted in other programs and under other authorities. In addition ATSDR is directed to consider the recommendations of the Interagency Testing Committee (ITC).

Section 104(i)(5)(D).

It is the sense of the Congress that the costs of research programs under this

paragraph be borne by the manufacturers and processors of the hazardous substance in question, as required in programs of toxicological testing under the Toxic Substances Control Act. Within 1 year after the enactment of the Superfund Amendments and Reauthorization Act of 1986, the Administrator of EPA shall promulgate regulations which provide, where appropriate, for payment of such costs by manufacturers and processors under the Toxic Substances Control Act, and registrants under the Federal Insecticide, Fungicide, and Rodenticide Act, and recovery of such costs from responsible parties under this Act.

The mission of ATSDR is to prevent or mitigate adverse human health effects or diminished quality of life that result from exposure to hazardous substances in the environment. To meet its mission, ATSDR must base its public health concerns, programs, activities, and actions on the application of contemporary science and resulting scientific findings. Sound science provides the cement for sound risk-management decisions. Bad or inadequate science provides a poor foundation for these decisions.

No matter how toxic a substance may be, people must come in contact with it (exposure) for harmful human health effects to result. Exposure may occur either by direct contact with the substance or indirect contact in the environment through breathing air, eating, or drinking material that contains the substance.

The scientific literature on the human health effects of hazardous substances in the environment clearly indicates hazard to human health from exposure to some substances. The literature base consists of relevant occupational studies, laboratory animal toxicology studies, and some community health studies. Regarding community health studies, a small body of literature indicates adverse human health effects in persons exposed to drinking water containing halomethanes and hydrocarbons (Grisham, 1986). Other hazardous substances that have been investigated for adverse effects on human health include some pesticides, metals, and organic compounds (Buffler *et al.*, 1985). However, most of the human epidemiologic investigations cited in these reviews suffer from poorly documented exposure data. In general, there is a paucity of exposure data in relevant human populations exposed to hazardous substances of concern.

II. Tenets for Decision Making in Research

Given the pivotal importance of scientific knowledge for public health actions on hazardous substances in the environment, ATSDR sponsors an applied research program authorized by provisions in the Superfund Act, as amended. The program is based on tenets that ATSDR has developed from the expertise of the Agency's staff, reports in the scientific literature, and from discussions with public health officials in Federal, State, and local agencies.

The tenets presented below will serve as a guide to ATSDR's decision making. To the extent that others may find them useful, ATSDR encourages their consideration.

- Because there is a paucity of human exposure data, a need exists for research programs directed toward filling the gaps with sound scientific data.
- Exposure data from appropriately selected human populations are vital for risk assessment and risk management.
- Validation of human exposure models with actual exposure data is essential.
- Scientific findings from occupational health studies are relevant to exposure of community residents to hazardous substances, but great caution must be used when making extrapolations from worker populations to populations that include children and other critical populations in the community setting.
- Toxicologic studies using laboratory animals are important for identifying potential human health effects but extrapolations between species must be made carefully and based on commonly accepted scientific principles.
- Well-designated and -conducted epidemiologic studies of relevant human health outcomes are the best source of data for decision-making on hazardous substances. In particular, longitudinal studies of carefully chosen cohorts are encouraged for evaluating health consequences of long-term exposure to low levels of hazardous substances. Exposure registries will be a vital resource to the conduct of such studies.
- A pressing need exists both for improving health surveillance systems and for linking them to environmental data systems.
- Community populations should be examined for evidence of health outcomes in addition to cancer and reproductive sequelae, e.g., effects on immune function, effects on the nervous system, and effects on skin.
- The effects of environmental hazardous substances on the health of children, the elderly, minorities, persons with infirmities, and other potentially impacted subpopulations need to be addressed through appropriate research and health surveillance.
- Better environmental health science will improve risk assessment and risk management.

III. Proposed Decision Guide

A. Background

An instrument is essential to guide ATSDR in identifying the substance-specific information that conforms to ATSDR's tenets for decision making. This key information is termed substance-specific data needs. Such an instrument would aid the Agency's scientific staff and its contractors in preparing toxicological profiles, specifically in identifying of substance-specific data needs and ultimately ATSDR's substance-specific research agenda.

An important consideration in the identification of data needs is the informational needs of the Agency regarding health assessments. A health assessment requires the following kinds of information.

- Background—Evaluation of information on the site's physical, geographical, historical, and operational setting;
- Environmental contamination and physical hazards;
- Potential environmental (air, water, soil, biota) and human exposure pathways (inhalation, ingestion, contact);
- Demographics—Populations at risk;
- Evaluation of human exposure—Comparison of contaminant levels relative to existing health standards;
- Public health implications;
- Conclusions/Recommendations—Determination of public health implications based on available medical and toxicologic information.

