AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

9-14-89
Vol. 54 No. 177

federal register

Thursday
September 14, 1989

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

OFFICIAL BUSINESS
Penalty for private use, $300

SECOND CLASS NEWSPAPER

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

9-14-89
Vol. 54 No. 177
Pages 37927-38190

federal register

Thursday
September 14, 1989

Briefings on How To Use the Federal Register
For information on briefings in Washington, DC, and Atlanta, GA, see announcement on the inside cover of this issue.

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

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $340 per year in paper form; $195 per year in microfiche form; or $37,500 per year for the magnetic tape. Six-month subscriptions are also available at one-half the annual rate. The charge for individual copies in paper or microfiche form is $1.50 for each issue, or $1.50 for each group of pages as actually bound, or $175.00 per magnetic tape. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or charge to your GPO Deposit Account or VISA or Mastercard.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 54 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202–783–3238
Magnetic tapes	275–3328
Problems with public subscriptions	275–3054

Single copies/back copies:

Paper or fiche	783–3238
Magnetic tapes	275–3328
Problems with public single copies	275–3050

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	523–5240
Magnetic tapes	275–3328
Problems with Federal agency subscriptions	523–5240

For other telephone numbers, see the Reader Aids section at the end of this issue.

THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
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.

ATLANTA, GA

WHEN: September 20; at 9:00 a.m.
WHERE: Room 808, 75 Spring Street, SW.
Richard B. Russell Federal Building
Atlanta, GA
RESERVATIONS: Call the Federal Information Center
404–331–6895

WASHINGTON, DC

WHEN: September 25; at 9:00 a.m.
WHERE: Office of the Federal Register
First Floor Conference Room
1100 L Street NW., Washington, DC
RESERVATIONS: 202–523–5240

Contents

Federal Register
Vol. 54, No. 177
Thursday, September 14, 1989

Agency for International Development
NOTICES
Meetings:
International Food and Agricultural Development Board, 38002

Agricultural Marketing Service
RULES
Spearmint oil produced in Far West, 37932

Agriculture Department
See Agricultural Marketing Service; Animal and Plant Health Inspection Service; Forest Service

Air Force Department
NOTICES
Meetings:
Scientific Advisory Board, 37968

Animal and Plant Health Inspection Service
RULES
Overtime services relating to imports and exports:
Communted traveltime allowances, 37931
NOTICES
Environmental statements; availability, etc.:
Genetically engineered plants; field test permits—
Tobacco, 37965

Army Department
See also Engineers Corps
NOTICES
Patent licenses, exclusive:
Dumas, Neil, 37969

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Census Bureau
NOTICES
Surveys, determinations, etc.:
Company Organization; multiestablishment companies, 37967

Commerce Department
See Census Bureau; International Trade Administration; National Oceanic and Atmospheric Administration; Patent and Trademark Office

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Romania, 37968

Defense Department
See also Air Force Department; Army Department; Engineers Corps
NOTICES
Meetings:
Science Board task forces, 37968

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Arenol Chemical Corp., 38002, 38003 (2 documents)
Parish Chemical Co., 38003
Radian Corp., 38003
Wildlife Laboratories, Inc., 38003

Education Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Handicapped children's early education program, etc., 38160, 38168 (2 documents)
Meetings:
National Commission on Drug-Free Schools, 37969

Energy Department
See also Federal Energy Regulatory Commission
NOTICES
Grant and cooperative agreement awards:
Washington State Energy Office, 37970

Engineers Corps
NOTICES
Environmental statements; availability, etc.:
Dry, Cirby, and Linda Creeks, CA, 37969

Environmental Protection Agency
RULES
Air pollutants, hazardous; national emission standards:
Benzene emissions from maleic anhydride plants, ethylbenzene/styrene plants, etc., 38044
PROPOSED RULES
Air pollutants, hazardous; national emission standards:
Benzene emissions from chemical manufacturing process vents, industrial solvent use, etc., 38083
Air quality implementation plans; approval and promulgation; various States:
Alaska, 37948
Public information:
Business information confidentiality; Clean Air Act or Clean Water Act, 38156
Superfund:
National oil and hazardous substances contingency plan—
National priorities list; hazard ranking system; field test report, 37949
NOTICES
Committees; establishment, renewal, termination, etc.:
Stratospheric Ozone Protection Advisory Committee, 37990

Executive Office of the President
See Presidential Documents

Federal Deposit Insurance Corporation
RULES
Assessments, 37935
NOTICES
Meetings; Sunshine Act, 38040

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 38040

Federal Emergency Management Agency
PROPOSED RULES
Disaster assistance:
Robert T. Stafford Disaster Relief and Emergency Assistance Act; implementation, etc.
Hazard mitigation planning, 37952

Federal Energy Regulatory Commission
NOTICES
Natural gas certificate filings:
ANR Pipeline Co. et al., 37970
Natural gas companies:
Certificates of public convenience and necessity; applications, abandonment of service and petitions to amend, 37978, 37979
(2 documents)
Small producer certificates, applications, 37978
Applications, hearings, determinations, etc.:
Arkla Energy Resources, 37980
Black Marlin Pipeline Co., 37985
Columbia Gas Transmission Corp., 37985
(2 documents)
East Tennessee Natural Gas Co., 37986
El Paso Natural Gas Co., 37980, 37986
(2 documents)
Great Lakes Gas Transmission Co., 37987
Midwestern Gas Transmission Co., 37987
National Fuel Gas Supply Corp., 37981
Northern Natural Gas Co., 37987
Pelican Interstate Gas System, 37988
Sea Robin Pipe Line Co., 37988
South Georgia Natural Gas Co., 37981, 37982
(2 documents)
Southern Natural Gas Co., 37982, 37988, 37989
(3 documents)
Tennessee Gas Pipeline Co., 37982
Texas Eastern Transmission Corp., 37983, 37989, 37990
(4 documents)
Texas Gas Pipe Line Corp., 37990
Transcontinental Gas Pipe Line Corp., 37984
Transwestern Pipeline Co., 37984
Williston Basin Interstate Pipeline Co., 37984

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
Yadkin County, NC, 38028

Federal Maritime Commission
NOTICES
Meetings; Sunshine Act, 38040

Federal Reserve System
NOTICES
Applications, hearings, determinations, etc.:
Hadler, William H., et al., 37991

Federal Retirement Thrift Investment Board
NOTICES
Meetings; Sunshine Act, 38040

Fish and Wildlife Service
RULES
Endangered and threatened species:
Rydberg milk-vetch, 37941
Migratory bird permits:
Uniform rules and procedures, 38142

Food and Drug Administration
NOTICES
Medical devices; premarket approval:
Coburn Posterior Chamber Intraocular Lens Models 72NUV, 720NUV, etc., 37993
Lombart (polymacon) Soft (Hydrophilic) Contact Lens, 37991
Microplate Anti-HAV IgM EIA, 37994
Sychrony Model 2020T Pulse Generator, etc., 37992
VITRAX, 37994

Forest Service
NOTICES
Environmental statements; availability, etc.:
Inyo National Forest, CA, 37966
Sawtooth National Forest, ID, 37967

Health and Human Services Department
See Food and Drug Administration; Health Resources and Services Administration; National Institutes of Health; Public Health Service

Health Resources and Services Administration
See also Public Health Service
NOTICES
Meetings; advisory committees:
November, 37995

Inter-American Foundation
NOTICES
Meetings; Sunshine Act, 38040

Interior Department
See also Fish and Wildlife Service; Land Management Bureau; Minerals Management Service; Mines Bureau
PROPOSED RULES
Acquisition regulations:
Conflict of interests, 37959

Internal Revenue Service
PROPOSED RULES
Income taxes:
Arbitrage restrictions—
Qualified student bonds and tax-exempt bonds; hearing, 37947
Research and experimental expenditures
Hearing, 37947

International Development Cooperation Agency
See Agency for International Development

International Trade Administration
NOTICES
European Community product testing and certification procedures, 37967

Justice Department
See Drug Enforcement Administration

Labor Department
See Pension and Welfare Benefits Administration

Land Management Bureau
NOTICES
Environmental statements; availability, etc.:
Sonoma and Lake Counties, CA, 37996
Management framework plans, etc.:
Colorado, 37996
Meetings:
Dickinson District Advisory Council, 37997
Kingman Resource Area Grazing Advisory Board, 37997
Las Vegas District Grazing Advisory Board, 37997
Medford District Advisory Council, 37997
Phoenix/Lower Gila Resource Areas Grazing Advisory Board, 37998
Roseburg District Advisory Council, 37998
Yuma District Advisory Council, 37998
Oil and gas leases:
Utah, 37998
Realty actions; sales, leases, etc.:
Arizona, 37998
California, 37999
Montana, 37999
Survey plat filings:
Alaska, 37999
Withdrawal and reservation of lands:
Wyoming; correction, 38041

Minerals Management Service
NOTICES
Outer Continental Shelf; development operations coordination:
Forest Oil Corp., 38000
Koch Exploration Co., 38000, 38001 (2 documents)
McMoRan Oil & Gas, 38001

Mines Bureau
NOTICES
Meetings:
Mining and Mineral Resources Research Advisory Committee, 38002

National Aeronautics and Space Administration
RULES
Space transportation system:
Space Shuttle mission operations; astronaut candidate recruitment and selection program, 37940

National Foundation on the Arts and the Humanities
NOTICES
Meetings:
Literature Advisory Panel, 38012, 38013 (2 documents)

National Institutes of Health
NOTICES
Meetings:
National Cancer Institute, 37995

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Bering Sea and Aleutian Islands king and tanner crab, 37943
NOTICES
Meetings:
New England Fishery Management Council, 37967
South Atlantic Fishery Management Council, 37968

National Science Foundation
NOTICES
Antarctic Conservation Act of 1978; permit applications, etc., 38013

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Houston Lighting & Power Co. et al., 38013

Patent and Trademark Office
RULES
Trademark cases:
Inter partes proceedings
Correction, 38041

Pension and Welfare Benefits Administration
NOTICES
Employee benefit plans; prohibited transaction exemptions:
Hodgin and Chongsiriwatana, Drs., P.A., 38003
Kendall Homes, Inc., et al., 38004
Wells Fargo Bank, N.A., et al., 38010

Presidential Documents
PROCLAMATIONS
Special observances:
United States Coast Guard Bicentennial (Proc. 6017), 37927
ADMINISTRATIVE ORDERS
Angola, funding for U.N. peacekeeping activities (Presidential Determination 89-26 of Aug. 31, 1989), 37929

Public Health Service
See also Food and Drug Administration; Health Resources and Services Administration; National Institutes of Health
NOTICES
Organization, functions, and authority delegations:
Health Resources and Services Administration et al., 37995

Railroad Retirement Board
NOTICES
Supplemental annuity program; determination of quarterly rate of excise tax, 38014

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
Intermarket Clearing Corp., 38014
Midwest Clearing Corp., 38021
National Securities Clearing Corp., 38022, 38023 (2 documents)
New York Stock Exchange, Inc., 38025
Applications, hearings, determinations, etc.:
American Airlines, Inc., 38026
Franklin Investment Trust et al., 38016
USAir, Inc., 38018
Vermont Life Insurance Co. et al., 38019

Small Business Administration
PROPOSED RULES
Loans to State and local development companies, 37945
NOTICES
Applications, hearings, determinations, etc.:
BDP Capital, Ltd., 38028

Tennessee Valley Authority
NOTICES
Agency information collection activities under OMB review, 38029

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See Federal Highway Administration

Treasury Department
See also Internal Revenue Service; Thrift Supervison Office
NOTICES
Agency information collection activities under OMB review, 38029–38031
(5 documents)

Thrift Supervision Office
PROPOSED RULES
Insured institutions; regulatory capital requirements, 37944

United States Information Agency
NOTICES
Agency information collection activities under OMB review, 38032
Art objects, importation for exhibition:
Paintings of Jakuchu, 38032

Veterans Affairs Department
NOTICES
Legal interpretations; General Counsel-precedent opinions:
Alaskan native and tribal income treatment for improved-pension purposes, 38033
Anatomical loss of creative organ following elective sterilization; entitlement to special monthly compensation, 38033
Burial benefits for death from service-connected disability; time period for filing claim, 38034
Burial in National Cemetery; eligibility, 38034
Educational benefits under Chapter 106, Title 10, USC; eligibility, 38035
Emergency Veterans' Job Training Act; constitutionality of section 7 (b)(3), 38035
Gifts and inheritances of property as improved-pension income, 38036
Improved pension income; deduction of expenses for last illness, burial, and just debts, 38036
Independent dose reconstruction criteria, 38037
National Environmental Policy Act; VA loan guaranty program compliance, 38037
Neuropsychiatric disorder rating codes, 38038
Payment in reopened claims for improved pension; commencement, 38038
Provisional income treatment; improved pension program, 38039

Separate Parts In This Issue

Part II
Environmental Protection Agency, 38044

Part III
Department of the Interior, Fish and Wildlife Service, 38142

Part IV
Environmental Protection Agency, 38156

Part V
Department of Education, 38160

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR

Proclamations:

6017.....37927

Administrative Orders:

Presidential Determinations:

No. 89-26 of Aug. 31, 1989.....37929

7 CFR

354.....37931

985.....37932

12 CFR

327.....37935

Proposed Rules:

561.....37944

563.....37944

13 CFR

Proposed Rules:

108.....37945

14 CFR

1214.....37940

26 CFR

Proposed Rules:

1 (2 documents).....37947

602.....37947

37 CFR

2.....38041

40 CFR

61.....38044

Proposed Rules:

2.....38156

52.....37948

61.....38083

300.....37949

44 CFR

Proposed Rules:

206.....37952

48 CFR

Proposed Rules:

1403.....37959

1405.....37959

1415.....37959

1453.....37959

50 CFR

13.....38142

17.....37941

21.....38142

676.....37943

Federal Register
Vol. 54, No. 177
Thursday, September 14, 1989

Presidential Documents

Title 3—

The President

Proclamation 6017 of September 12, 1989

United States Coast Guard Bicentennial

By the President of the United States of America

A Proclamation

On August 4, 1790, the Congress authorized ten revenue cutters requested by Alexander Hamilton, the Nation's first Secretary of the Treasury, for the purpose of interdicting violators of U.S. customs laws. The vital seagoing service that began with those ten swift vessels lives on today in the form of the United States Coast Guard.

Today, the United States Coast Guard remains in the forefront of our Nation's fight against the importation of contraband by sea. Working in cooperation with other government agencies, it plays a crucial role in preventing illegal drugs from reaching the United States. By helping to keep drugs off America's streets, the Coast Guard is helping to save lives.

Saving lives is nothing new to the outstanding men and women of the United States Coast Guard. Through its search and rescue operations, vessel inspections, and boating safety programs, the Coast Guard protects both commercial and recreational boaters from the perils of the high seas and other navigable waters.

In addition to preventing personal injury and property damage on all U.S. waters, the Coast Guard has served as a leader in protecting those waters. It has helped to minimize damage to the marine environment from spills of oil and other hazardous substances, and it has safeguarded our Nation's ports, waterways, and marine facilities from vandalism and accidental harm.

The U.S. Coast Guard also conducts polar and domestic ice operations to support our national interests and facilitates marine transportation in domestic waters by maintaining short- and long-range aids to navigation—including lighthouses, buoys, and loran stations.

This important Government agency, which has ably served the American people in war as well as peacetime, will observe its Bicentennial during the period of time beginning August 4, 1989, and ending August 4, 1990.

The Congress of the United States, by Senate Joint Resolution 126, has authorized and requested the President to issue a proclamation recognizing the 2 centuries of service by the United States Coast Guard and calling upon the Nation to share in the pride and satisfaction enjoyed by its dedicated members during the commemoration of this Bicentennial.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the period beginning August 4, 1989, and ending August 4, 1990, as a time to commemorate the Bicentennial of the United States Coast Guard. I invite the Governors of the States, Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, and America Samoa and the Mayor of the District of Columbia to provide for the observance of this commemoration.

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

George Bush

[FR Doc. 89-21868
Filed 9-12-89; 2:32 pm]
Billing code 3195-01-M

Presidential Documents

Presidential Determination No. 89–26 of August 31, 1989

Certification Pursuant to Title II of the Dire Emergency Supplemental Appropriations and Transfers, Urgent Supplementals, and Correcting Enrollment Errors Act of 1989 (Public Law 101–45)

Memorandum for the Secretary of State

Pursuant to Title II of the Dire Emergency Supplemental Appropriations and Transfers, Urgent Supplementals, and Correcting Enrollment Errors Act of 1989, Public Law 101–45 and for the reasons stated in the justification for this determination, I hereby determine that:

(1) the armed forces of the South West Africa People's Organization (SWAPO) have left Namibia and returned north of the 16th parallel in Angola in compliance with the Agreement Between the Governments of the People's Republic of Angola and the Republic of Cuba for the Termination of the International Mission of the Cuban Military Contingent (the Bilateral Agreement) signed at the United Nations on December 22, 1988, and the Agreement among the People's Republic of Angola, the Republic of Cuba, and the Republic of South Africa, signed at the United Nations on December 22, 1988;

(2) the United States has received explicit and reliable assurances from each of the parties to the Bilateral Agreement that all Cuban troops will be withdrawn from Angola by July 1, 1991, and that no Cuban troops will remain in Angola after that date; and

(3) the Secretary General of the United Nations has assured the United States that it is his understanding that all Cuban troops will be withdrawn from Angola by July 1, 1991, and that no Cuban troops will remain in Angola after that date.