It is apparent from the Health Assessment process that data needs in both the areas of exposure assessment and substance toxicity affect ATSDR's ability to assess the impact of hazardous substances from Superfund sites on human health. The lack of sound scientific data on human health implications from exposure to hazardous substances produces uncertainties in the resulting conclusions and recommendations in a health assessment.

B. Attributes of the Decision Guide

The investment would guide the scientific staff to identify the exposure, toxicity, and substance-specific data needs while meeting the mandates of CERCLA in the following manner:

Determining . . . whether adequate information of the health effects of each substance is available or in the process of development to determine levels of exposure

which present a significant risk to human health of acute, subacute, and chronic health effects.

Identifying . . . toxicological testing needed to identify the types of levels of exposure that may present significant risk of adverse health effects in humans.

The ATSDR's Research Agenda for Priority Substances must possess the following characteristics:

- It should facilitate the progressive accumulation of priority data while containing cost.
- It should strike a balance in developing both exposure and toxicity data to evaluate public health concerns.
- It must be flexible and tailored to the data needs for each individual substance rather than using an automatic fill-in-the-blank approach.
- It must allow simultaneous research efforts in more than one area of investigation for a given substance.

Ultimately, the data from ATSDR's Research Agenda for Priority Substances would reduce or eliminate the uncertainties of health assessments.

C. Substance-Specific Research

The first step in identifying substance-specific research is the detailed examination of existing substance-specific data on exposure and toxicity. This requires a judgment on the quality of the existing information.

ATSDR has adopted the National Research Council's (NRC) "Guidelines for Assessing the Quality of Individual Studies" in "Toxicity Testing: Strategies to Determine Needs and Priorities" (NRC, 1984). ATSDR also agrees with the NRC that judging the quality of past and future studies solely by standards of today is not appropriate. The NRC guidelines suggest that a report of scientific findings will be considered adequate for use in health hazard assessment if it meets the following basic criteria:

- All elements of exposure are clearly described.
- Results in test subjects are predictive of human response and test subjects are sensitive to the effects of the substance.
- Controls are comparable with test subjects in all respects except the treatment variable.
- End points answer the specific questions addressed in the study and observed effects are sufficient in number or degree to establish a dose-response relationship that can be used in estimating the hazard to the target species.
- Due consideration in both the design and the interpretation of studies must be given for appropriate statistical analysis of the data.

The ATSDR subscribes to the NRC guidelines. To the extent that they are appropriate, they should also be applied to judgments on the quality of data from epidemiological investigations and other scientific studies of relevance to ATSDR's substance-specific research program. In addition, the reliability of epidemiological data in hazard identification is increased when the results are obtained from studies that have the following assets (Johnson, 1988; Houk, 1989):

- Are derived from well-designed and well-executed case control or cohort studies that are free from bias;
- Display a strong association unlikely to be due to chance variation;
- Follow a logical, temporal sequence of exposure-response;
- Have been replicated in a variety of settings;
- Exhibit a dose-response relationship, using valid estimates of exposure and dose;
- Are toxicologically plausible;
- Where possible, include an examination of causality.

In addition, ATSDR recognizes the following desirable factors of studies or reports of scientific findings as set forth in the NRC guidelines:

- Subjective elements should be minimized.
- Peer review of scientific papers and of reports is desirable. (Note: CERCLA mandates that toxicologic testing results used by ATSDR be peer reviewed.)
- Results reported have increased credibility if they are supported by findings from other investigations.
- Similarity of results to those of tests and conducted on structurally related compounds increases scientific confidence.
- Evidence of adherence to good laboratory practices improves confidence in results.

The types of information that ATSDR requires to identify data needs fall into three levels and these are defined below and depicted in Figure 1.

Level I—A base set of exposure and toxicity information for *identifying* basic exposure and toxicity characteristics of each substance. This information would be used to *identify* further research needs.

Level II—A set of tests and research for *confirming* the toxicity and exposure indicated by Level I data. These data would be used to evaluate further research needs.

Level III—Research to improve the *application* to humans of the results of Level II research.