You are directed to inform the appropriate committees of the Congress of this Determination and the obligation of funds under this authority and to provide them with copies of the justification explaining the basis for this Determination. You are further directed to publish this Determination in the Federal Register.

George Bush

THE WHITE HOUSE,
Washington, August 31, 1989.

[FR Doc. 89–21896
Filed 9–12–89; 3:32 pm]
Billing code 3195–01–M

Rules and Regulations

Federal Register
Vol. 54, No. 177
Thursday, September 14, 1989

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

Animal and Plant Health Inspection Service

7 CFR part 354

[Docket No. 89-127]

Commuted Traveltime Periods

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning overtime services provided by employees of Plant Protection and Quarantine (PPQ) by removing or adding commuted traveltime allowances for various locations in California, Louisiana, New Mexico, and Texas. Commuted traveltime allowances are the periods of time required for PPQ employees to travel from their dispatch points and return there from the places where they perform Sunday, holiday, or other overtime duty. The Government charges a fee for certain overtime services provided by PPQ employees and, under certain circumstances, the fee may include the cost of commuted traveltime. This action is necessary to inform the public of the commuted traveltime between these locations.

EFFECTIVE DATE: September 14, 1989.

FOR FURTHER INFORMATION CONTACT: Paul R. Eggert, Director, Resource Management Support, PPQ, APHIS, USDA, Room 623, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7764.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR, chapter III, and 9 CFR, chapter I, subchapter D, require inspection, laboratory testing, certification, or quarantine of certain plants, plant products, animals and animal byproducts, or other commodities intended for importation into, or exportation from, the United States. When these services must be provided by an employee of Plant Protection and Quarantine (PPQ) on a Sunday or holiday, or at any other time outside the PPQ employee's regular duty hours, the Government charges a fee for the services in accordance with 7 CFR part 354. Under circumstances described in § 354.1(a)(2), this fee may include the cost of commuted traveltime. Section 354.2 contains administrative instructions prescribing commuted traveltime allowances, which reflect, as nearly as is practicable, the periods of time required for PPQ employees to travel from their dispatch points and return there from the places where they perform Sunday, holiday, or other overtime duty.

We are amending § 354.2 of the regulations by removing or adding commuted traveltime allowances for various locations in California, Louisiana, New Mexico, and Texas. The amendments are set forth in the rule portion of this document. This action is necessary to inform the public of the commuted traveltime between these locations.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this 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.

The number of requests for overtime services of a PPQ employee at the locations affected by our rule represents an insignificant portion of the total number of requests for these services in the United States.

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.

Effective Date

The commuted traveltime allowances appropriate for employees performing services at ports of entry, and the features of the reimbursement plan for recovering the cost of furnishing port of entry services, depend upon facts within the knowledge of the Department of Agriculture. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find upon good cause that prior notice and other public procedure with respect to this rule are impracticable and unnecessary; we also find good cause for making this rule effective less than 30 days after publication of this document in the **Federal Register.**

Executive Order 12372

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

List of Subjects in 7 CFR Part 354

Agricultural commodities, Exports, Government employees, Imports, Plants (Agriculture), Quarantine, Transportation.

Accordingly, 7 CFR part 354 is amended as follows:

PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

1. The authority citation for Part 354 continues to read as follows.

Authority: 7 U.S.C. 2260, 49 U.S.C. 1741; 7 CFR 2.17, 2.51, and 371.2(c).

2. Section 354.2 is amended by removing or adding, in alphabetical order the information as shown below:

§ 354.2 Administrative instructions prescribing commuted traveltime.

* * * * *

COMMUTED TRAVELTIME ALLOWANCES

[In hours]

Location Covered	Served From—	Metropolitan area	
		Within	Outside
Remove:			
Louisiana:			
Lake Charles	Crowley		3
Texas			
Rio Grande City	Roma		1
Add:			
California:			
Mather AFB	Stockton		3
McClellan AFB	Stockton		4
Sacramento	Stockton		3
Sacramento Metropolitan Airport	Stockton		4
Fairfield	Stockton		4
Louisiana:			
Cameron	Lake Charles		3
Clifton Ridge	Lake Charles		2
Carlyss	Lake Charles		2
Hackberry	Lake Charles		2
New Mexico:			
Columbus	Deming		1½
Texas:			
Port Arthur	Lake Charles, LA		3
Rio Grande City	Roma	1½	

Done in Washington, DC, this 8th day of September 1989.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-21637 Filed 9-13-89; 8:45 am]

BILLING CODE 3410-10-M

Agricultural Marketing Service

7 CFR Part 985

[FV-89-001 IFR]

Spearmint Oil Produced in the Far West; Revision of Salable Quantities and Allotment Percentages for "Class 1" (Scotch) and "Class 3" (Native) Spearmint Oils for the 1989-90 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule invites comments on increasing the quantity of "Class 1" (Scotch) and "Class 3" (Native) spearmint oils produced in the Far West that may be purchased from, or handled for, producers by handlers during the 1989-90 marketing year which began June 1, 1989. This action is taken under the marketing order for spearmint oil produced in the Far West to promote orderly marketing conditions and was recommended by the Spearmint Oil Administrative Committee, which is responsible for local administration of the order.

DATES: Interim final rule effective September 14, 1989. Comments which are received by October 16, 1989 will be considered prior to any finalization of this interim final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2085, South Building, P.O. Box 96456, Washington, DC 20090-6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular busines hours.

FOR FURTHER INFORMATION CONTACT: Jacquelyn R. Schlatter, Marketing Specialist, F&V, AMS, USDA, Room 2522-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-5120.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Order No. 985 (7 CFR part 985), as amended, regulating the handling of spearmint oil produced in the Far West. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended, (7 U.S.C. 601-674), hereinafter referred to as the Act.

This interim 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 (AMS) has considered the economic impact of this final action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are

unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus both statutes have small entity orientation and compatibility.

There are approximately nine handlers of Far West spearmint oil subject to regulation under the spearmint oil marketing order, and approximately 253 spearmint oil producers in the regulated area. Of the 253 producers, 160 producers hold "Class 1" (Scotch) oil allotment base and 136 producers hold "Class 3" (Native) oil allotment base. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having gross annual revenues for the last three year 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 Far West spearmint oil may be classified as small entities.

The Spearmint Oil Administrative Committee (Committee), during a June 28, 1989, teleconference meeting, unanimously recommended that the salable quantities and allotment percentages for both Scotch and Native spearmint oils for the 1989–90 marketing year be increased. Section 985.51(b) of the marketing order authorizes the Committee to recommend such an increase and to submit its recommendation, and the reasons for it, to the Secretary of Agriculture for approval. The salable quantities and allotment percentages for those classes of oil were published in the March 8, 1989, issue of the **Federal Register** (54 FR 9766). This revision would have increased the salable quantity for Scotch oil from 706,742 to 840,099 pounds and increased the allotment percentage from 42 to 50 percent. However, the Committee, during an August 18, 1989, teleconference meeting, unanimously recommended that the salable quantity and allotment percentage for Scotch spearmint oil for the 1989–90 marketing year be further increased to 70 percent and 1,193,828 pounds, respectively. In addition, the salable quantity for Native oil will be increased from 781,092 to 891,363 pounds and the allotment percentage will be increased from 42 to 48 percent as a result of the Committee's June 28, 1989, meeting. These revisions are issued pursuant to § 985.52 of the spearmint oil marketing order.

The salable quantity is the total quantity of a class of oil which handlers may purchase from or handle on behalf of producers during a marketing year. Each producer is allotted a share of the salable quantity by applying the allotment percentage (which is the salable quantity multiplied by 100 divided by the total of all allotment bases) to the producer's allotment base for that class of oil.

Scotch Spearmint Oil

At its September 21, 1988, meeting, the Committee estimated trade demand for Scotch spearmint oil for the 1989–90 marketing year to be 718,000 pounds. A desirable carry-out figure of 0 pounds was adopted and, when added to the trade demand, resulted in a total supply needed of 718,000 pounds. The Committee estimated that 16,892 pounds would be carried in on June 1, 1989. This amount was deducted from the total supply needed leaving 701,108 pounds as the salable quantity needed. This quantity, divided by the total of all allotment bases of 1,682,719 pounds, resulted in 41.6 percent, which was the computed allotment percentage. This figure was adjusted to 42 percent and established as the 1989–90 Scotch allotment percentage which resulted in a 1989–90 salable quantity of 706,742 pounds.

At the time of the June 28, 1989, Committee meeting, the 1989–90 salable percentage of 42 percent for Scotch oil, when applied to the then current total allotment base of 1,680,198 pounds, gave a 1989–90 salable quantity of 705,683 pounds. Since all growers were expected to either produce their individual salable quantity or fill any deficiencies with reserve pool oil, the total salable quantity which was available, when this figure was combined with the actual carry-in on June 1, 1989, was 723,372 pounds, and this was the total supply available for the 1989–90 marketing year. Carry-in on June 1, 1989, was 17,689 pounds of Scotch oil, a little higher than the Committee had estimated.

The Committee, at its June 28, 1989, meeting, recommended increasing the salable percentage of Scotch spearmint oil by 8 percent, from 42 to 50 percent, which would have made an additional 134,416 pounds available to the market. If these additional pounds were added to the total supply available of 732,372 pounds, the Committee felt at that time that the resulting 857,788 pounds would have met immediate needs while assuring growers that a burdensome supply would not be put on the market. The Committee therefore recommended that the 1989–90 Scotch salable percentage be increased from 42 to 50 percent, which would have resulted in an increase in the salable quantity from 706,742 to 840,099 pounds. This figure, when added to the June 1, 1989, carry-in of 17,689 pounds, would have resulted in a total available supply of 857,788 pounds.

The demand for Far West Scotch oil has continued to increase due to a shortage of Midwest Scotch oil caused by the drought in the summer of 1988. During the 1988 fall planting season, when growers in the Far West began to realize that their Scotch oil reserves would be used to fill the unexpected demand, plans were made to increase the acreage of Far West Scotch oil. However, an extremely wet fall prevented any significant planting. In addition, the spring of 1989 was also very wet, and growers were forced to wait until very late in the spring to plant. Therefore, because of the wet conditions and delayed planting, the 1989 crop of Far West Scotch oil is expected to have a below average yield.

Uncertainties about the 1989–90 supply of Scotch oil has caused concern among buyers and users of Scotch oil and has resulted in the high demand and market activity that is presently occurring. In order to meet the increase in trade demand, a higher salable quantity and allotment percentage for Scotch oil are therefore required.

The June 28 recommendation would not have made the reserve Scotch oil available. This is because growers had reserve pool oil in excess of the amount needed to fill their annual allotment. Due to the continuing strong demand for Scotch spearmint oil, the Committee recognized that it was necessary to allow all the reserve pool oil to be made available for sale. Thus, the Committee, in an August 18, 1989, teleconference meeting, unanimously voted to revise its June 28, 1989, recommendation by increasing the salable percentage of Scotch spearmint oil from the recommended 50 to 70 percent. Accordingly, all growers will have adequate annual allotment to market all the Scotch oil from current production and from the reserve pool.

When the 70 percent salable percentage is applied to the total Scotch oil allotment base of 1,680,198 pounds, it results in a salable quantity of 1,193,828 pounds. However, the actual amount of oil made available by this action is the total estimated supply of 872,685 pounds. This is because very few growers have individual supplies of oil equal to 70 percent of their base. However, since all of the estimated supply will likely be needed this year and it is desirable that all growers be able to market this oil, the Committee recommended that the 1989–90 Scotch oil salable percentage be further

increased from its original June 28, 1989, recommendation of 42 percent to 70 percent. The following table summarizes the computations used in arriving at the Committee's recommendations.

	Recommendation Sept. 21, 1988	Recommendation June 28, 1989	Revised recommendation Aug. 18, 1989
	Pounds		
(1) Carry-in	16,892	17,689	17,689
(2) Total supply available	723,634	857,788	872,685
(3) Desirable carryout	0	0	0
(4) Total Allotment base for Scotch oil	1,682,719	1,680,198	1,680,198
(6) Allotment percentage	42	50	70
(7) Salable quantity	706,742	840,099	[1] 854,996

[1] Although 70 percent of the total 1989-90 allotment base figure of 1,680,198 pounds results in a salable quantity of 1,193,828 pounds, the actual amount of Scotch oil made available by this action is 872,685 pounds. This is because some growers do not have reserve pool oil and will not be able to fill the deficiency created by this increase.

Thus, the Department has determined that an allotment percentage of 70 percent should be established for Scotch spearmint oil for the 1989–90 marketing year. This percentage would make available 872,685 pounds of Far West Scotch spearmint oil to handlers of Far West spearmint oil.

Native Spearmint Oil

At its September 21, 1988, meeting, the Committee estimated trade demand for Native spearmint oil for the 1989–90 marketing year to be 818,266 pounds. A desirable carry-out figure of 0 pounds was adopted and, when added to the trade demand, resulted in a total supply needed of 818,266 pounds. The Committee estimated that 40,000 pounds would be carried-in on June 1, 1989. This amount was deducted from the total supply needed, leaving 778,266 pounds as the salable quantity needed. This quantity, divided by the total of all allotment bases of 1,859,743 pounds, resulted in 41.8 percent which was the computed allotment percentage. This figure was adjusted to 42 percent and established as the 1989–90 Native allotment percentage which resulted in a 1989–90 salable quantity of 781,092 pounds based on the estimated total base of 1,859,743 pounds.

The 1989–90 salable percentage of 42 percent for Native oil, when applied to the revised total allotment base of 1,857,007 pounds, gave a 1989–90 salable quantity of 779,943 pounds. Since all growers were expected to either produce their individual salable quantity or fill deficiencies with reserve pool oil, the total salable quantity made available, when this figure was combined with the actual carry-in on June 1, 1989, was 789,139 pounds. This was the total supply available for the 1989–90 marketing year. Carry-in on June 1, 1989, was 9,196 pounds of Native oil, which was lower than the Committee had estimated.

The potential shortage of Scotch oil has put an extra demand on the supply of Native oil. In addition, recent events in China have given rise to concern about the supply of Chinese spearmint oil among buyers and users. Last year, the crop of Chinese oil was poor, and only 20,000 pounds were imported into the United States. In past years, as much as 170,000 pounds have been imported. Uncertainty about the Midwest production and the supply of oil from China have contributed to a heightened demand and an increase in grower prices for Native oil from $10.50 to $11.00 per pound. In order to meet the increase in trade demand, a higher salable quantity and allotment percentage for Native oil are required. The Committee has therefore recommended increasing the salable percentage by 6 percent, from 42 to 48 percent, thus making an additional 111,420 pounds available to the market which increases the salable quantity from 781,092 to 891,363 pounds. The Committee decided that this figure will meet immediate needs while assuring growers that a burdensome supply will not be put on the market. This figure added to the June 1, 1989, carry-in of 9,196 pounds results in a total available supply of 900,559 pounds. The following table summarizes the computations used in arriving at the Committee's recommendations.

	Original recommendation Sept. 21, 1988	Revised recommendation June 28, 1989
	Pounds	
(1) Carry-in	40,000	9,196
(2) Total supply available	821,092	900,559
(3) Desirable carryout	0	0
(4) Total allotment base for Native oil	1,859,743	1,857,007
(6) Allotment percentage	42	48
(7) Salable quantity	781,092	891,363

Thus, the Department has determined that an allotment percentage of 48 percent should be established for Native spearmint oil for the 1989–90 marketing year. This percentage will make available 900,559 pounds of Far West Native spearmint oil to handlers of Far West spearmint oil.

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

After consideration of all relevant matter presented, including that contained in the final rule published in the March 8, 1989, issue of the **Federal Register** (54 FR 9766), in connection with the initial establishment of the salable quantities and allotment percentages for Scotch and Native spearmint oils, the Committee's recommendations and other available information, it is found that to revise § 985.209 (54 FR 9766) so as to change the salable quantities and allotment percentages for Scotch and Native spearmint oils, as set forth below, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that upon good cause it is impractical, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action relieves restrictions on handlers by increasing the quantities of Scotch and Native

spearmint oils that may be freely marketed immediately; and (2) it should be effective as soon as possible to enable handlers to satisfy current market needs for Scotch and Native spearmint oils.

List of Subjects in 7 CFR Part 985

Far West, Marketing agreements and orders, Spearmint oil.

For the reasons set forth in the preamble, 7 CFR part 985 is amended as follows:

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

PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

1. The authority citation for 7 CFR Part 985 continues to read as follows:

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

2. Section 985.209 is revised to read as follows:

§ 985.209 Salable quantities and allotment percentages—1989–90 marketing year.

(a) "Class 1" (Scotch) oil—a salable quantity of 1,193,828 pounds and an allotment percentage of 70 percent.

(b) "Class 3" (Native) oil—a salable quantity of 891,363 pounds and an allotment percentage of 48 percent.

Dated: September 11, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–21636 Filed 9–13–89; 8:45 am]

BILLING CODE 3410–02–M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 327

RIN 3064–AA95

Assessments

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule; request for comments.

SUMMARY: The Board of Directors of the Federal Deposit Insurance Corporation ("FDIC") is amending part 327 of its regulations, 12 CFR part 327, entitled "Assessments," in response to the requirements of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"). The final rule establishes interim assessment procedures for savings associations. The final rule also provides a mechanism for the Financing Corporation ("FICO") and the Resolution Funding Corporation ("REFCORP") to impose assessments through the end of 1989.