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Categories of Data Needs

Approach for ATSDR's Data Needs

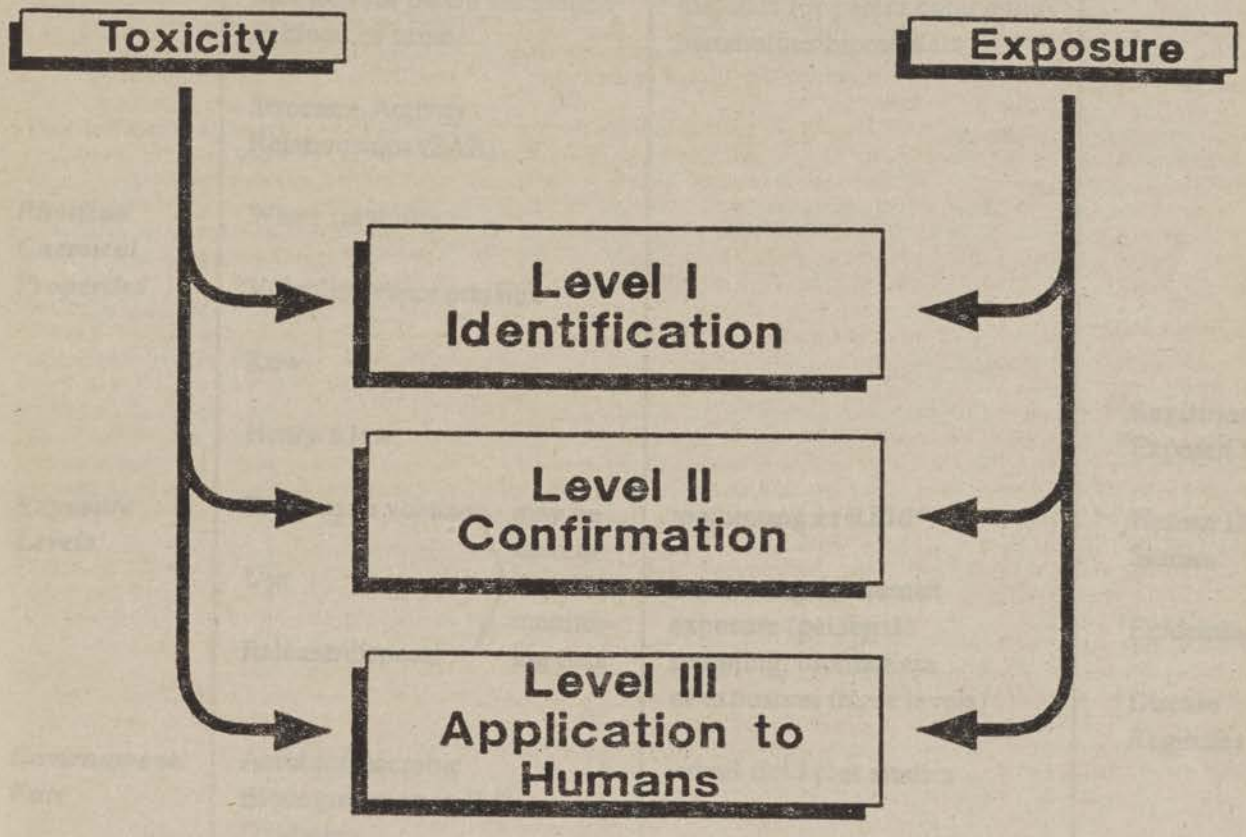


Figure 1

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As the initial stage of the overall guide for developing and evaluating data and information on exposure and toxicity, Level I is designed to be:

- Broad enough across subcategories to support decisions on the need for further studies in exposure and toxicity;
- Extensive enough within subcategories to support reasoned judgments concerning further studies in each major aspect of exposure and toxicity; and
- Sufficient as a *guide* to organize substance-by-substance scientific judgment on additional research needs, not a rigid recipe.

Data needs are categorized as exposure or toxicity and are then subcategorized (Tables 1 and 2). The subcategories of exposure reflect ATSDR's need for data that would allow evaluation of humans exposed to substances in the environment and consist of analytical methods, physical/chemical properties, environmental fate, and bioavailability. Toxicity is divided into ten subgroups relating either to duration of exposure or type of effect. These subcategories are single-dose exposure, repeated-dose exposure, chronic exposure, genotoxicity, reproduction, development, immunotoxicity, neurotoxicity, sensitization, and carcinogenicity.

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Table 1
Exposure Data

Exposure	Level I	Level II	Level III
Analytical	Methods for parent compound in REM*	methods for degradation products in REM*	
	Methods for parent compound in blood or urine	methods for parent compound\ metabolites\biomarkers	
	Structure-Activity Relationships (SAR)		
Physical/ Chemical Properties	Water solubility		
	Volatility/vapor pressure		
	Kow		
	Henry's law		Registries of Exposed Persons
Exposure Levels	Production volume, Use, Release/disposal (may be used in lieu of monitoring data)	monitoring in REM*	Human Dosimetry Studies
		monitoring for human exposure (personal sampling, biomarkers of exposure, tissue levels)	Epidemiology
			Disease Registries
Environment Fate	Aerobic/anaerobic Biodegradation in H_2O Oxidation Hydrolysis Aerosolization Photoreactivity Volatilization Soil adsorption/desorption	small field plot studies	
		monitoring for products in REM *	
Bioavailability		food chain bioaccumulation	
		availability from REM* (analytical or toxicity) emphasize in vivo	