DATES: Effective: September 14, 1989. Section 327.07 (c) through (e) shall expire on December 31, 1989. Written comments should be delivered not later than November 13, 1989.

ADDRESS: Written comments may be addressed to the Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550–17th Street NW., Washington, DC 20429.

FOR FURTHER INFORMATION CONTACT: William Farrell or Carole Edwards, Assessments Unit, Division of Accounting and Corporate Services, Federal Deposit Insurance Corporation, 550–17th Street NW., Washington, DC 20429, (202) 898–6564 or (202) 416–2073.

SUPPLEMENTARY INFORMATION:

A. In General

The FIRREA became law on August 9, 1989. It requires the FDIC to insure—and assess—savings associations that the Federal Savings and Loan Insurance Corporation ("FSLIC") previously insured. These insured savings associations (herein called "associations" or "thrifts") must shift from the FSLIC's assessment schedule to that of the FDIC.

The FIRREA further declares that, in order to ensure that the FICO and the REFCORP have sufficient resources during the transition period, the FDIC "may prescribe such regulations as may be necessary to allow the Financial Corporation and the Resolution Funding Corporation to impose assessments" against savings associations. 12 U.S.C. 1817(b)(1)(F). The FDIC must coordinate with the FICO and the Secretary of the Treasury in issuing any such regulations.

The final rule implements these legislative mandates. It provides for savings associations to make a Transition Payment on September 29, 1989. Associations will make no other payments until 1990, when they will begin to follow the FDIC's regular schedule of semiannual assessments.

The Transition Payment represents the overall net amount that an association must pay through the end of 1989. As in the past, each association will pay a single amount representing the entire assessment due. The entities that have claims on the amount so paid—the FICO, the REFCORP, and the FDIC [1]—will allocate the proceeds among themselves.

[1] The FSLIC Resolution Fund has first claim on the assessments that are received by the FDIC. Then, after the FSLIC Resolution Fund has taken the funds it needs, the remaining funds are allocated to the Savings Association Insurance Fund.

B. Procedural Requirements

The FICO must continue to meet its financial responsibilities during the transition period, and must therefore continue to receive a reliable income stream during that period. The REFCORP must likewise finance its Principal Fund during that period. The assessments that the FICO and the REFCORP may impose on associations belonging to the Savings Association Insurance Fund are a primary source of funds for the FICO and the REFCORP.

The FIRREA prescribes the mechanism by which the FICO and the REFCORP may obtain funds during the transition period. The FIRREA specifies that the FDIC's regulations provide the vehicle for the FICO and the REFCORP to exercise their authority to assess savings associations during the transition period. Accordingly, in order to avoid any hiatus in the flow of funds to the FICO and the REFCORP, the FDIC is obliged to establish assessment procedures as soon as possible.

For these reasons, it is impracticable—and contrary both to public interest and to the intent of the FIRREA—to incur the delay that the ordinary process of notice and public comment would entail. Accordingly, the FDIC is issuing this rule without notice and public comment (pursuant to 5 U.S.C. 553(b)(B)) or a delayed effective date (pursuant to *id.* 553(d)(3)). The FDIC will, however, consider any public comments received by November 13, 1989 in order to determine whether this final rule should be revised.

C. Payment of Assessments During the Transition Period

Under prior legislation, each FSLIC-insured thrift paid an annual base assessment on the anniversary of the date it first became insured ("annual payment date"). The amount of the assessment was ½ of 1% of total deposits; the payment was for the full amount due for the coming year.[2] Thus

[2] The association also made a semiannual payment or was awarded a semiannual credit, depending on the change in the association's assessment base in the prior half-year. The mid-cycle payment or credit was regarded as a mere adjustment to the annual base assessment, not as a separate payment.

The association was obliged to pay any semiannual assessment promptly on the semiannual payment date. If the association received a semiannual credit, however, the amount of the credit was deducted from its next annual base assessment.

each FSLIC-insured association had its own assessment cycle. The FSLIC received a continuous income stream throughout the year.

Prior law also authorized the FICO to assess savings associations. Although the FICO drew upon its own independent authority to impose the assessment, the FICO's assessment and the FSLIC's assessment were related: The FICO could not assess any more than the maximum amount of the FSLIC assessment, and the FSLIC assessments were reduced by the amount to be paid to the FICO. From the standpoint of the associations, the total amount of the two assessments always remained the same.

The Federal Home Loan Bank Board ("Bank Board")—as operating head of the FSLIC—and the FICO responded to these requirements by creating a joint billing system. They arranged for each association to pay the total amount to a Joint Paying Agent [3] which then allocated the proceeds between the FSLIC and the FICO. The FICO had first claim on the funds. Since the FICO's needs varied from time to time, the allocation varied.

Prior legislation also authorized the Bank Board to charge special assessments, which could aggregate as much as ⅛ of 1% of total deposits during each calendar year. The Bank Board imposed these special assessments on a quarterly basis beginning in 1985. Unlike the annual base assessments, these payments were retrospective: that is, they were paid at the end of the calendar quarter, not at the beginning.

The Bank Board exercised its special-assessment powers three times during 1989. The Bank Board computed the amount of each payment at the full allowable rate (⅛th of 1% per annum). The first payment was due at the end of March, and was pro-rated over the full quarter year. The second payment was due at the end of June, and was likewise pro-rated over the full quarter year. The third payment—authorized on August 3, 1989—is due at the end of September. Unlike the prior two payments, however, this payment is not pro-rated over the full quarter, but only over the interval beginning at the start of the third quarter and ending on August 8, 1989 (the day before the FIRREA became effective).

By contrast, FDIC-insured banks pay only the annual base assessment, and all pay it according to the same cycle. Half the annual assessment is due on January 31, and the other half is due on July 31. These installments represent payments for the semiannual period in which they are payable.

[3] The Joint Paying Agent is the Federal Home Loan Bank of Des Moines.

The FIRREA requires savings associations to shift from their own individual assessment cycles—and from the quarterly cycle of special assessments—to the banks' semiannual assessment cycle. The FIRREA also calls upon the FDIC to provide a framework for enabling the FICO and the REFCORP to collect assessments during the transition period.

In addition, the FIRREA raises the annual base assessment rate for thrifts. The new rate (effective through the end of 1990) does not constitute a new and heavier burden on the thrifts, however. It merely blends the FSLIC's annual base assessment rate with its special assessment rate: the overall rate that thrifts will have to pay is substantially the same as the rate they would have had to pay if the FSLIC had continued to impose the full amount of the special assessment throughout the remainder of 1989 and 1990.[4]

Finally, the FIRREA replaces the FICO's assessment authority with new authority, and also establishes assessment authority for the REFCORP. The main outlines of the FICO's authority remain the same. The FICO continues to have authority to assess thrifts; the FICO's assessment continues to be subject to the same overall limit (which is now defined by the FDIC's assessment authority); and the FICO continues to have first claim on thrift assessments.[5] the REFCORP's assessment authority follows the same pattern. The REFCORP has its own independent authority to assess thrifts; its assessments together with those of the FICO may not exceed the FDIC's assessment authority; and it has second claim—behind the FICO—on thrift assessments. The FDIC [6] receives any amounts remaining after the FICO and the REFCORP have taken their shares.

The final rule seeks to make the transition from the Bank Board's procedures as smooth as possible. The new procedure dovetails with the assessments—both the regular annual base assessments and the three special assessments—already imposed by the Bank Board. To that end, the final rule adopts the terms and follows the procedures set forth in the FSLIC's assessment regulations, resolutions, and orders.

The final rule preserves the joint billing arrangement used by the FSLIC and the FICO, and extends it to cover the REFCORP as well. The FDIC—acting on behalf of the FICO and the REFCORP—will send out bills to thrifts on or before September 20, 1989. Each association must maintain a demand deposit account with the Federal home loan bank where the association's principal office is located, and must hold enough funds in the account to pay the assessment on September 29, 1989. The association's Federal home loan bank will directly debit the association's account on that date and will wire the funds to the Joint Paying Agent.

The FDIC recognizes that, as a matter of administrative necessity, the Bank Board has already billed certain thrifts for their annual base assessments. The Bank Board sent bills to thrifts whose annual payment dates fall on or before September 19, 1989. Since the Bank Board issued the bills before the FIRREA became law, however, the Bank Board computed the assessments at the pre-FIRREA rate.

The final rule provides that the thrifts must pay these bills just the way they would have paid them under prior law. That is to say, any thrift receiving a bill must pay 1/12 of 1% of its assessment base on its usual annual payment date. Thrifts receive a credit—explained below—for the portion of the assessment that is attributable to 1990.

The final rule also requires thrifts to make a special "Transition Payment" on September 29, 1989.[7] The payment consists of certain pro-rated assessments, credits, and adjustments, as follows:

Assessments

1. FSLIC special assessment. One component of the Transition Payment represents the special assessment imposed by the Bank Board in Resolution 89-2214 (August 3, 1989). Thrifts must pay the full remaining special assessment for 1989 allowed under prior law, pro-rated from July 1, 1989, through August 8, 1989.[8]

[4] The correlation is not exact. The annual base assessment rate (1/12 of 1%) plus the special assessment rate (⅛ of 1%) equals 5/24 of 1%, or .208333 * * * of 1%. The FIRREA fixes the new assessment rate at a slightly lower figure (.208 of 1%).

[5] When a thrift pays its assessment, it may deduct an amount (up to certain limits) representing the return of the thrift's contributions to the FSLIC Secondary Reserve. The FICO, the REFCORP, and the FDIC's Savings Association Insurance Fund then share in the next funds so paid.

[6] See n. 1.

[7] The third quarter ends on September 30, 1989, which is a Saturday. Accordingly, savings associations must make the Transition Payment by Friday, September 29.

[8] This interval is 39 days long. The special assessment is computed by multiplying each thrift's assessment base (as of June 30, 1989) by the special assessment rate (⅛th of 1%), and then multiplying the result by 39/365.

2. Catch-up amount. A second part represents the difference between the amount required to be collected during 1989 at the new statutory rate, which is in effect on and after August 9, 1989, and the amount of the annual base assessment [9] already collected or billed for that interval at the rate prescribed under prior law. This "catch-up" amount is pro-rated as follows:

A. Thrifts That Have Already Paid Or Been Billed for Annual Base Assessments During 1989 at the Pre-FIRREA rate

(i) Thrifts with pre-FIRREA annual payment dates. If an association has an annual payment date falling in the interval beginning on January 1 and ending August 8, the association has already paid its annual base assessment [10] through the end of 1989 (and beyond) [11] at the old pre-FIRREA rate. The catch-up amount for such an association covers the entire period from August 9, 1989, through the end of 1989, and is pro-rated accordingly.[12]

(ii) Thrifts with post-FIRREA annual payment dates. If an association's annual payment date falls in the interval beginning on August 9 and ending on September 19, the association has been billed for (and may have already paid) an annual base assessment during 1989 at the old pre-FIRREA rate. The association is in the same position as those that have earlier annual payment dates. Its catch-up amount is likewise pro-rated from August 9, 1989, through the end of 1989.

B. Other Thrifts

The remaining associations are those having annual payment dates falling during the interval that begins on September 20 and ends on December 31. These associations will pay 1989 assessments at the rate prescribed by the FIRREA. Accordingly, the catch-up amount for each such association is pro-rated only from August 9, 1989, up to (but not including) its annual payment date.

3. New assessments at the post-FIRREA rate. A third part is only imposed on thrifts having annual payment dates that fall between September 20 and December 31. This third part represents the thrift's annual base assessment—through the end of 1989—computed at the new statutory rate. This amount is pro-rated from the thrift's annual payment date to the end of 1989.

Credits

1. Credit for contribution to Secondary Reserve. One of the reductions in the Transition Payment is the annual credit for an association's contribution to the FSLIC Secondary Reserve.[13] This credit has priority over other credits; but it may not reduce the Transition Payment below zero.[14]

2. Post-1989 portion of prepaid annual base assessment. A second deduction represents a credit for the amount of the thrift's prepaid annual base assessment (net of semiannual payments) attributable to 1990. Only thrifts whose annual payment dates fall from January 2 through September 19, 1989, will have such a credit.[15] The remaining thrifts will only pay an assessment through December 31, 1989; no part of their assessment will be attributable to 1990.

Miscellaneous Adjustments

1. Adjustments for mergers. Some savings associations completed merger transactions on or before June 30, 1989.[16] Some of these associations are already obliged—under prior law—to pay additional assessments reflecting their increased assessment bases; others are due credits. Any uncollected amounts of this kind are to be added to the Transition Payment; any credits are to be subtracted from it.

2. Adjustments for amended base assessments and amended special assessments. These adjustments reflect any administrative or technical revisions in the computation of individual thrifts' annual base assessments, semiannual assessments, and special assessments.

If an association's credits exceed the amounts due from it, the association will not have to make a Transition Payment. The excess of the credits over the amounts due will be applied in equal parts against the thrift's assessments in 1990.

In essence, thrifts will pay what they would have paid under the FSLIC's rules, pro-rated to the end of 1989. The chief difference is that the thrifts with assessment dates that fall on September 20 or later will have to pay their 1989 assessments by the end of the third quarter of 1989, rather than on their usual dates.

This slight shift in payment schedule is not expected to have any significant adverse effect on thrifts. The amount of the payment is pro-rated to the end of 1989. Accordingly, the later in 1989 that an association would have paid its assessment, the smaller is the pro-rated amount.

After making the Transition Payment, most thrifts will have a clean slate. None will have to make any payments during the final quarter of 1989, and most will not have any credits to carry forward. It is expected that all thrifts will then convert to the FDIC's regular schedule of semiannual assessments at the start of 1990.

The FICO, the REFCORP, and the FDIC expect to issue permanent assessment regulations prior to the end of 1989.

Regulatory Flexibility Act Statement

Neither the Administrative Procedure Act (5 U.S.C. 553) nor any other provision of law requires notice of proposed rulemaking. Accordingly, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

List of Subjects in 12 CFR Part 327

Assessments, Banks, Banking, Bank deposit insurance, Financing corporation, Savings associations, Savings and loan associations.

The Board of Directors of the Federal Deposit Insurance Corporation amends

[9] The annual base assessment is adjusted for any semiannual payment an association may have made, or for any semiannual credit it may have been awarded. See n. 2.

[10] Thrifts that pay annual base assessments on and after March 19, 1989, will not have any adjustments for semiannual payments or credits.

[11] The credit for the 1990 portion of the annual base assessment is computed separately.

[12] This interval is 145 days long. The catch-up amount is computed by (1) multiplying each association's assessment base (as of June 30, 1989) by the new rate, and then multiplying the result by 145/365; (2) multiplying the amount the association has already paid as an annual base assessment (net of any adjustment for semiannual payments or credits), and then multiplying that figure by 145/365; and then (3) subtracting the amount determined in Step 2 from the amount determined in Step 1. This process can be shortened mathematically, as it is in the regulation.

[13] This credit is computed by multiplying the thrift's pro-rata share of the FSLIC Secondary Reserve (as of January 1, 1989) by 20%, and then subtracting any credits already applied in calendar year 1989. If a thrift has already received a Secondary Reserve credit in 1989, the credit to be applied against the Transition Payment must be reduced by that amount. Merged associations' credits are adjusted proportionately.

[14] If a thrift cannot use a portion of its Secondary Reserve credit, the unused credit remains in the general pool of credit for Secondary Reserves that is to be returned to all thrifts in the following year. The thrift's share of the pool increases to offset the credit it has foregone.

[15] Of those associations, only ones having annual payment dates falling on or before March 19 have annual base assessments that are adjusted for semiannual payments or credits.

[16] An association's Transition Payment is based on its June 30 assessment base, which only reflects mergers that occur on or before that date. Accordingly, when one association merges with or acquires another after June 30, the survivor's assessment base is added to that of the association it has absorbed.

part 327 of title 12 of the Code of Federal Regulations as follows:

PART 327—ASSESSMENTS

1. The authority citation for part 327 is revised to read as follows:

Authority: 12 U.S.C. 1441, 1441b, 1817–19.

2. Part 327 is amended by adding the following new section:

§ 327.07 Assessment of savings associations during the transition period.

(a) *Application of section.* (1) The provisions of paragraphs (c) through (e) of this section shall expire on December 31, 1989.

(2) All other provisions of this section shall expire on December 31, 1990.

(b) *Definitions.* For the purposes of this section:

(1) *Account* means a deposit in an insured savings association.

(2) *Note account* means a note, subject to the right of immediate call, evidencing funds held by depositories electing the note option under applicable United States Treasury Department regulations.

(3) *Insured member* means a holder of an insured account in an insured savings association.

(4) *Insured savings association* means a depository institution that is an insured depository institution as a result of the operation of section 4(a)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1814(a)(2)).

(5) *Thrift Assessment Base* means the total amount of all accounts (except note accounts) of the insured members of an insured savings association: *Provided,* That such total amount shall not include interest accrued, but not due and payable, or dividends declared, but not due and distributable, as of any annual payment date or semiannual payment date.

(6) *Annual payment date* means the date on which the FSLIC issued a certificate of insurance to an insured savings association, and each anniversary of that issuance.

(7) *Semiannual payment date* means a date six months after an association's annual payment date.

(8) *Transition payment* means the payment specified in paragraph (d) of this section.

(9) *Financing corporation* means the Financing Corporation chartered pursuant to section 21 of the Federal Home Loan Bank Act (12 U.S.C. 1441).

(10) *FSLIC* means the Federal Savings and Loan Insurance Corporation.

(11) *Resolution Funding Corporation* means the Resolution Funding Corporation established by section 21B of the Federal Home Loan Bank Act (12 U.S.C. 1441b).

(12) *Joint collection agent* means any person, corporation, governmental unit, or any other entity that has been authorized by the Corporation, the Financing Corporation, and (as appropriate) the Resolution Funding Corporation to act as an agent on behalf of the Corporation, the Financing Corporation, and (as appropriate) the Resolution Funding Corporation for collecting assessments pursuant to section 7 of the Federal Deposit Insurance Act, to section 21 of the Federal Home Loan Bank Act, and (as appropriate) to section 21B of the Federal Home Loan Bank Act.

(13) *FIRREA* means the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

(16) *Effective Date* means August 9, 1989.

(c) *Continuation of current collection practices for associations already billed by the Federal Home Loan Bank Board for annual base assessments at the pre-FIRREA rate.* (1)(i) On each annual payment date, each insured savings association shall pay an amount equal to 1/12 of 1% of the insured savings association's Thrift Assessment Base.

(ii) Paragraph (cc)(1)(i) of this section shall not apply to any association whose annual payment date occurs on or after September 20, 1989.

(2) The amount to be paid by each insured savings association on each annual payment date pursuant to paragraph (c)(1)(i) of this section shall be determined on the basis of the most recent report filed by such association with the Office of Thrift Supervision or predecessor agency as of each such payment date; but any insured savings association that has not filed such a report within 60 days of any annual payment date or semiannual payment date shall provide more recent information if requested to do so by the Corporation.

(3)(i) Notwithstanding the provisions of paragraph (c)(2) of this section, if the Corporation determines, on the basis of reports filed with the Office of Thrift Supervision or predecessor agency by an insured savings association or other information of the Office of Thrift Supervision or predecessor agency or the Corporation, that a filed report on the basis of which a payment would be made or credit received by the insured savings association does not accurately reflect the growth or decline in the accounts of depositors of such insured savings association, the Corporation may determine that an annual payment or credit shall be made on the basis of the average of such accounts as reported over a period determined by the Corporation, but not to exceed six months, and not including any report filed to show the condition of the insured savings association as of a date more than three calendar months before or after the date of the report on the basis of which the amount of a payment would be determined under paragraph (c)(2) of this section.

(ii) The Director of the Division of Accounting and Corporate Services is authorized to make determinations for the Corporation pursuant to paragraph (c)(3)(i) of this section.

(d) *Transition payment.*(1)(i) On behalf of the Financing Corporation, the Resolution Funding Corporation, and itself, the Corporation shall—

(A) Compute the amount of the Transition Payment to be paid by each insured savings association; and

(B) Notify each such association of such amount on or before September 20, 1989.

(ii) If the amount of the Transition Payment is greater than zero, the association shall pay such amount on September 29, 1989.

(2) The Transition Payment to be paid by each insured savings association shall include the following amounts:

(i) *FSLIC special assessment.* The amount required to be paid pursuant to the Federal Home Loan Bank Board's Resolution 89–2214 (August 3, 1989). This amount shall be computed as follows:

(A) Multiply the association's Thrift Assessment Base by 1/8 of 1%; and then

(B) Multiply the product so determined by 39/365.

(ii) *Catch-up payments for annual base assessments.*—

(A) *Associations having annual payment dates from January 1 through March 19.* In the case of any insured savings association having an annual payment date falling within the interval beginning on January 1 and ending on March 19, an amount computed as follows:

(*1*) Multiply the association's Thrift Assessment Base by .208 of 1%; then

(*2*) If the association made a payment on its semiannual payment date within calendar year 1989, add any amount so paid to the amount the association paid on its annual payment date within calendar year 1989, or, in the alternative, if the association received a credit on its semiannual payment date within calendar year 1989, subtract any amount so credited from the amount the associated paid on its annual payment date within calendar year 1989; then

(*3*) Subtract the amount derived pursuant to paragraph (d)(2)(ii)(A)(*2*) of this section from the amount derived

pursuant to paragraph (d)(2)(ii)(A)(*1*) of this section; and then

(*4*) Multiply the amount determined pursuant to paragraph (d)(2)(ii)(A)(*3*) of this section by 145/365.

(B) *Associations having annual payment dates from March 20 through September 19.* In the case of any insured savings association having an annual payment date falling within the interval beginning on March 20 and ending on September 19, an amount computed as follows:

(*1*) Multiply the association's Thrift Assessment Base by .208 of 1%; then

(*2*) Subtract the amount paid by the association on its annual payment date within calendar year 1989 from the amount derived pursuant to paragraph (d)(2)(ii)(A)(*1*) of this section; and then

(*3*) Multiply the amount so determined by 145/365.

(C) *Associations having annual payment dates from September 20 through December 31.* In the case of any insured savings association having an annual payment date falling within the interval beginning on September 20 and ending on December 31, an amount computed as follows:

(*1*) Multiply the association's Thrift Assessment Base by .208 of 1%; then

(*2*) If the association made a payment on its semiannual payment date within calendar year 1989, add any amount so paid to the amount the association paid on its annual payment date within calendar year 1988, or, in the alternative, if the association received a credit on its semiannual payment date within calendar year 1989, subtract any amount so credited from the amount the association paid on its annual payment date within calendar year 1988; then

(*3*) Subtract the amount derived pursuant to paragraph (d)(2)(ii)(C)(*2*) of this section from the amount derived pursuant to paragraph (d)(2)(ii)(C)(*1*) of this section; and then

(*4*) Multiply the product so determined by a fraction the numerator of which is the number of days from the Effective Date until (but not including) the association's annual payment date and the denominator of which is 365.

(iii) *New base assessments for associations having annual payment dates from September 20 through December 31.* In the case of any insured savings association having an annual payment date falling within the interval beginning on September 20 and ending on December 31, an amount computed as follows:

(A) Multiply the association's Thrift Assessment Base by .208 of 1%; and then

(B) Multiply the product so determined by a fraction the numerator of which is the number of days from the association's annual payment date through December 31, 1989, and the denominator of which is 365.

(iv) *Other debits*—(A) *Adjustments for merger assessments.* Any unpaid amounts due to the FSLIC prior to July 1, 1989, attributable to changes in the association's Thrift Assessment Base as a result of a merger, acquisition, or assumption of deposit liabilities.

(B) *Miscellaneous debits.* Other unpaid amounts attributable to administrative adjustments to the computation of any assessment to be paid by the association prior to the Effective Date.

(V) *Relevant thrift assessment base.* For the purpose of paragraphs (d)(2) (i), (ii) and (iii) of this section, an insured savings association's Thrift Assessment Base shall be determined as of June 30, 1989. The Thrift Assessment Base of an insured savings association that has merged or consolidated with, or acquired the assets of or assumed the liability to pay deposits in, any other insured savings association after such date shall include the Thrift Assessment Bases of all insured savings associations participating in such transaction.

(3) *Credits*—(i) *Secondary reserve credit.* The Transition Payment to be paid by any insured savings association shall be reduced by an amount computed as follows:

(A) Multiply the association's Secondary Reserve balance (or, in the case of an association that during calendar year 1989 has merged or consolidated with, or acquired the assets of or assumed the liability to pay deposits in, any other insured savings association, the sum of the Secondary Reserve balances of all insured savings associations participating in such transaction) as of January 1, 1989, by 20%; and then

(B) Subtract an amount equal to the total amount already credited to the association (or, in the case of an association that during calendar year 1989 has merged or consolidated with, or acquired the assets of or assumed the liability to pay deposits in, any other insured savings associations, the sum of the amounts credited to all insured savings associations participating in such transaction) during 1989 for amounts contributed to the Secondary Reserve:

Provided, That the amount so computed shall not reduce the Transition Payment below zero.

(ii) *Other credits.* If the Transition Payment, after reduction pursuant to paragraph (d)(3)(i) of this section, is greater than zero, it shall be further reduced by the following credits:

(A) *Portion of prepaid annual base assessment attributable to 1990.* In case of any insured savings association having an annual payment date falling within the interval beginning on January 2 and ending on September 19, the Transition Payment shall be reduced by an amount computed as follows:

(*1*) If the association made a payment on its semiannual payment date within calendar year 1989, add any amount so paid to the amount the association paid on its annual payment date within calendar year 1989, or, in the alternative, if the association received a credit on its semiannual payment date within calendar year 1989, subtract any amount so credited from the amount the association paid on its annual payment date within calendar year 1989; then

(*2*) Multiply the product so determined by a fraction the numerator of which is the number of days from January 1, 1990, until (but not including) the association's annual payment date, and the denominator of which is 365.

(B) *Adjustments for merger assessments.* Any amounts credited to the association prior to July 1, 1989, attributable to changes in the association's Thrift Assessment Base as a result of a merger, acquisition, or assumption of deposit liabilities.

(C) *Miscellaneous credits.* The Transition Payment shall be further reduced by any credits resulting from administrative adjustments to the amounts heretofore paid to the FSLIC.

(e) *Procedures for payment and allocation of funds*—(1) *Payment required.* The amounts required to be paid pursuant to this section shall be paid through the Joint Collection Agent.

(2) *Method of payment.* Each insured savings association shall establish a demand deposit account at the Federal home loan bank in the district where such association's principal office is located for the purpose of paying the assessments required pursuant to this section. Prior to the due date for each assessment payment, each insured savings association shall deposit sufficient funds in its demand deposit account in order that such demand deposit account may be directly debited by the respective Federal home loan bank for the amount of the assessment then due.

(3) *Allocation of assessment proceeds.* The gross assessments (net of credits specified in paragraph (d)(3)(i) of this section) paid through the Joint Collection Agent as provided in this section shall be allocated first to the Financing Corporation pursuant to section 21(f) of the Federal Home Loan Bank Act until the Financing

Corporation's assessment is collected in full, and then to the Resolution Funding Corporation pursuant to section 21B(e) of the Federal Home Loan Bank Act until the Resolution Funding Corporation's assessment is collected in full. Any amounts remaining, net of all other credits, shall be allocated to the Corporation, to be credited as provided by law.

(f) *Credits to be applied against 1990 assessments.* If an insured savings association has credits described in paragraph (d)(3)(ii) of this section that are not applied against the Transition Payment, such excess credits shall be applied in equal parts against such assessments as the association may be required to pay in 1990 under the provisions of this part.

By order of the Board of Directors.

Dated at Washington, DC, this 5th day of September, 1989.

Federal Deposit Insurance Corporation,

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 89-21649 Filed 9-13-89; 8:45 am]

BILLING CODE 6714-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1214

RIN 2700-AA28

Space Transportation System; Astronaut Candidate Recruitment and Selection Program

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: NASA is amending 14 CFR part 1214 by revising subpart 1214.11, "NASA Astronaut Candidate Recruitment and Selection Program." This rule establishes the process for selection of astronauts to support Space Shuttle mission operations. It is being revised to enable NASA to establish and maintain an integrated pool of qualified civilian applicants from which to select astronaut candidates. This revision will streamline the overall process to allow astronaut selections by NASA within a period of 3 to 4 months instead of 12 to 15 months.

EFFECTIVE DATE: September 14, 1989.

ADDRESS: Office of Space Flight, Code M, National Aeronautics and Space Administration, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: A.T. Dannessa, 202-453-8645.

SUPPLEMENTARY INFORMATION: Since this action is internal and administrative in nature and concerns agency management and personnel, notice and public comment requirements are exempt under 5 U.S.C. 553(a)(2).

The National Aeronautics and Space Administration has determined that:

1. This rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601-612, since it will not exert a significant economic impact on a substantial number of small entities.

2. This rule is not a major rule as defined in Executive Order 12291.

List of Subjects in 14 CFR Part 1214

Payload specialist, Mission manager, NASA-related payload, Mission specialist, Investigator working group, Government employees, Government procurement, Security measures, Space transportation and exploration, SSUS procurement, Small self-contained payloads, Reimbursement for shuttle services, Authority of Space Transportation System (STS) Commander, Articles authorized to be carried on Space Transportation System flights, Space Transportation System Personnel Reliability Program, Nonscientific payloads, Space Flight Participants.

For reasons set out in the Preamble, NASA is amending 14 CFR part 1214 by revising subpart 1214.11 to read as follows:

PART 1214—SPACE TRANSPORTATION SYSTEM

1. The authority citation for Part 1214 continues to read as follows:

Authority: Sec. 203, Pub. L. 85-568, 72 Stat. 429, as amended (42 U.S.C. 2473); sec. 201(b), Pub. L. 87-624, 76 Stat. 421 (47 U.S.C. 721(b)), unless otherwise noted.

2. Subpart 1214.11 is revised to read as follows:

Subpart 1214.11—NASA Astronaut Candidate Recruitment and Selection Program

Sec.

1214.1100 Scope.
1214.1101 Announcement.
1214.1102 Evaluation of applications.
1214.1103 Application cutoff date.
1214.1104 Evaluation and ranking of highly qualified candidates.
1214.1105 Final ranking.
1214.1106 Selection of astronaut candidates.
1214.1107 Notification.

Subpart 1214.11—NASA Astronaut Candidate Recruitment and Selection Program

§ 1214.1100 Scope.

It is NASA policy to maintain an integrated Astronaut Corps. This subpart 1214.11 sets forth NASA procedures and assigns responsibilities for recruitment and selection of astronaut candidates. It applies to all pilot and mission specialist astronaut candidate selection activities conducted by the National Aeronautics and Space Administration.

§ 1214.1101 Announcement.

(a) Astronaut candidate opportunities Will be announced nationwide by the Johnson Space Center (JSC) and publicized periodically unless specifically canceled by NASA.

(b) Civilian applicants may apply at any time.

(c) JSC is responsible for implementing and refining the astronaut candidate application process to minimize the effort required to file and/or update applications.

(d) Military personnel on active duty must apply through and be nominated by the military service with which they are affiliated. Military nominees will not be part of the continuing pool of applicants. The military services will convene their internal selection boards and provide nominees to NASA. The military nominees will be evaluated by NASA and the military services will be notified promptly of those nominees who are finalists.

(e) The Assistant Administrator for Equal Opportunity Programs, NASA Headquarters, will provide assistance in the recruiting process.

§ 1214.1102 Evaluation of applications.

(a) All incoming applications will be reviewed by the JSC Human Resources Office to determine whether or not applicants meet basic qualifications. Those not meeting the basic qualification requirements will be so notified in writing and will not be eligible for further consideration. Those meeting the basic qualification requirements will have their applications retained for review by a designated rating panel.

(b) The JSC Director, or designee, will appoint the rating panel composed of discipline experts who will review and rate qualified applicants as "Qualified" or "Highly Qualified."

(c) Efforts will be made to assure that minorities and females are included among these discipline experts.

(d) The criteria for each level will be developed by JSC and will serve as the basis for the ratings. The evaluation will be based on the quality of the individual's academic background and experience and the extent to which the individual's academic achievements, experience, and special qualifications relate to the astronaut candidate position. Reference information on those rated "Highly Qualified" will normally be obtained. The JSC Director of Human

Resources will monitor this process to assure adherence to applicable rules and regulations.

(e) Those rated "Highly Qualified" may be required to obtain a Class I or Class II physical. Only medically qualified applicants will be referred for final evaluation and possible interview and selection. Those who are not medically qualified will be so informed and will not be eligible for further consideration.

§ 1214.1103 Application cutoff date.

(a) The JSC Director, or designee, is responsible for identifying the need for additional astronaut candidates and for obtaining necessary approval to make selections.

(b) Once such approval has been obtained, the JSC Director will establish a cutoff date for the acceptance of applications. Applications received after the date of the request will be maintained and processed for the next selection. The cutoff date will normally occur every 2 years on or about July 1.

§ 1214.1104 Evaluation and ranking of highly qualified candidates.

(a) The JSC Director will appoint a selection board consisting of discipline experts and such other persons as appropriate to further evaluate and rank the "Highly Qualified" applicants.

(b) Efforts will be made to assure that minorities and females are included on this board.

(c) The "Highly Qualified" applicants who are determined to be the "Best Qualified" will be invited to the Johnson Space Center for an interview, orientation, and detailed medical evaluation.

(d) Background investigations will normally be initiated on those applicants rated "Best Qualified."

§ 1214.1105 Final ranking.

Final rankings will be based on a combination of the selection board's initial evaluations and the results of the interview process. Veteran's preference will be included in this final ranking in accordance with applicable regulations.

§ 1214.1106 Selection of astronaut candidates.

The selection board will recommend to the JSC Director its selection of candidates from among those finalists who are medically qualified. The number and names of candidates selected to be added to the corps will be approved, as required, by JSC/ NASA management and the Associate Administrator for Space Flight, prior to notifying the individuals or the public.

§ 1214.1107 Notification.

Selectees and the appropriate military services will be notified and the public informed. All unsuccessful qualified applicants will be notified of nonselection and given the opportunity to update their applications and indicate their desire to receive consideration for future selections.

Dated: August 31, 1989.

Richard H. Truly,

Administrator.

[FR Doc. 89-21515 Filed 9-13-89; 8:45 am]

BILLING CODE 7510-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Delisting of Astragalus Perianus (Rydberg Milk-Vetch)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) removes *Astragalus perianus* (Rydberg milk-vetch) from the List of Endangered and Threatened Plants. This action is based on a review of all available data, which indicate the species is not threatened. When the species was federally listed in 1978 it was known only from the type location in Bullion Canyon, Piute County, Utah, and one population on top of Mt. Dutton, Garfield County, Utah. Extensive studies have been conducted for the last 9 years resulting in the discovery of 11 additional populations and current estimates of well over 300,000 plants.