*REM = Relevant Environmental Media

Table 2
Toxicity Data

Toxicity	Level I	Level II	Level III
Single Dose Exposure	Single Dose Disposition Skin/Eye Irritation Acute Toxicity		
Repeated Dose Exposure	14-day by Relevant Route 90-day Subchronic	Comparative Toxicokinetics	
Chronic Exposure	SAR	2-year Bioassay	Epidemiology
	Ames Micronucleus	Additional Genotoxicity Studies	Mechanism of Toxic Action
Reproductive	Extended Repro Workup in Subchronic	2-Generation or Continuous Breeding	Biomarkers of disease
Developmental	Short Term in vivo Screen	2-Species Developmental	Clinical Methods for Mitigating Toxicity
Immunotoxicity	(Use Subchronic Results) Battery	Immunotox	
Neurotoxicity	Neuropath in Subchronic Demeanor in Subchronic	Neurotox Battery	
Sensitization	Dermal Sensitization		
Carcinogenicity	(Use Muta & subchronic results)	2-year Bioassay	

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In each subcategory the guide begins with the basic information needed to make scientific judgment on more complex research (Level I). It then proceeds through intermediate types of information that confirm information either found or apparent in Level I (Level II). Finally it deals with the most complex, i.e., information that applies to humans and which, when available, would allow identification of the types of levels of exposure that may present significant risk of adverse health effects in humans (Level III). Given the data available at any one time, data needs for a particular chemical could fall in Level I for certain subcategories, in Level II for others, and in Level III for still others. In fact, in exceptional situations, the data needs for a given substance could require studies (for different subcategories) in all three levels simultaneously.

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Process for Application of ATSDR's Decision Guide

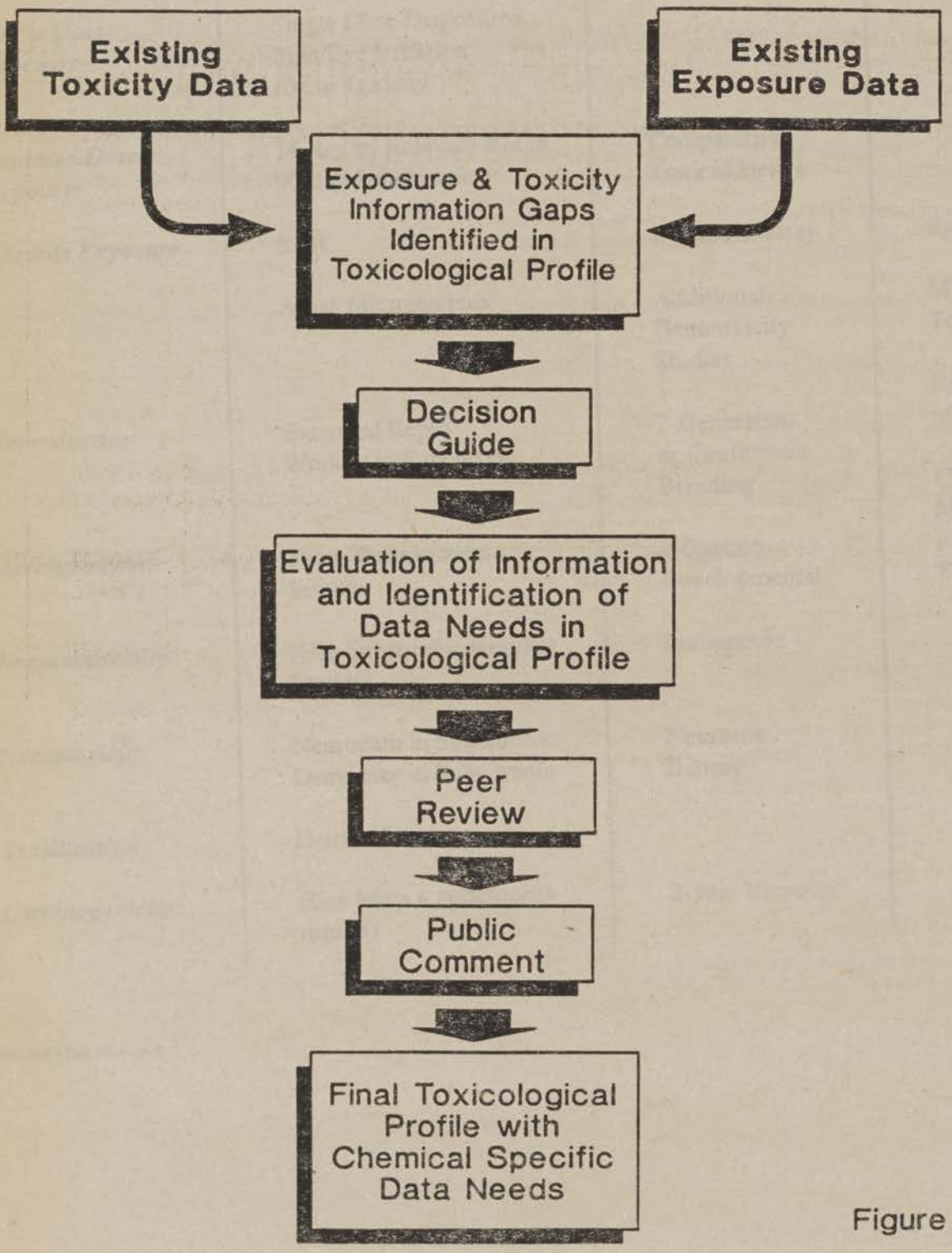


Figure 2

At the end of each level a decision would be made whether further research is needed for the subcategory. The use of the decision guide would provide a substance-by-substance scientific judgment of data needs. The results of applying the decision guide, i.e. the data needs for each chemical, would appear in the toxicological profile. The profile would be peer reviewed and subsequently released for public comment. These two steps allow for review, critique, and comment on the data needs. The scientific staff would revise the data needs in the profile as appropriate. Paramount to the program design is:

(1) The survey of international and national ongoing studies, and

(2) The periodic reconsideration of data needs—inherent in the triennial profile update process—based upon acquisition and review of new data.

ATSDR is mandated to initiate a program of research for each substance, and the data needs identified by the above process would be the first step toward the identifying the substance-specific research agenda. The other steps, setting substance-specific and cross-substance priorities of data needs are discussed below (section IV, A and B).

D. Application of the Decision Guide

1. *Sample Exercise for Di(2-ethylhexyl) phthalate—DEHP.* The results of applying the decision guide are presented for DEHP.

This is a sample exercise and the data needs identified in this exercise have not been developed beyond identification, nor have they been evaluated for the feasibility or potential of being filled by other research sources. A discussion of the basis for identifying data needs for the exposure and toxicity categories follow (Tables 3 and 4).

A review and evaluation of the DEHP literature was made to determine the presence and acceptability of key information in the decision guide. Special considerations were made for the application to Superfund sites; e.g., common routes of exposure and the availability of analytical methods sensitive enough for environmental exposure conditions.

2. *DEHP—Discussion of exposure Data Needs.* Phthalic acid esters (PAE) represent a class of compounds with large production volume and potential for environmental release. Because of their low solubility in water and persistence in the environment, the potential for bioconcentration is recognized. Di(2-ethylhexyl) phthalate (DEHP), a representative PAE, is a commonly used plasticizer that has become widely distributed in the environment and has recognized toxicity in animal models. Because of usage patterns, PAEs occur as mixtures in the environment, but at this time ATSDR is dealing only with DEHP. It is apparent that we must consider DEHP as a sentinel for other PAEs with an eye toward addressing the issues that arise from the following statements on environmental PAE mixtures:

- In general, phthalate solubilities in water decrease with increasing molecular weight. High molecular weight phthalates are practically insoluble, making detection in water extremely difficult.
- Vapor pressure decreases with increasing molecular weight; PAE vapor pressures are essentially nil at ambient temperatures. It is generally accepted that low levels of phthalates occur in the atmosphere and higher levels occur near release sources, e.g. incinerators.
- Data on octanol-water partitioning verify the tendency of phthalates to partition to organic matter and to soil or sediment.
- Biodegradation half-lives generally correlate with the length of alkyl sidechains.

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Table 3
Exposure Data

Exposure	Level I	Level II	Level III
Analytical	Methods for parent compound in REM*	Methods for degradation products in REM*	
	Analytical Method to Separate Homologs/Isomers		
	Methods for parent compound in blood or urine	Methods for parent compound\ metabolites\biomarkers	
	Structure-Activity Relationships (SAR)		
Physical/ Chemical Properties	Water solubility		
	Volatility/vapor pressure		
	Kow		Registries of Exposed Persons
	Henry's law		Human dosimetry studies
Exposure Levels	Production volume, Use, Release/disposal — may be used in lieu of monitoring data	Monitoring in REM*	Epidemiology
		Monitoring for human exposure (personal sampling, biomarkers of exposure, tissue levels)	Disease Registries
	Determine which phthalate esters and their amounts around sites		
Environment Fate	Aerobic/anaerobic Biodegradation in H_2O Oxidation Hydrolysis Aerosolization Photoreactivity Volatilization Soil adsorption/desorption	Small field plot studies	
		Monitoring for products in REM*	
		Determine aerobic and anaerobic degradation of homologs/isomers	
Bioavailability		Food chain Bioaccumulation Availability from REM* (analytical or toxicity) emphasize in vivo	

*REM = Relevant Environmental Media

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Analytical methods consisting of GC/MS and HPLC/UV are available and adequate for detecting DEPH. However, methods for separating, identifying, and quantifying PAEs are not available. Use of the Decision Guide identified a need' for developing such analytic methods to address the enrivonmental situation, i.e. mixtures of PAEs. This class of chemicals is recognized as having differing abilities to induce toxic responses and this problem must be addressed from the analytic standpoint before one can ascertain to what and to how much human populations are being exposed. This need must also be filled before one can assess the *in situ* degradation potential of PAEs and the resultant levels of human exposure.