EFFECTIVE DATE: October 16, 1989.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Fish and Wildlife Enhancement Office, U.S. Fish and Wildlife Service, 1745 West 1700 South, Salt Lake City, Utah 84104.

FOR FURTHER INFORMATION CONTACT: John L. England at the above address, telephone number (801) 524-4430 or (FTS) 588-4430.

SUPPLEMENTARY INFORMATION:

Background

Rydberg and Carlton were the first to collect this milk-vetch during 1905 in the Tushar Mountains west of Marysvale, Piute County, Utah. Their collection remained obscure until 1964 when Rupert Barneby used this collection as the type specimen in describing *Astragalus perianus* as a new species (Barneby 1964).

Numerous attempts were made to relocate this species in the Tushar Mountains and in 1976, specimens were collected and positively identified as *Astragalus perianus*. Prior to this collection the species was thought to be extinct at the type locality. In June 1975, Welsh and Murdock discovered the species at the top of Mt. Dutton on the Sevier Plateau, Garfield County, Utah. The species was federally listed as threatened in 1978 by the Service (43 FR 17914).

In 1981 Rupert Barneby reevaluated the specimens of *A. perianus* and *A. serpens*, a species it closely resembles, at Brigham Young University and identified a series of collections previously identified as *A. serpens* to be *A. perianus*. These collections, made in Kane, Iron, and Piute Counties from 1967 to 1977, greatly expanded the known distribution of *A. perianus*.

In 1982 the U.S. Forest Service developed a management plan for the Rydberg milk-vetch (U.S. Forest Service 1982). In August 1983 this plan was approved and implemented. As a consequence of this management plan, inventories were intensified and monitoring studies were established to determine use, condition and trends for the species and its habitat. From 1984 through 1987 the majority of potential habitat was inventoried. Twelve major population centers were located and mapped. These populations cover over 2,000 acres in six counties on six major physiographic areas in south central Utah: the Tushar Mountains, Sevier Plateau, Markagunt Plateau, Fish Lake Plateau, Mount Dutton, and Thousand Lake Mountain (Atwood 1987).

The majority of habitat occurs on Federal lands administered by the Dixie and Fish Lake National Forests. The remaining habitat occurs on private lands. Conservative estimates for the 13 currently known populations indicate population numbers at well over 300,000 individuals (J.L. England, U.S. Fish and Wildlife Service, pers. obs., 1988). All age classes are represented in the 13 populations. All populations are healthy with most having adequate protection from potential threats. The Service proposed delisting *Astragalus perianus* (53 FR 39626) on October 11, 1988, based on the above discussed changes in the knowledge of the status of the species.

Summary of Comments and Recommendations

In the October 11, 1988, proposed rule and associated notifications, all interested parties were requested to

submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices were published in the Deseret News and The Salt Lake Tribune (both newspapers have general circulation throughout Utah, including the counties which have populations of *A. perianus*) on November 11, 1988, which invited general public comment. Six comments were received and are discussed below.

Four comments—two from university botanists, one from the U.S. Forest Service and one from the Utah Natural Heritage Program—supported the Service's proposal to delist *A. perianus* as a threatened species. Two comments—one from the State of Utah and one from an international conservation organization—acknowledged the Service's proposed action, but took no position on the proposal.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Astragalus perianus* should be removed from the List of Endangered and Threatened Plants found at 50 CFR 17.12. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR 424) promulgated to implement the listing provisions of the Act were followed. 50 CFR 424.11 requires that certain factors be considered before a species can be listed, reclassified, or delisted. These factors and their application to *Astragalus perianus* Barneby (Rydberg milk-vetch) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Mining and road construction remain as localized threats to small portions of the species' overall population, but because of the increase in numbers and range of known populations, they no longer constitute a significant threat to *A. perianus*.

B. *Overutilization for commercial, recreational, scientific, or educational purposes. A. perianus* is not collected for commercial purposes and the other factors have not and are not expected to impact the species' viability.

C. *Disease or predation.* All populations are healthy and viable with little or no disease or predation. The numbers of wildlife and livestock have decreased since 1950 with subsequent improvement in the overall vegetative condition of the species' habitat. No evidence of livestock or wildlife use was observed over the last 9 years of study.

The recent introduction of mountain goats (*Oreamnos americanus*) into the Tushar Mountains may pose a latent threat to that population. The Service, however, concurred with a "no effect" conclusion in the biological assessment the Forest Service prepared for the introduction of mountain goats in 1985. This concurrence was based in large part on the Forest Service's determination that the transplanted herd would not intrude into occupied habitat of *A. perianus*. In any event, even a significant impact on that one population would not affect the overall status of the species.

D. *The inadequacy of existing regulatory mechanisms.* No regulatory mechanism would exist to protect *A. perianus* following delisting. However, the U.S. Forest Service Manual (section 2670) administratively requires protection and maintenance of viable populations of rare species which may be sensitive to environmental degradation. Since the majority of habitat for the Rydberg milk-vetch occurs on Federal lands administered by the Forest Service, this administrative mechanism has great potential for protecting the species.

E. *Other natural or manmade factors affecting its continued existence.* No other natural or manmade factors affecting *A. perianus* are known.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to remove *Astragalus perianus* from the List of Endangered and Threatened Plants in 50 CFR 17.12 and remove the species from the protection of the Endangered Species Act of 1973, as amended.

The regulations at 50 CFR 424.11(d) state that a species may be delisted if: (1) It becomes extinct, (2) it recovers, or (3) the original classification data were in error. Sufficient new information exists to show the original classification as threatened was in error and the additional populations discovered through recovery efforts demonstrate a lack of significant threat to the Rydberg milk-vetch.

Effects of Rule

This action will result in the removal of *Astragalus perianus* from the List of Endangered and Threatened Plants (50 CFR 17.12) and from the protection of the Endangered Species Act of 1973, as amended. Federal agencies are no longer required to consult with the Secretary to insure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of the Rydberg milk-vetch. There is no designated critical habitat for this species. Federal regulations and statutes on taking this species no longer apply. The Service will monitor populations of *A. perianus* for five years as required by the 1988 amendments to the Endangered Species Act. The Forest Service has stated that they will maintain the species on their sensitive species list and provide protection under the Forest Service administrative manual requirements to ensure the continued viability of the species.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Atwood, N.D. 1987. Rydberg milkvetch, *Astragalus perianus* Barneby. Technical Report, U.S. Forest Service, Ogden, Utah. 18 pp.

Baneby, R.C. 1964. Atlas of North American *Astragalus*. Memoirs of the New York Botanical Garden. 13(II):597–1188.

U.S. Forest Service. 1982. Management plan for *Astragalus perianus*. U.S. Forest Service Typed Document, Ogden, Utah. 49 pp.

Author

The author of this final rule is John L. England, Botanist, U.S. Fish and Wildlife Service (see **ADDRESSES** section above). Dr. Duane Atwood, Regional Botanist, USDA Forest Service, Intermountain Region, Ogden, Utah 84401 (801) 625–5599 or FTS 586–5599 provided substantial information.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411; Pub. L. 100–478, 102 Stat. 2306; Pub. L. 100–653, 102 Stat. 3825 (16 U.S.C. 1531 *et seq.*); Pub. L. 99–625, 100 Stat. 300, unless otherwise noted.

§ 17.12 [Amended]

2. Amend § 17.12(h) by removing the entry *Astragalus perianus* (Rydberg milk-vetch) under Fabaceae from the List of Endangered and Threatened Plants.

Dated: August 21, 1989.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 89–21634 Filed 9–13–89; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 676

[Docket No. 90894–9194]

King Crab Fishery of the Bering Sea and Aleutian Islands Area

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

ACTION: Final rule; technical amendment.

SUMMARY: NOAA issues this final rule implementing a technical amendment to remove, in its entirety, the final rule for the King Crab Fishery of the Bering Sea and Aleutian Islands Area. This action is being taken for the following reasons: (1) The rule was never fully implemented and never took effect because the delegation of authority was not accepted by the Governor of the State of Alaska, and (2) the recent approval of the Fishery Management Plan for the King and Tanner Crab Fisheries of the Bering Sea and Aleutian Islands Area, published July 11, 1989 (54 FR 29080), superseded the authority under which the rule was originally promulgated.

EFFECTIVE DATE: September 14, 1989.

FOR FURTHER INFORMATION CONTACT: Raymond E. Baglin, Jr., Fishery Biologist, Alaska Region, 907–586–7230.

SUPPLEMENTARY INFORMATION: The final rule, which set forth measures for managing the commercial king crab fishery in the Bering Sea and Aleutian Islands Area, was published November 14, 1984 (49 FR 44998). In adopting the rule, the North Pacific Fishery Management Council intended that, to the extent practicable, the State of Alaska should continue to play a leading role in the management of this king crab fishery. The final rule delegated management authority for the fishery to the State, and specified the procedures by which existing and future State management measures were to be evaluated for consistency with the standards and criteria of the original Fishery Management Plan for the King Crab Fishery of the Bering Sea and Aleutian Islands area (old crab FMP). The purpose and scope section of the rule contained a provision at § 676.1(c) that Part 676 would take effect upon receipt by the Secretary of Commerce (Secretary) of a statement signed by the Governor of the State of Alaska accepting the provisions of this part on behalf of the State. In 1986, the Governor rejected the rule as too restrictive on traditional methodology of Alaskan king crab management, especially inseason management actions, thereby declining the offer to delegate to the State of Alaska federal management authority to implement the rule.

On June 2, 1989, the Secretary approved the Fishery Management Plan for the Commercial King and Tanner Crab Fisheries of the Bering Sea and Aleutian Islands (new crab FMP), and issued a notice of approval that was published July 11, 1989 (54 FR 29080). This approval superseded the old crab FMP and, therefore, the old crab FMP is being withdrawn; likewise, since Part 676 was promulgated under the old crab FMP, the authority for this rule no longer exists.

Therefore, NOAA issues this technical amendment to remove Part 676 and to withdraw the old crab FMP. The old crab FMP and Part 676 were never operational, never had any legal effect, and now have been superseded.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator) finds for good cause that because this rule will have no substantive effect, it is unnecessary to provide notice or to seek prior public comment under 5 U.S.C. 553 (b) and (c); likewise, and for the same reason the Assistant Administrator finds good cause for not delaying the effective date of this rule under 5 U.S.C. 553(d). As no notice of proposed rulemaking is required, this rule is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 603).

This rule has no substantive effect and therefore is not a major rule under Executive Order 12291.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 6, 1989.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

List of Subjects in 50 CFR Part 676

Administrative practice and procedure, Fisheries, Fishing, Reporting and recordkeeping requirements.

PART 676—[REMOVED]

For the reasons set forth in the preamble, 50 CFR Part 676 is removed.

[FR Doc. 89–21418 Filed 9–13–89; 8:45 am]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 54, No. 177
Thursday, September 14, 1989

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

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

RIN: 3068-AA73

[OTS-89004]

12 CFR Parts 561 and 563

Regulatory Capital

Dated: September 12, 1989.

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Proposed rule, extension of comment period, notice of public hearing.

SUMMARY: The Office of Thrift Supervision ("Office") is hereby: (1) Reopening and extending until September 22, 1989, the comment period on the proposed rule on regulatory capital promulgated by the Federal Home Loan Bank Board ("Bank Board") as Board Res. 88-1342 (December 15, 1988) (53 FR 51800, Dec. 23, 1988); and (2) announcing a public hearing on issues affecting that proposal resulting from the enactment of the Financial Institutions Reform, Recovery and Enforcement Act of 1989.

DATES: Comments must be received on or before September 22, 1989. The public hearing will be held Thursday, September 21, 1989, from 9:00 a.m. until 5:00 p.m.

ADDRESSES: Comments and written requests to participate in the public hearing should be sent to Mary J. Hoyle, Regulatory Paralegal, Regulations and Legislation Division, Sixth Floor, Office of the General Counsel, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552. Requests to participate may be hand-delivered to the same address between the hours of 9:00 a.m. and 5:00 p.m. Monday through Friday. Requests to participate in the public hearing must be received no later than 5:00 p.m. on Tuesday, September 19, 1989. Comments will be available for public inspection at Information Services, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Hearing Location: The Office of Thrift Supervision's Amphitheater, Second Floor, 1700 G Street, NW., Washington, DC 20552.

FOR FURTHER INFORMATION CONTACT: Mary J. Hoyle, (202) 906-7135, Regulatory Paralegal, Regulations and Legislation Division, Office of the General Counsel, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: On December 13, 1988, the Bank Board proposed to adopt a risk-based regulatory capital regulation. Board Res. No. 88-1342, 53 FR 51800 (December 23, 1988). The Bank Board held public hearings on this proposal on February 9 and 10, 1989. The comment period on this proposal closed on March 23, 1989.

On August 9, 1989, the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA"), Pub. L. 101-73, 103 Stat. 183, established the Office of Thrift Supervision and provided that the Bank Board would cease to exist 60 days after the statute's enactment. Section 401(h) of the FIRREA provided that orders, resolutions, determinations, and regulations of the Bank Board in effect on the date of FIRREA's enactment were to remain in effect until modified, terminated, set aside, or superseded in accordance with applicable law by the appropriate successor agency. The Bank Board's notice of proposed rulemaking on regulatory capital is such a resolution and the Office has therefore succeeded to that notice.

Section 301 of the FIRREA amended the Home Owners' Loan Act by adding a new section 5(t) requiring the Office to promulgate, by November 7, 1989, regulations prescribing uniformly applicable capital standards for all savings associations. Section 5(t) contains a number of provisions affecting the content of these capital standards, establishing transition rules for certain provisions, and setting out the consequences of failure to meet these standards.

Because of the significant effect the provisions of the FIRREA will have on the capital standards to be prescribed by the Office, the Office has determined that it would be appropriate to reopen briefly the comment period on its proposed capital regulation for the specific and limited purposes of soliciting public comment on the new statutory requirements and on the effect of FIRREA on various aspects of that proposal. The comment period is brief due to the statutory requirement that the Office promulgate its required capital regulation within 90 days of FIRREA's enactment. Because of the short statutory timetable for promulgation of this capital regulation, the Office will not be able to consider any comments received after the close of this comment period. As the original comment period on the proposal was 90 days, the Office believes that the Administrative Procedure Act requirements for adequate public notice and comment have been satisfied.

During this reopened comment period, on September 21, 1989, the Office will hold a public hearing on these issues. Persons wishing to participate in this hearing should send a written request to participate to the address listed in the **"ADDRESSES"** portion of this document, to be received by no later than 5:00 p.m. on September 19, 1989. The request to participate in the hearing must include the following information: (1) The name, address, and business telephone number of the participant; (2) the entity that the participant will be representing; and (3) a brief summary of the participant's remarks.

Depending on the number of requests received, participants may be limited in the length of their oral presentations. The Office will notify participants by telephone of the time scheduled for their presentation. The Office anticipates establishing panels of participants for presentations and reserves the right to limit the number of participants and to select, in its discretion, those persons who may make oral presentations if it receives more requests for participation than may be accommodated in the time available.

M. Danny Wall,
Director, Office of Thrift Supervision.

[FR Doc. 89-21873 Filed 9-13-89; 8:45 am]
BILLING CODE 6720-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 108

RIN 3245-AB90

Loans to State and Local Development Companies

AGENCY: Small Business Administration.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: On November 4, 1988, the President signed Public Law 100-590, the Small Business Administration Reauthorization and Amendment Act of 1988 (Act). The following proposed rules are amendments required by the Act: (1) Definition of "rural areas" for purposes of placing greater emphasis on the needs of such areas, and (2) authority for a contract between a rural CDC with another CDC in the same general area to satisfy the requirements of a full-time professional staff, and management ability. In addition, this set of rules proposes changes which are necessary to conform the regulations to the statutory changes and to administrative experience since the last amendment. The latter changes include a revision of language relating to leases in *alter ego* transactions, addition of rural development as a national objective, prohibiting principals of borrower small concerns from receiving loan proceeds; a revision as to when the loan processing fee is earned, and a change in the minimum deposit from $1,000 or 1½%, to $2,500 or 1%, whichever is less.

DATE: Comments must be received on or before October 16, 1989.

ADDRESSES: Written comments may be sent to the Office of Economic Development, Small Business Administration, Room 720, 1441 L Street NW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: LeAnn M. Oliver, Financial Analyst, Office of Economic Development, (202) 653-6986.

SUPPLEMENTARY INFORMATION: The first three changes are designed to reflect the statutory changes made by the Act. Changes related to rural development would be made in §§ 108.2, Definitions, and 108.503(b)(3) to define the term "rural area" and to add rural development to the list of National Objectives which the program is designed to serve. "Rural area" is defined in terms of the population of a political subdivision. The statute defines "rural areas" simply as "those localities with populations of less than 20,000". It is thus necessary to circumscribe the term "localities". Metropolitan counties frequently contain both urban and rural areas. SBA finds it difficult to formulate a definition for rural subdivisions of metropolitan counties that would not either include urban or exclude rural areas. We have therefore left the specific designation of such rural localities to SBA's judgment, based on economic and population analysis. Assume, for example, a township of less than 20,000 inhabitants, within a county that has been classified as metropolitan by the Department of Agriculture. If this township is so distant from the nearest major population center as to make commuting for employment impractical, and few employment opportunities exist locally, then such township could be determined to be rural. By reserving this determination to SBA's Central Office we hope to achieve consistency throughout the country.

In addition, § 108.503-1(b)(3) would be amended to authorize a rural CDC to satisfy the requirements of professional staff and management ability by acquiring these capabilities through contract with a nearby, fully staffed CDC. This provision is already contained in this section but is subject to SBA prior approval. The proposed regulation does not provide for SBA prior approval.

Section 108.8(d)(5) would be amended to permit, in alter-ego situations, that the remaining term of the lease may include options, which in the aggregate are at least equal to the term of the loan. The reason for this proposal is that in several states a lease in excess of 5 years must be recorded, and the recordation fee can be expensive. This amendment would permit the lease to be divided into shorter option periods which will not require recordation.

Section 108.503-4(a) would be amended to add § 120.103-3 to the list of the loan policy provisions of Part 120 which are made applicable to the CDC program. Section 120.103-3 provides for an appeal procedure when a loan is declined. The purpose of this proposal is to incorporate into the CDC regulations a practice which heretofore was not codified, although the appeal procedure has always been available in this program.

Section 108.503-4(b) would be amended to add to the categories of ineligible projects one so structured that part or all of the debenture proceeds would not go into the project, but would go to the applicant's principals. The purpose of this proposed amendment is to bar projects which increase the liklihood of conflicts between this economic development program and the self interest of the borrowers.

Section 108.503-6 would be amended to provide in paragraph (a)(1) that two thirds of the loan processing fee shall be deemed earned by the CDC when SBA issues its debenture authorization, and the remaining third when the loan from the CDC to the borrower is closed. A further amendment, to paragraph (b), would change the provision for a deposit which the 503 company may require with the loan application, from the current $1,000 or one and one-half percent to $2,500 or one percent, whichever is less. This deposit would be promptly returned to the applicant if the loan is declined, and would be applied towards the processing fee if the loan is approved. In the event the application is withdrawn, the deposit is refunded after deduction of processing costs. We believe that this requirement to compensate the CDC for work performed on applications that are subsequently withdrawn will discourage frivolous applications.

The language related to negotiation of the Central Fiscal Agent (CFA) fee in § 108.503-11(a) would be deleted as unnecessary because no new CFA agreements will be concluded. The CFA services debentures sold to the Federal Financing Bank (FFB). This financing mechanism is no longer in use. All projects under this program are now funded by the public sale of debenture pool participations.

Compliance With Executive Orders 12291 and 12612, the Regulatory Flexibility Act and the Paperwork Reduction Act.

SBA has determined that this proposal, taken as a whole, would not constitute a major rule for the purposes of Executive Order 12291, because the annual effect of this rule on the national economy would not attain $100 million. In this regard, we estimate that SBA will make no more than $20 million annually in additional loans for rural development, and no more than $5 million of *alter ego* loans where the lease term plus options equals the loan term. We further estimate that contracts between rural CDC's and their fully-staffed partners will not aggregate more than $500,000. We believe that the prohibition against self-dealing projects will prevent less than $20 million of projects. The change in the deposit fee structure will cause less than a $20,000 increase in aggregate deposit fees.

These proposed rules, if promulgated as final, would not result in a major increase in costs or prices to consumers, individual industries, Federal, state and local government agencies or geographic regions, and will not have adverse effects on competition, employment, investment, productivity or innovation.

SBA certifies that these rules, if promulgated, do not warrant the preparation of a Federalism Assessment in accordance with Executive Order 12612.

For the purpose of compliance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the provisions of this proposal, if promulgated in final form, could have a significant economic impact on a substantial number of small entities. The following analysis of the provisions is provided within the context of the review prescribed in the Regulatory Flexibility Act (5 U.S.C. 603).

1. These regulations are proposed:

(a) To implement Public Law 100–590, cited above;

(b) To conform existing regulations to the requirements of the new law;

(c) To enable small businesses with 503 loans to avoid costly recordation fees;

(d) To codify SBA's appeal procedure when a loan is declined.

(e) To prohibit a conflict-of-interest situation not expressly addressed previously; and

(f) To discourage frivolous applications; and

(g) To delete obsolete language concerning the Central Fiscal Agent (CFA).

2. The legal bases for these proposed regulations are section 5(b)(6) of the Small Business Act, 15 U.S.C. 634(b)(6); sections 308(b) and 503 (a)(2) of the Small Business Investment Act, 15 U.S.C. 687(b) and 697(a)(2); and section 136 of Public Law 100–590, cited above.

3. These regulations, taken together, would apply to all 503 companies and to all small concerns applying, or contemplating an application, for assistance under this program. While it is impossible to estimate their number, we can say that 1170 debenture guarantees were made by SBA in FY 1988.

4. There are no additional reporting, recordkeeping and other compliance requirements inherent in these proposed rules.

5. There are no Federal rules which duplicate, overlap or conflict with these proposed rules.

6. There are no significant alternate means to accomplish the objectives of these proposals.

For purposes of the Paperwork Reduction Act, Pub. L. 98–511, 44 U.S.C. Ch.35, SBA certifies that these rules would impose no new reporting or recordkeeping requirements.

List of Subjects in 13 CFR Part 108

Loan programs/business, Small businesses.

For the reasons set out in the preamble, 13 CFR Part 108 of the Code of Federal Regulations is proposed to be amended as follows:

PART 108—[AMENDED]

1. The authority citation for part 108 continues to read as follows:

Authority: 15 U.S.C. 687(c), 695, 696, 697, 697a, 697b, 697c, Pub. L. 100–590.

2. Section 108.2 is amended by adding immediately after the definition of "Reserve Deposit" a new definition ("Rural Area") as follows:

§ 108.2 Definitions.

* * * * *

Rural Area means:

(1) Any political subdivision in a nonmetropolitan county (as defined by the Economic Development Division, Economic Research Service, U.S. Department of Agriculture) with a population of less than 20,000; or

(2) Any political subdivision in a metropolitan county with a population of less than 20,000 if SBA has determined such political subdivision to be rural.

3. Section 108.8(d) is amended by revising the second sentence of paragraph (d)(5) to read as follows:

§ 108.8 Borrower requirements and prohibitions.

* * * * *

(d) * * *

(5) * * * The lease (including options exercisable exclusively by such operating small concern) shall be for a term of not less than the term of the section 502 or 503 loan.

* * * * *

4. Section 108.503(b)(3) is revised to read as follows:

§ 108.503 Program objectives.

* * * * *

(b) * * *

(3) *National objectives.* A project which will result in:

(i) Increased productivity through the modernization of existing facilities necessary to retain jobs,

(ii) Expansion of exports,

(iii) Expansion of minority business development,

(iv) Assisting manufacturing firms (SIC Codes 20–49),

(v) Assisting businesses in rural areas (as defined in § 108.2), or

(vi) Assisting businesses in labor surplus areas as defined by the U.S. Department of Labor (see paragraph (c) of this section).

Such project may be approved only if the average job opportunity costs for the 503 company's 503 portfolio do not exceed the standard of paragraph (c) of this section.

* * * * *

5. Section 108.503–1 is amended by revising the first sentence of paragraph (b)(3) to read as follows:

§ 108.503–1 Eligibility requirements for 503 companies.

* * * * *

(b) * * *

(3) *Professional Staff.* Each 503 company shall have a full-time professional staff and professional management ability (including adequate accounting, legal and business-servicing abilities): Provided, however, that a 503 company in a rural area, as defined in § 108.2, shall be deemed to have satisfied the foregoing requirements if it contracts with another 503 company in the same general area, which has such staff and such management ability, to provide necessary services. * * *

* * * * *

6. Section 108.503–4 is amended by revising in the introductory text the fourth sentence of paragraph (a) and redesignating paragraphs (b)(3) and (b)(4) as (b)(4) and (b)(5) respectively, and adding a new (b)(3) to read as follows:

§ 108.503–4 Project eligibility.

(a) * * * Sections 120.101–2(a) through (d), (f) and (g), 120.102–7, 120.103–2(a) through (e) and 120.103–3 of this chapter also apply. * * *

* * * * *

(b) * * *

(3) Those where the applicant or any Associate thereof (as defined in § 108.2) would, directly or indirectly, receive all or any part of 503 loan proceeds, except as permitted under §§ 108.503–5(a) and (d), 108.503–6(a) and (b) and 108.503–11(b)(2).

* * * * *

7. Section 108.503–6 is amended by revising paragraph (a)(1) and (b) to read as follows:

§ 108.503–6 Costs which may be charged to the small concern by the 503 company

* * * * *

(a) * * *

(1) *Loan processing fee.* The cost incurred by the 503 company for loan packaging, processing and non-legal staff functions related to loans shall be

recovered through a loan processing fee not to exceed one and one-half percent (1.5%) of the net debenture proceeds (as defined in § 108.2). Two-thirds of the loan processing fee shall be deemed earned and may be collected by the 503 company when the debenture authorization for the particular loan is issued by SBA. The deposit described in paragraph (b) of this section shall be applied to this portion of such fee. The remainder of the loan processing fee shall be deemed earned when the 503 loan is closed (see § 108.503–12). The 503 company, in its discretion, may collect the loan processing fee when earned or from the debenture proceeds. The loan processing fee paid by the borrower may be reimbursed from the debenture proceeds (see § 108.503–5(b)).

* * * * *

(b) *Deposits.*

(1) A 503 company may require a deposit of the lesser of $2,500 or 1% of the net debenture proceeds, as defined in § 108.2, at the time it accepts an application for processing.

(2) If the 503 company or SBA declines the application, such deposit shall be refunded within ten days after all appeal rights (see § 120.103–3 of this chapter) have been exhausted or waived.

(3) When the debenture authorization is issued, the deposit shall be applied towards the loan processing fee (see paragraph (a)(1) of this section).

(4) If the applicant withdraws its loan application at any time before SBA issues the debenture authorization, the 503 company may deduct its reasonable and necessary costs incurred in packaging and processing the loan application. Such costs shall be documented. Any remaining deposit balance shall be remitted to the applicant within ten days of such withdrawal.

* * * * *

§ 108.503–11 [Amended]

8. Section 108.503–11 Central fiscal agent is amended by removing the last two sentences of paragraph (a).

(Catalog of Federal Domestic Assistance 59.036 Certified Development Company Loans (503 Loans); 59.041 Certified Development Company Loans (504 loans).)

Susan Engeleiter,

Administrator.

[FR Doc. 89–21421 Filed 9–13–89; 8:45am]

BILLING CODE 8025–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[PS–002–89]

RIN 1545–AM92

Research and Experimental Expenditures

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations under section 174 of the Internal Revenue Code concerning research and experimental expenditures.

DATES: The public hearing will be held on Tuesday, December 5, 1989. Outlines of oral comments must be delivered by Friday, November 17, 1989.

ADDRESSES: The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. The requests to speak and outlines of oral comments should be submitted to the Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attention: CC:CORP:T:R (PS–002–89) Room 4429, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Angela Wilburn telephone (202) 566–3935 (not a toll-free call).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations appearing in the **Federal Register** for Wednesday, May 17, 1989 (54 FR 21224).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit, not later than Friday, November 17, 1989, an outline of the oral comments to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answers thereto.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Dale D. Goode,

Chief, Regulations Unit Assistant Chief Counsel (Corporate).

[FR Doc. 89–21521 Filed 9–13–89; 8:45 am]

BILLING CODE 4830–01–M

26 CFR Parts 1 and 602

[FI–80–86; FI–91–86]

RIN 1545–AJ42; 1545–AJ67

Arbitrage Restrictions on Qualified Student Loan Bonds and Tax-Exempt Bonds

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of extension of time to submit comments on proposed regulations and notice of public hearing on such proposed regulations.

SUMMARY: This document provides notice that the time for submitting comments on both the proposed regulations relating to arbitrage restrictions on tax-exempt bonds generally and the proposed regulations relating specifically to arbitrage restrictions on qualified student loan bonds is extended to November 15, 1989. In addition this document provides a notice of public hearing on the same proposed regulations.

Comments are due on or before November 15, 1989.

DATES: The public hearing will begin at 10:00 a.m. on Wednesday, December 13, 1989, and will continue, if necessary, at the same time on Thursday, December 14, 1989. Outlines of oral comments must be delivered by Wednesday, November 29, 1989.

ADDRESS: The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The requests to speak and outlines of oral comments, as well as any written comments, should be submitted to the Internal Revenue Service, Attn: CC:CORP:T:R (FI–80–86, FI–91–86), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Carol Savage of the Regulations Unit, Assistant Chief Counsel (Corporate), Internal Revenue Service, Room 4429, 1111 Constitution Avenue, NW., Washington, DC 20224, telephone 202–343–0232 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under sections 148 through 150 of the Internal Revenue Code of 1986.

On May 15, 1989, proposed and temporary regulations (T.D. 8252) under sections 148, 149 and 150 of the Internal Revenue Code of 1986 were published in the **Federal Register** (54 FR 20861 and 54 FR 20787). These regulations relate to arbitrage restrictions on tax-exempt bonds generally.

On July 5, 1989, proposed regulations under section 148 of the Internal Revenue Code of 1986 were published in the **Federal Register** (54 FR 28075). These regulations relate specifically to arbitrage restrictions on qualified student loan bonds.

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments by November 15, 1989, and who also desire to present oral comments at the hearing on the proposed regulations should submit, not later than Wednesday, November 29, 1989, an outline of the oral comments to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answers thereto.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building under 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue:

Cynthia E. Grigsby,

Acting Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 89–21866 Filed 9–12–89; 3:06 pm]

BILLING CODE 4830–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–3644–2]

Approval and Promulgation of Implementation Plans; Alaska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: By this Notice, EPA invites public comment on its proposed approval of amendments to the Alaska "State Air Quality Control Plan" as revisions to the Alaska state implementation plan (SIP). EPA is proposing to approve amendments to Section IV.F. "Project Review Procedures" and title 18, chapter 50, section 300 "Permit to Operate" of the Alaska Administrative Code (18 AAC 50), which require fugitive emissions to be included when determining whether certain sources are subject to permit review but allow fugitive emissions to be excluded for all other source categories. EPA is also proposing to approve a number of other revisions to 18 AAC 50 which relate to the Alaska permit to operate regulations and to the emission limitations for asphalt plants.

DATE: Comments must be postmarked on or before October 16, 1989.

ADDRESSES: Copies of the materials submitted to EPA may be examined during normal business hours at:

Air Programs Branch (10A–88–7), Environmental Protection Agency, 1200 Sixth Avenue AT–082, Seattle, Washington 98101

State of Alaska, Department of Environmental Conservation, 3220 Hospital Drive, Juneau, Alaska 99811

Comments should be addressed to: Laurie M. Kral, Air Programs Branch, Environmental Protection Agency, 1200 Sixth Avenue AT–082, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: David C. Bray, Environmental Protection Agency, Air Programs Branch, 1200 Sixth Avenue, AT–082, Seattle, Washington 98101, Telephone: (206) 442–4253, FTS: 399–4253.

SUPPLEMENTARY INFORMATION:

I. Background

On September 12, 1988, the Commissioner of the Alaska Department of Environmental Conservation submitted amendments to section IV.F. of the Alaska State Air Quality Control Plan and numerous amendments to title 18, chapter 50, of the Alaska Administrative Code as revisions to the Alaska SIP.

The amendments to pages IV.F.1–1 through IV.F.1–8 of Section IV.F. "Project Review Procedures" clarify the source categories for which fugitive emissions must be included in the determination of whether the source is "major" and subject to review under the Alaska "prevention of significant deterioration" (PSD) permit program. The Alaska "Permit to Operate" program, as currently approved by EPA, does not provide for any exclusion of fugitive emissions when determining whether or not a source is "major." The proposed amendment would make the Alaska program consistent with EPA's minimum requirements by incorporating the exclusion allowed under 40 CFR 51.166(b)(1)(iii) and (i)(4)(ii). Appropriate changes to the Alaska Administrative Code are also proposed, as discussed below, to implement this revision.

Although this proposed revision to Alaska's "Permit to Operate" program will make it less stringent with respect to sources required to obtain PSD permits, the program will still meet minimum EPA requirements for an approvable PSD program. Furthermore, there are currently no strategies for attainment and/or maintenance of ambient air quality standards which rely, either directly or indirectly, on the stringency of the state's earlier PSD program. The only designated nonattainment areas are the Fairbanks and Anchorage carbon monoxide areas, and the state permit program includes a "de facto" construction moratorium on new major (100 ton per year) carbon monoxide sources in those two areas. The control strategies for the two PM_{10} Group I areas which are now under development have not relied on the stringency of the earlier PSD program. Since these amendments satisfy the minimum EPA requirements for PSD permit programs and do not weaken any existing control strategies, EPA is proposing to approve the amendments as a revision to the Alaska SIP.

The amendments to Title 18, Chapter 50, of the Alaska Administrative Code revise the emission limitations for existing asphalt plants, revise the PSD applicability provisions with respect to the inclusion of fugitive emissions, and make numerous administrative changes to update and clarify certain regulatory provisions.

The amendments to sections 050(a)(4), 050(b), and 050(d)(1), revise the opacity and grain loading standards for existing asphalt plants. The previous rules established two levels of emission limitations for existing asphalt plants,

depending upon whether such was constructed or modified after November 1, 1982. The amendments would extend the applicability of the more stringent emission standards to asphalt plants which are constructed or modified after June 11, 1973. Since these amendments simply tighten the current SIP emission limitations, EPA is proposing to approve them as revisions to the Alaska SIP.