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Table 4
DEHP Toxicity Data

Toxicity	Level I	Level II	Level III
Single Dose Exposure	Single Dose Disposition Skin/Eye Irritation Acute Toxicity		
Repeated Dose Exposure	14-day by Relevant Route 90-day Subchronic	Comparative Toxicokinetics	Epidemiology
		Physiologically based Pharmacokinetics	**Cohort Study Medical Devises (DEHP only) Peroxisome proliferation?**
			Epi Study Occupational Exposure M/F reproductive toxicity?
Chronic Exposure	SAR	2-year Bioassay	
	Determine Additivity of phthalates via SAR: Is DEHP a prototype for phthalates?		Mechanism of Toxic Action
			Mechanism of peroxisome proliferation
Genotoxicity	Ames Micronucleus	Additional Genotoxicity	Biomarkers of disease
Reproductive	Extended Repro workup in Subchronic	2-Generation or Continuous Breeding	Clinical Methods for Mitigating Toxicity
Developmental	Short term in vivo screen	2-species Developmental	
Immunotoxicity	(Use subchronic results)	Immunotox Battery	
Neurotoxicity	Neuropath in subchronic Demeanor in subchronic	Neurotox Battery	
Sensitization	Dermal sensitization		
Carcinogenicity	(Use Muta & subchronic results)	2-year Bioassay	

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3. *DEHP—Discussion of Toxicity Data Needs.* Most toxicity data for DEHP has been derived from gavage studies. DEHP has been shown to be a carcinogen in an NTP bioassay. Using the Decision Guide, questions arise as to species differences in the route of exposure, metabolism, and endpoints, i.e., mechanisms producing peroxisome proliferation. In addition, reproductive and developmental toxicity appear to be a possibility for DEHP. Because populations exist that have had high levels of exposure both to DEHP alone (medical device users) and to mixtures of PAEs (occupational), a research need was identified to assess these two populations for toxicity related to DEHP. Specifically, the study should address the potential of DEHP to produce peroxisome proliferation in humans (medical device users) and alterations in reproductive function (occupation). The data needs are shown in their respective levels in Table 4.

IV. Setting Priorities

Once the data needs have been identified in the profile, the needs for substance-specific data must then undergo further scientific evaluation leading to priorities and ultimately to ATSDR's Research Agenda for Priority Substances (Figure 3). The scientists from the ATSDR, EPA and NTP as well as the profile author from the contractor will use the tenets previously set forth (section II) and the following criteria for setting priorities for substance-specific data needs. Once priorities have been set for these data needs, each substance's data needs will be submitted for public comment and subsequently revised where appropriate. The revised data needs are termed substance-specific research needs. These procedures will take place as the three agencies progress from identifying information gaps and data needs to determining substance-specific research needs and eventually to creating ATSDR's Research Agenda for Priority Substances. This process involves setting first substance-specific and then cross-substance priorities (Figure 3).

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Proposed Process for Development of ATSDR's Research Agenda