Amendments to sections 300(a)(5)(C), 300(a)(6)(C), and 300(a)(7) have been made to clarify the state's procedures for accumulating emissions increases for determining when a "major modification" has resulted. The previous rules did not clearly indicate that emissions would begin accumulating again after the issuance of a permit for a major modification. Since this provision is more stringent than required by EPA regulations, EPA is proposing to approve this clarification as a revision to the Alaska SIP.

Amendments to section 300(c) have been made to clarify that the information to be submitted in a PSD permit application is required for each pollutant emitted in significant amounts. Since this is consistent with EPA requirements, EPA is proposing to approve this clarification as a revision to the Alaska SIP.

A new section 300(g) is being added to establish the requirement to include fugitive emissions in the determination of a "major" source for purposes of PSD permitting. Since this new section is consistent with EPA requirements, as discussed above, EPA is proposing to approve it as a revision to the Alaska SIP.

Amendments are being made to sections 500(d), 510(a), 520(a), 520(b), and 620 in order to update references to EPA regulations (e.g. 40 CFR Parts 58 and 60) and to other portions of the State Air Quality Control Plan. These are strictly administrative changes which comply with EPA requirements, EPA is proposing to approve them as a revision to the Alaska SIP.

II. Summary of Action

EPA is today soliciting public comment on its proposed approval of revisions to the State of Alaska state implementation plan. Specifically, EPA is proposing to approve amendments to pages IV.F.1-1 through IV.F.1-8 of section IV.F. "Project Review Procedures" and amendments to title 18, Chapter 50, sections 050(a)(4), 050(b), 050(d)(1), 300(a)(5)(C), 300(a)(6)(C), 300(a)(7), 300(c), 300(g), 500(d), 510(a), 520(a), 520(b), and 620 of the Alaska Administrative Code.

Interested parties are invited to comment on all aspects of this proposed approval. Comments should be submitted in triplicate, to the address listed in the front of this Notice. Public comments postmarked by October 16, 1989, will be considered in the final rulemaking action taken by EPA.

III. Administrative Review

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years.

Under 5 U.S.C. section 605(b), I certify that SIP approvals do not have a significant economic impact on a substantial number of small entities (46 FR 8709).

Authority: 42 U.S.C. 7401–7642.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by Reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and Recordkeeping requirements, Sulfur oxides.

Dated August 31, 1989.

Robert S. Burd,

Acting Regional Administrator.

[FR Doc. 89-21412 Filed 9-13-89; 8:45 am]

BILLING CODE 6560-50-M

---

40 CFR Part 300

[Docket No. 105NCP-HRS; FRL-3646-3]

Hazard Ranking System (HRS) for Uncontrolled Hazardous Substance Releases; Field Test Report

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of data and request for comment.

SUMMARY: The Environmental Protection Agency (EPA) proposed revisions to the Hazard Ranking System (HRS), the principal tool used for placing sites on the National Priorities List (NPL), on December 23, 1988 (53 FR 51962). EPA has conducted a nationwide field test to examine model results to actual field data, to test the feasibility of implementing the proposed factors, to determine resources needed, and to assess the availability of information needed for the evaluation of sites. EPA is making the report on the field testing available to the public for comment.

DATE: Comments on this notice must be received by October 16, 1989.

ADDRESS: Comments may be mailed or delivered to the CERCLA Docket Clerk, Attn: Docket Number 105NCP-HRS, Mail Code OS-240, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Please send 4 copies of comments.

AVAILABILITY OF THE REPORT. In order to facilitate full and prompt access to this report by interested members of the public, the report is being distributed to all persons who submitted written comments to EPA (or oral comments at EPA public hearings) on the proposed revisions to the HRS, during the comment period of December 23, 1988 to March 23, 1989. In addition, copies will be provided (without charge) upon request to other interested members of the public. Requests for copies of the field test report should be made to the CERCLA Docket Office, Waterside Mall 2nd floor U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, phone (202) 382-3046. The report is also available for viewing, by appointment only, from 9:00 a.m. to 4:00 p.m., Monday through Friday excluding holidays, in the CERCLA docket office, Room 2427 in Waterside Mall (401 M Street, SW., Washington, DC).

FOR FURTHER INFORMATION CONTACT: Jane Metcalfe or Larry Zaragoza, Hazardous Site Evaluation Division, Office of Emergency and Remedial Response, OS-230, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, or the Superfund Hotline, phone (202) 382-3000 or (800) 424-9346.

SUPPLEMENTARY INFORMATION:

I. Background

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. 9601 *et seq.*), commonly called the Superfund, in response to dangers posed by uncontrolled releases of hazardous substances, pollutants, and contaminants into the environment. Section 105(8)(A) of CERCLA required the Environmental Protection Agency (EPA) to establish criteria for determining priorities among releases or threatened releases. To meet this requirement, EPA revised the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, on July 16, 1982 (47 FR 31180) to include the Hazard Ranking System (HRS). The HRS is a scoring system used to assess the relative threat associated with actual or potential

releases to the environment. The HRS score is the primary mechanism for selecting sites for the National Priorities List (NPL); only sites on the NPL are eligible for Superfund-financed remedial actions.

In 1986, Congress passed the Superfund Amendments and Reauthorization Act of 1986 (SARA), which added a number of new evaluation factors to the scoring system, and in section 105(c)(1), directed EPA to revise the HRS to assure "to the maximum extent feasible, that the hazard ranking system accurately assesses the relative degree of risk to human health and the environment posed by sites and facilities subject to review." CERCLA sections 118 and 125, as amended, included additional requirements for revisions to the HRS.

On December 23, 1988, EPA published a notice of proposed rulemaking (NPRM) (53 FR 51962) in which the Agency proposed extensive revisions to the HRS to meet the Congressional mandate. The major changes proposed included the following:

- The waste quantity factor would be based on a tiered approach.
- The toxicity factor would be based on three kinds of toxicity: cancer, and toxicity associated with acute and chronic exposures.
- In the ground water, surface water, and air pathways, toxicity would be combined with either mobility or persistence values.
- Population factors would be evaluated based on both actual and potential contamination. Where only potential contamination exists, populations would be weighted to account for the distance from the site (for air, ground water, and onsite exposure) or dilution potential of the surface water body.
- The number of sensitive environments considered would be increased.
- Potential air releases would be evaluated.
- The surface water pathway would be divided into four threats: drinking water, human recreation, human food chain, and environmental. Direct consideration of human food chain and recreation threats is new.
- Direct contact and fire-explosion would be eliminated, and an onsite exposure pathway added.

In order to assist the Agency in finalizing the HRS, EPA undertook a field testing program. The field testing had several objectives:

- To test the feasibility of implementing the proposed HRS factors;
- To determine resources required (*e.g.*, cost, technical hours) for specific tasks under the proposed HRS; and
- To assess the availability of information needed for the evaluation of sites with the proposed HRS and to identify difficulties with its use.

To meet these objectives, EPA Headquarters and all ten EPA Regional offices performed site inspections at 29 sites nationwide. The sites were selected either because the Regions had planned work at the site for 1988 or because the sites had specific features EPA wanted to test using the proposed HRS revisions (*e.g.*, potential human food chain exposures, direct contact and potential air releases).

The site inspections were conducted primarily to collect the data needed to prepare scoring and documentation packages for the proposed HRS revisions. In addition, field test participants were encouraged to collect data for every HRS factor, including release potential, even where release potential would not normally have been scored because an observed release had been documented. Besides collecting data and completing the initial scoring, the participants provided feedback on how well they thought the proposed revisions evaluated the relative risks at the sites involved.

The participants completed a cost information form for each site to provide a basis for estimating the resources required for using the proposed HRS. These efforts included assembling information on the types of alternative data collection procedures used to support revised HRS factors, for example, computer databases and "desktop" information.

II. Summary of Field Test Results

This section summarizes main findings of the field testing; however, interested members of the public should review the entire report for a discussion of the full range of findings. The limitations of the field test goals, design, and results should be particularly noted. Reviewers of the field test report may submit comments on any issue raised in the report.

The Agency tested the proposed revised HRS by performing inspections at 29 sites nationwide. Sites were not randomly selected, but were primarily chosen to have characteristics that would help evaluate the proposed new components of the HRS. Thus, the ability to extrapolate these results to the greater universe of CERCLA sites is limited. However, EPA believes that the field test results do provide a useful measure of how actual environmental data perform within the framework of the proposed HRS and will allow the reader to draw conclusions regarding the usefulness and feasibility of the proposed HRS revisions.

Definitions and Criteria—General

The field test indicated that participants experienced difficulties with some definitions and criteria found in the proposed HRS revisions. For example, some participants stated that criteria for conducting sampling for air releases and ground water releases at drinking water wells are not sufficiently precise. Participants recommended that simplification of the proposed HRS be pursued, particularly in terms of the instructions for scoring factors.

Definitions and Criteria—Source Definition and Characterization

Characterization of sources is important under the proposed HRS because a number of factors (e.g., containment, waste quantity) are evaluated for each source. Moreover, target distances are measured from source (vs. site) boundaries. The field testing indicated four areas of concern related to defining and characterizing sources. First, defining source boundaries proved to be difficult; a number of participants questioned whether contaminated soil should be considered part of a source. Project participants also noted that the size of a source may be different for each pathway; this may be particularly true for onsite exposure.

Second, difficulties arose concerning how to select source type for several situations. Participants found the air pathway criteria for grouping several sources too restrictive. Third, containment descriptions were occasionally hard to apply. Finally, the issue of whether response actions should be considered when scoring a site received much discussion.

Waste Quantity

The proposed HRS would allow the use of a tiered scoring system for waste quantity. For sources where data are available on hazardous constituent quantity, the amount of hazardous substances could be used to calculate waste quantity. For other sources, hazardous waste quantity, source volume, or source area could be used. The field test indicated a number of concerns with the hazardous waste quantity. While most participants found the increased discrimination to be a significant improvement, some found the factor time-consuming and the directions confusing. Several participants raised questions about the

quality of analytical data required, and requested clarification on the type, number, and distribution of samples needed to document calculations. For example, it was unclear whether analyses of subsurface samples could be used to calculate depth of a source for several sites. Another issue raised was the degree to which data other than analytical chemistry results, such as aerial photography, could be used as a basis for scoring the factor.

The field test results indicate that source volume was the most frequently used waste quantity measure (almost 40 percent); hazardous substances quantity was the second most frequently scored measure (about 30 percent). Every site evaluated on the basis of hazardous substances quantity was assigned the maximum score. Sites scored based on source volume or area had a wider distribution of scores. Some field test personnel suggested that the divisors used for calculating both source volume and source area warrant reexamination.

Target Population Factors

The field test findings indicate four significant issues related to target factors in general. First, documenting target populations was time-consuming when compared with the current HRS. The field test participants searched several national databases as potential sources of population data. EPA's Graphical Exposure Modeling Systems (GEMS) was employed for estimating recreational use populations. However, field test participants judged GEMS to be relatively unsuccessful for populations within a mile of the site, the most important group when distance weights are applied and for rural areas. Databases searched for drinking water well information were sometimes out-of-date and inaccurate. In general, test participants were concerned about the quality of database information and about whether this information will have to be confirmed with more accurate data collection techniques (*e.g.*, doing actual counts of local populations).

Second, the evaluation of onsite population in the air and onsite exposure pathways raised several issues. For example, participants reported that for the air pathway, the criteria for defining onsite target populations were unclear. In addition, participants felt that for the onsite exposure pathway the exclusion of onsite workers when evaluating resident population was inconsistent as such workers are counted in the other pathways. The final difficulty was that documenting onsite populations could require increased community relations efforts, as well as the collection of specific information on the occupants of any house with observed property contamination.

Third, the proposed HRS would weight target populations potentially exposed to contamination from a site based on distance or dilution potential. The participants were concerned about the effects of these weighting factors. Although several participants felt that the weighting factors improved the relative accuracy of the proposed HRS, the distance weighting factors were partly responsible for the generally lower ground water pathway scores. For the surface water pathway, participants suggested that the dilution weighting factors may not accurately represent the degree of contaminant dilution in major rivers. Also, distance weighting factors applied to nearby populations in the onsite exposure pathway may require additional review; this factor often scored very high and may not realistically reflect the degree to which nearby populations to come into contact with contaminants at a site.

Fourth, the proposed HRS would evaluate populations on the basis of whether they are exposed to documented contamination above health-based benchmarks. The field test indicates a number of problems with the use of these benchmarks. Relatively few instances of populations drinking from contaminated sources were found at the 29 sites evaluated. The participants commented that the scope of the site inspection conducted to gather data for HRS scoring allows only limited sampling of wells and intakes. As a result, the population identified as being exposed to documented contamination may be small at most sites.

Sensitive Environments

The proposed HRS would expand the definition of sensitive environments and evaluate all such environments within the target distance limit. The participants noted that evaluating sensitive environments is more time-consuming under the proposed HRS revisions. Defining boundaries of some of the listed sensitive environments is not always straightforward, particularly ones such as habitats of endangered species where there are no fixed geographical positions. When distance weighting sensitive environments, participants encountered problems because the environments sometimes cross distance categories.

Another problem arose from the use of Natural Heritage Program (NHP) information, an alternative approach provided in the proposed HRS. The participants noted that the quality of data in NHP databases varies from state to state. In addition, the NHP does not generally establish geographic boundaries for habitats.

Surface Water—Human Food Chain

Nearly all participants felt that the human food chain population factor was second only to the hazardous waste quantity factor in its difficulty to evaluate. Four issues were identified during the field test. First, participants encountered sites where defining fisheries was difficult. For example, several hatcheries were withdrawing water within the target distance limit for use in raising fish, but were not releasing these fish to the surface water. For migratory fish, such as salmon, fisheries were also hard to define.

Second, the field test indicated that food chain productivity information was difficult to interpret. A number of methods were used—actual catch or harvest data, historical stocking rate, landings data, standing crop data, and default values. For each method, participants identified concerns that could result in inaccurate calculations. For example, landings data may include fish caught outside the target distance. Also, some productivity data included all food chain species, including fish not normally consumed by humans. While actual data on yield or productivity was used when available, the field test results indicated that standing crop default values were used for about half of the sites tested that had fishery evaluations to estimate human food chain production.

Third, the proposed standards for documenting actual food chain contamination may be too restrictive. Several participants suggested that state benchmarks and other criteria could be used for substances for which an FDA action level has not been set. Fourth, at sites near coastal areas and small bodies of water, human food chain factors appear to overstate the risk posed by potential food chain contamination. Over 50 percent of the sites with fisheries received the maximum food chain population values.

Surface Water—Human Recreation

Participants stated that the population factor was disproportionately difficult to evaluate relative to its impact on scores. The target distance limits for evaluating population, which are determined from the accessibility/attractiveness factor, contributed to the problems associated with evaluating human recreation threat targets.

Ground Water to Surface Water Discharge

In the proposed HRS, ground water contamination has resulted in documented contamination of surface water would indirectly be taken into account in the evaluation of the surface water pathway. The proposed HRS does not have a direct mechanism to for estimating potential contamination of surface water by ground water. Questions were raised during the field testing as to whether there should be a direct mechanism for evaluating such discharges.

Air—Particulates

The field test revealed problems with the method used to evaluate particulate releases to air. Under the proposed HRS, mobility would be evaluated separately for gaseous and particulate releases to air; the values would then be combined in a matrix to assign a source mobility value. The participants suggested assessing particulate and gas mobility separately; that is, a potential to release value would be assigned for each type of release. Participants stated that other measures of potential particulate release should be considered. The proposed HRS revisions would base the particulate mobility value on the precipitation effectiveness index; participants suggested wind speed and particulate size may also be important considerations. Another issue related to particulate releases is distance-weighting. Participants noted that the proposed distance weighting approach is based on gaseous releases and may not be appropriate for sites where only particulate releases are likely.

Cost Issues

The costs associated with data collection, sampling, evaluation, and administrative requirements in support of proposed HRS scoring were found to vary widely among sites. The dollar costs per site, including all necessary data collection and scoring activities, ranged from $100,000 to $311,000, and averaged $176,000. (These costs represent the entire process of pre-remedial site evaluation, sample analysis and site scoring.) Comprehensive evaluations were performed for all pathways at most sites, and the sites themselves were primarily selected for specific characteristics of interest from the perspective of field testing. As such, these costs may not be representative of the costs supporting HRS scoring occurring for the greater universe of CERCLA sites

One of the most significant influences on the overall cost of the site evaluations was the number of Contract Laboratory Program (CLP) samples collected at the site. The number of samples varied among these sites from 34 to 98 with an overall average of 63 samples for the 29 sites evaluated. For this mix of samples per site, the field test results indicate that sampling and analysis costs comprised about half the cost associated with the site evaluations. A second major cost element was the installation of ground water monitoring wells. Limiting the number of sites where wells are installed and limiting the number of wells installed could reduce overall costs substantially.

Site Scores

Scores for each field test site were prepared under both the proposed HRS and the current HRS. Significant scoring results include the following:

- Under the proposed HRS revisions, surface water tended to be the highest scoring pathway for the field test sites. Under the current HRS, the ground water pathway tended to score highest.
- Under the proposed HRS revisions, the surface water pathway scores were usually dominated by the human food chain threat.
- Surface water and air pathway scores were generally higher using the proposed HRS than using the current HRS.
- Ground water pathway scores were generally lower with the proposed HRS than with the current HRS.
- Overall site scores for the field test sites were generally higher under the proposed HRS than under the current HRS.