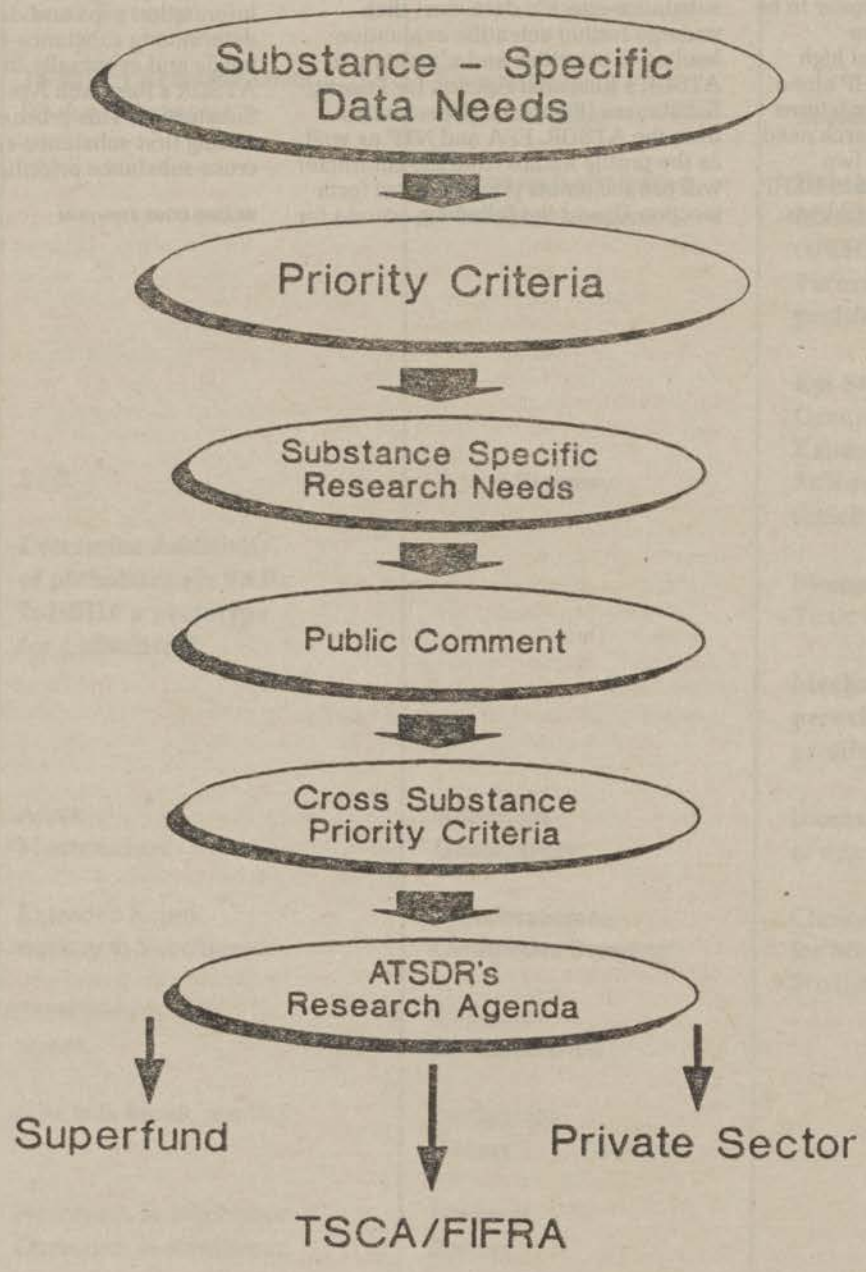


Figure 3

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A. Substance-Specific Priorities

In the process of setting substance-specific priorities data needs, some general principles must be recognized.

- Not all information gaps are data needs.
- All data needs are not of the same priority.
- Substance should be considered individually but may be grouped because of structural similarity or other relevant factors.
- ATSDR's Tenets for Decision Making in Research should be used.

Once the data needs have been identified in the toxicological profile, a technical panel composed of scientists from the three agencies and the contractor will convene. This group will have the responsibility for setting priorities for substance-specific data needs. The technical panel will consider the following:

- All levels of data should be considered in selecting priority data needs.
- Level I gaps are not automatically in the priority grouping. In general, Level I data have priority when there are no higher level data and when data are insufficient to make higher level priority testing decisions.
- Priority for either exposure or toxicity data requires thorough evaluation of research needs in other areas to help achieve a balanced research program for each substance.

Because the hazardous substances have varying amounts of existing exposure and toxicity data, there is an inherent need to build on a sound basic data foundation (Level I and II). Doing otherwise would usually not justify higher level research. In general, the data needs for individual hazardous substances listed below will be considered research priorities, usually in the following descending order:

- Development and/or confirmation of appropriate analytic methods.
- Determination of environmental and human exposure levels when analytic methods are available.
- Bioavailability studies for substances of known significant toxicity and exposure.
- Studies available for all toxicological profile substances to characterize target organs and dose response.
- Disposition studies and comparative physiological-based pharmacokinetics when a toxic endpoint has been determined and differences in species response have been noted.
- Mechanistic studies on substances with significant toxicity and substantial human exposure.
- Investigation of methods for mitigation of toxicity for substances where enough is known about mode of action to guide research.
- Epidemiologic studies that will provide a direct answer on human disease for a substance of known significant toxicity.

B. Cross-Substance Priorities

Considering ATSDR's Tenets for Decision Making in Research, the substance-specific priorities (substance-specific research needs) will undergo a process to set cross-substance priorities with the following considerations.

- The aggregate of prioritized data needs for individual hazardous substances will form the information base for determining priority research needs across a set of hazardous substances. In general, Level III research will be given priority over Levels I and II when prioritizing across substances.
- As ATSDR's Listings of Hazardous Substances take into account the known toxicity, occurrence at NPL sites, and potential for human exposure, the position of a substance on those lists should be considered in setting cross-substance priority research needs. In general, greater weight will be given to higher ranking substances.
- As stated in many of ATSDR's Tenets for Decision Making for Research (Section II), human exposure considerations are vital to health assessments. Thus the size of the human population exposed to the substance should be considered in setting cross-substance priority research needs. In general, greater weight will be given to research that is relevant to the greatest number of persons in populations of concern.
- As the effects of hazardous environmental substances on the health of children, the elderly, minorities, persons with infirmities, and other potentially impacted subpopulations need to be addressed. The existence and size of susceptible subpopulations exposed to the substance should be considered in setting cross-substance priority research needs.
- CERCLA mandates that the research program identify types of exposure that may present significant risk of adverse health effects in humans. Thus, consideration of the use of such data, i.e. data that is key to making a judgment as to levels of significant human exposure, is a matter of priority. This would enhance the ability of public health officials to implement appropriate health protective actions.
- Where possible, priority will be given to research that can be generalized to other substances or areas of science.
- Other things being equal, priority will be given to studies of substances that will provide insight on multiple substances rather than on a single substance.

V. Definitions

Adequate Data: A substance-specific information base that is complete enough to permit performance of an ATSDR Health Assessment; judged on sound scientific basis.

ATSDR's Registry of Data Needs for Superfund Substances: Collection of needs that have been identified, and subsequently peer reviewed, for any of the Superfund Hazardous Substances.

Data Gap: Phrase used in first 25 profiles indicating lack of information in current knowledge relevant to stated criteria listed in the profile.

Data Needs: Substance-specific information need identified via decision guide; information required to perform health assessments.

Decision Guide: ATSDR's proposed categories of data that, if available, would support the preparation of a health assessment by reducing the uncertainties that are inherent to the process.

Exposure: Direct contact with the substance or indirect contact in the environment through breathing air, eating, or drinking material that contains the substance.

Health Assessment: ATSDR's evaluation of data and information on the release of hazardous substances into the environment, performed to assess any current or future impacts on public health, develop health advisories or other health recommendations, and identify studies or actions needed to evaluate and mitigate or prevent human health effects.

Research Needs: Substance-specific data needs identified as priority via a technical evaluation and subject to public comment.

Research Program: Substance-specific research needs identified as priority across chemicals and directed toward reducing the uncertainty of health assessments. The program will permit determination of the types or levels of exposure that may present significant risk of adverse health effects in humans.

Sufficient Information: Phrase used in the first 25 toxicological profiles to indicate when information available on a specific substance fulfilled stated criteria listed in the profile.

VI. List of Abbreviations

ATSDR: Agency for Toxic Substances and Disease Registry

CERCLA: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (Superfund)

DEHP: Di(2-ethylhexyl) phthalate

EPA: Environmental Protection Agency

FIFRA: Federal Insecticide, Fungicide and Rodenticide Act

ITC: Interagency Testing Committee

NTP: National Toxicity Program

PAE: Phthalic acid esters

PHS: Public Health Service

SAR: Structure-Activity Relationship

SARA: Superfund Amendments and Reauthorization Act of 1986

TSCA: Toxic Substances Control Act

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Dated: August 28, 1989.

Walter R. Dowdle,

Acting Administrator, Agency for Toxic Substances and Disease Registry.

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

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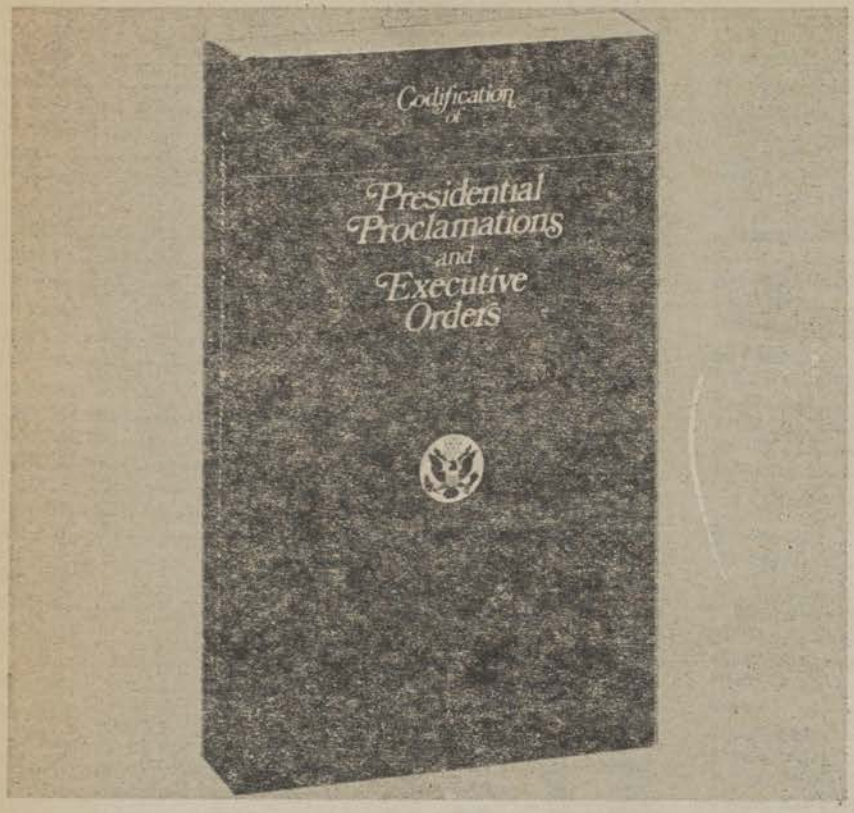
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[4] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

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