The ability to extrapolate these results to the greater universe of CERCLA sites is limited because of the limitations on the design and size of the study, as discussed above. However, these results do provide a useful measure of how actual environmental data perform within the framework of the proposed HRS.

The Agency invites public comment on the issues raised by this field test report.

Dated: September 8, 1989.

Jonathan Z. Cannon,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 89-21611 Filed 9-13-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 206

RIN: 3067-AB45

Disaster Assistance

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule. Hazard Mitigation Planning (Subpart M).

SUMMARY: President Reagan signed the Disaster Relief and Emergency Assistance Amendments of 1988 (Public Law 100-707) on November 23, 1988. This law amended the Disaster Relief Act of 1974, Public Law 93-288, and retitled it the Robert T. Stafford Disaster Relief and Emergency Assistance Act. On March 21, 1989, FEMA published a document containing Subpart M (Hazard Mitigation Planning) at 44 CFR part 206 (54 FR Page 11610, March 21, 1989). Through this document, Subpart M was published as an interim regulation to implement the hazard mitigation planning provisions of the Stafford Act for disasters declared after the effective date of Public Law 100-707, i.e. November 23, 1988. The interim regulations, which FEMA was directed to publish within 180 days of passage of the Stafford Act, are designed to provide immediately effective regulations for the new law. Subpart M was not revised through the interim regulations because the section of the law addressed by Subpart M (section 409) is identical to the original language in section 406 of Public Law 93-288.

At this time FEMA wishes to update, simplify and clarify Subpart M through the issuance of proposed regulations. The proposed regulation will provide reviewers an opportunity to comment on the proposed rule through the normal regulatory process before becoming effective. As described in the following Supplementary Information, the changes to Subpart M are based on a number of factors that have occurred since publication of the original regulation in 1979. One key factor is the great deal of experience that FEMA and the States have gained with post-disaster hazard mitigation planning.

The proposed rule will also establish the relationship between Subpart N (Hazard Mitigation Grant Program) and Subpart M. Section 404 of the Stafford Act, for the first time, provides authority to fund hazard mitigation measures identified under the mitigation planning process described in Subpart M. Regulations for this significant new mitigation funding program have been

published separately at 44 CFR Part 206, Subpart N, published on May 22, 1989 (54 FR 22173).

DATE: Comments on the proposed rule change will be accepted until November 13, 1989.

ADDRESSES: Send written comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Robert G. Chappell, Assistant Associate Director, Disaster Assistance Programs, State and Local Programs and Support, 500 C Street SW., Washington, DC 20472, (202) 646-3615, or contact the program officer for Subpart M listed at the end of the "Supplementary Information."

SUPPLEMENTARY INFORMATION: Section 406 of the Disaster Relief Act of 1974 for the first time in Federal disaster legislation required that recipients of disaster assistance, as a condition of receiving such assistance, take measures to evaluate and "mitigate" natural hazards in the Federally declared disaster areas. Within the context of the legislation, the term "mitigate" was defined to mean "reduce" or "avoid" exposure or vulnerability to hazards on a long term basis. With the passage of the Public Law 100-707, section 406 of the Disaster Relief Act of 1974 was renumbered as section 409 of the Stafford Act, but the language in the provision was not amended.

Following enactment of the Disaster Relief Act of 1974, FEMA's predecessor agency, the Federal Disaster Assistance Administration, undertook studies to identify and carry out Federal responsibilities under section 406. These studies led to adoption on November 8, 1979, of the regulations currently found at 44 CFR part 205, Subpart M, Hazard Mitigation. With the passage of the Stafford Act in November 1988, FEMA was directed to issue interim regulations within 180 days, to be effective immediately. Subpart M was reissued without change at 44 CFR part 206, Subpart M, Hazard Mitigation Planning (54 FR page 11610; March 21, 1989). Subpart M was not revised through the interim regulation because section 409 contained no new language warranting revision.

Section 409 of the Stafford Act requires State and local governments to evaluate the natural hazards in areas in which the proceeds of the grants or loans are to be used, and to take appropriate actions to mitigate such hazards. In order to accomplish this, State and local governments are required to prepare and implement hazard mitigation plans. Through the plans, State and local governments can both evaluate the natural hazards in the disaster area, and identify appropriate actions to mitigate the risk from these hazards. Under section 409, hazard evaluation means an evaluation of State or local vulnerability to natural hazards, rather than hazardous materials, radiological hazards, or other types of technological hazards. Though FEMA realizes that section 409 refers explicitly only to natural hazards, it is FEMA's intent that if a declaration is made for a technological hazard, the recipients of such Federal disaster assistance will be expected to evaluate those technological hazards for which assistance is made available.

The hazard evaluation is an essential part of the mitigation process, though it is not to be considered an end in itself. The hazard evaluation typically serves one of two purposes. First, a general hazard evaluation must be conducted to identify the types of mitigation measures appropriate to a given area. Existing information on flooding, landslides, earthquakes, hurricanes, and other natural hazards can generally be obtained from Federal and State agencies to serve this purpose. Second, a more specific hazard evaluation may be required to determine the design of a mitigation measure. If not available, this type of evaluation might have to be performed as specific measures are identified and developed.

The Stafford Act specifically references land use and construction practices as types of appropriate mitigation actions, thus indicating a Congressional intent to address long term, comprehensive approaches to mitigation. Under section 409, the President is also authorized to prescribe hazard mitigation standards or approve such standards after adequate consultation with the appropriate elected officials of general purpose local governments. Such standards should be technically sound, acceptable, reasonable, practicable, and cost-effective.

Since 1979, a number of factors have combined to necessitate a comprehensive revision to the current Subpart M regulations. First, in 1980, the Office of Management and Budget issued a directive to twelve Federal agencies, including FEMA, requiring them to coordinate post-flood disaster assistance and recovery planning and to emphasize nonstructural flood hazard mitigation measures, to the greatest extent possible, as part of an effort to minimize Federal expenditures over the long term for flood disaster recovery assistance. A copy of the directive is printed as Attachment A to this proposed regulation. The Interagency Agreement for Nonstructural Flood Damage Reduction signed by these agencies created a process of post-disaster surveys and reports prepared by interagency, intergovernmental, and interdisciplinary teams, under the leadership of FEMA, which are intended to identify and recommend approaches for recovery and mitigation actions. Since many of the major disasters declared by the President result from floods, and since this interagency hazard mitigation team process impacts significantly on FEMA's recovery and mitigation programs, it is essential that the substantive and procedural requirements of both the interagency teams and section 409 be closely coordinated. Section 206.404(b) designates the interagency team to serve in place of the Hazard Mitigation Survey Team for flood related disasters. As described under § 206.404(a), the purpose of the Hazard Mitigation Survey Team is to identify immediate post-disaster mitigation opportunities, and longer term mitigation issues to be addressed in the post-disaster hazard mitigation plans required under Subpart M.

Second, with the passage of the Stafford Act a significant new mitigation funding program was created. Section 404 of the Stafford Act provides authority to fund hazard mitigation measures identified under section 409. Section 404 states that up to a 50 percent Federal contribution is available to fund measures which the President has determined are cost-effective mitigation measures, and which substantially reduce the risk of future damage, hardship, loss, or suffering in any area affected by a major disaster. Such measures are to be identified following the evaluation of natural hazards under section 409. The total Federal contribution available under section 404 is limited to 10 percent of the estimated aggregate amounts of grants authorized by section 406 of the Stafford Act for permanent restorative work. Interim regulations for the Hazard Mitigation Grant Program under section 404 can be found at 44 CFR part 206, Subpart N, published on May 22, 1989. The proposed Subpart M which follows contains regulations to coordinate the mitigation planning and funding programs authorized by sections 409 and 404 of the Stafford Act, respectively.

Third, there have been changes within FEMA's program relating to disaster assistance to State and local governments, referred to as the public

assistance program, that warrant a revision to Subpart M. Subpart M, at 44 CFR part 205 (relating to disasters declared prior to November 23, 1988) and 44 CFR part 206 54 FR page 11610; March 21, 1989 (relating to disasters declared since November 23, 1988) references "disasterproofing," a practice which historically allowed FEMA to fund hazard mitigation not required by applicable standards, as part of the repair or reconstruction of a damaged facility under the public assistance program. In the past, funding for disasterproofing was generally limited to 15 percent of the public assistance grant, and was limited to integral portions of the damaged facility. Under section 406(e) of the Stafford Act, cost-effective hazard mitigation measures which may be required by FEMA after review of a project are now eligible for FEMA assistance without the restrictions formerly applied to disasterproofing. The term "hazard mitigation" has replaced the term "disasterproofing" in the context of public assistance projects. Funding for hazard mitigation within the public assistance program is described at 44 CFR 206.226(b). Therefore, it is no longer necessary for the regulations implementing section 409 to address public assistance hazard mitigation requirements.

In addition to the planning requirements associated with section 409, this section also addresses minimum standards for any repair or reconstruction financed under the Stafford Act. Under current FEMA policy, the cost of bringing a facility up to minimum standards is an eligible public assistance cost when such standards apply to the type of work being performed. These minimum standards, including standards for hazard mitigation, can either be in place at the time of the disaster or can be adopted after the disaster but prior to approval of a project. Because hazard mitigation funding for damaged public facilities and minimum standards are covered under the interim public assistance regulations at 44 CFR 206.226(a), proposed Subpart M only addresses how the need for new standards might be identified through the mitigation process. For example, if a number of State highway bridges are destroyed or damaged in a disaster, possible mitigation measures for each bridge receiving Federal disaster assistance would be addressed through the public assistance program. The State's hazard mitigation plan required by Subpart M should address the fact that standards for State bridges might be inadequate, and if appropriate should propose a new design standard for State highway bridges.

Finally, since publication of the original hazard mitigation regulations in 1979, a great deal of experience on hazard mitigation planning has been gained by both FEMA and the States. Particular experience has been gained with respect to use of the mitigation survey teams in the early identification of mitigation opportunities; with the provision of technical assistance to States in the development of mitigation plans; with the need to involve all key State agencies and local units of government in the planning process; with the need to monitor and evaluate implementation of mitigation plans; and, with the need to allow for updates of previously developed plans, as opposed to automatically requiring a completely new mitigation plan following a declaration.

This revision to Subpart M is being proposed to update, simplify, and clarify current regulations. The basic requirements of the proposed rule are based largely on Subpart M regulations proposed on April 18, 1986 (51 FR page 13332). The 1986 proposed regulations, which substantially revised and updated the 1979 regulations, underwent extensive review by Federal agencies, States, local governments, and professional emergency management and floodplain management associations. These regulations were part of a larger effort to revise disaster assistance regulations which did not become final because of objections to other subparts of the proposed regulations. In preparing this version of Subpart M, comments on the 1986 version of the regulations were taken into consideration. For example, a section on the hazard mitigation planning process was added at the suggestion of one reviewer.

However, much of the detail contained in the 1986 version will not be found in these proposed regulations. The type of detail covered by the 1986 proposed regulations, such as the duties of a FEMA or State Hazard Mitigation Coordinator or the topics to be covered by a section 409 Scoping Meeting with the State, will be contained in FEMA handbooks and guidance documents, not in regulation. Regulations should be clear and concise, and should be directed at outlining basic requirements for State and local governments. Any detail of a procedural nature, such as the timeline for development of a mitigation plan or the format of the plan, is better covered by FEMA policy and guidance documents.

Though Subpart M prescribes mitigation planning requirements in the event of a Federal declaration, State and local governments are encouraged to develop mitigation plans before a disastrous event strikes. A disaster provides an opportunity during which many worthwhile mitigation measures can be implemented. Unfortunately, these opportunities are often lost during the recovery process because of failure to plan ahead. For example, a community or State could develop a more stringent floodplain management or earthquake building design and construction standard that would be ready for adoption after the occurrence of a disastrous event, whether Federally declared or not. Supplemental Federal, State, or local funds available during the recovery process may help pay for implementation of this new standard as damaged structures and facilities are repaired or reconstructed.

With the creation of the Hazard Mitigation Grant Program, it is more important than ever to have early identification of mitigation measures so that mitigation opportunities are not lost during reconstruction. State or local units of government that develop a good basic mitigation plan prior to a declaration can also have the advantage of not having to prepare a complete mitigation plan as a result of a declaration, but might merely need to update the existing plan to satisfy FEMA requirements.

The major provisions of proposed new Subpart M are summarized below.

1. The key responsibilities of FEMA, State, and local governments in carrying out the requirements of section 409 of the Stafford Act are updated and clarified. The principal responsibility of the State is to integrate hazard mitigation into its ongoing activities and programs, and to prepare and submit a hazard mitigation plan within 180 days of the declaration. The emphasis on a comprehensive approach to mitigation, with participation on the part of all key State and local government agencies, is new to Proposed Subpart M.

2. Section 409 requires recipients of Federal disaster assistance to evaluate the natural hazards in the disaster area and to take appropriate action to mitigate such hazards. The hazard mitigation plan is the method of evaluating hazards and identifying appropriate mitigation actions. FEMA has the authority under the Stafford Act to ensure compliance with hazard mitigation commitments, including the recovery of funds or denial of future funds if mitigation commitments are not fulfilled. For example, if a State has

agreed to implement a mitigation action as a condition of receiving Federal disaster assistance, such as upgrade of a substandard levee, and this action is not taken, future disaster assistance for losses resulting from failure to implement this mitigation action could be denied. Proposed Subpart M clearly states this authority.

3. The requirement to conduct a natural hazards and mitigation evaluation as part of the declaration process is outlined. This evaluation will be the basis for formulating hazard mitigation language in FEMA-State Agreements. The proposed rule focuses on the process of the evaluation, rather than suggesting standard mitigation language to be included in FEMA-State Agreements.

4. The regulation covers the relationship between the Hazard Mitigation Grant Program, recently authorized by section 106(a)(3) of Public Law 100–707, which added new section 404 to the Stafford Act, and the section 409 planning process. The Hazard Mitigation Grant Program provides a method of funding mitigation measures identified under section 409. Interim Subpart M does not address the Hazard Mitigation Grant Program.

5. The Hazard Mitigation Survey Team (HMST) is established as the method of providing technical assistance to State and local governments and of identifying mitigation issues in the immediate post-disaster setting. The HMST is also integral to early identification of measures to be funded under the Hazard Mitigation Grant Program. The proposed rule updates and clarifies the function of the HMST, and states that the Interagency Hazard Mitigation Team (IHMT) can serve in place of the HMST for flood related disasters.

6. The general approach, content, and submission requirements of the hazard mitigation plan are updated and clarified in proposed Subpart M. The new requirements are based on knowledge and experience gained since initial publication of Subpart M.

7. Key roles of FEMA, the State, and local governments in the hazard mitigation planning process are described. The proposed rule places much more emphasis on involvement of all key State and local agencies in the development and implementation of the mitigation plan.

For further information on the Hazard Mitigation Planning proposed regulations, contact Patricia Stahlschmidt at 202–646–3678.

Environmental Considerations

An environmental assessment has been prepared, leading to the determination that this rule will not have a significant impact on the environment and that an Environmental Impact Statement is not required. The assessment is available for review at the Office of the Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

Regulatory Flexibility

FEMA has determined that this rule is not a major rule under Executive Order 12291, and will not have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. Hence, no regulatory impact analyses have been prepared.

Federalism Assessment

In promulgating these rules, FEMA has considered the President's Executive Order on Federalism issued on October 26, 1987 (E.O. 12612, 52 FR 41685). The purpose of the order is to assure the appropriate division of governmental responsibilities between the national government and the States. Among other provisions, this rule implements the requirement that agency rules be in accordance with the so-called common rule, adopted by FEMA at 44 CFR Part 13, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. These regulations conform FEMA assistance to the Executive Order 12612.

To describe this, a Federalism assessment has been prepared. It may be obtained or reviewed at the Office of the Rules Docket Clerk, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

Reporting Requirements

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, as amended, 44 U.S.C. 3501 *et seq.* Public reporting burden for this collection is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Submit comments regarding this burden estimate, or any aspect of this collection of information, to the Office of Information and Regulatory Affairs, OMB, 726 Jackson Place NW., Washington, DC 20503 marked "Attention: Desk Officer for FEMA". The final rule will respond to any OMB or public comments on the information collection requirements.

List of Subjects in 44 CFR Part 206

Disaster Assistance: general, the declaration process, Emergency assistance, Individual assistance, Public assistance, The Coastal Barrier Resources Act, Community disaster loans, Fire suppression, and Hazard mitigation.

Accordingly, FEMA proposes to revise Subpart M of Chapter I, Subchapter D, of Title 44 CFR to read as follows:

Subpart M—Hazard Mitigation Planning

Sec.

206.400 General.
206.401 Definitions.
206.402 Responsibilities.
206.403 Pre-declaration activities.
206.404 Mitigation survey teams.
206.405 Hazard mitigation plan.
206.406 Hazard mitigation planning process.
206.407 Minimum standards.

Authority: The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. 93–288, as amended by Pub. L. 100–707; 42 U.S.C. 5121, *et seq.*; Reorganization Plan No. 3 of 1978; E.O. 12148; and E.O. 12673.

Subpart M—Hazard Mitigation Planning

§ 206.400 General.

This subpart prescribes the requirements for implementation of section 409 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Pub. L. 93–288, as amended, hereinafter referred to as the "Stafford Act") and prescribes Federal, State and local hazard mitigation planning responsibilities following the declaration of a major disaster or emergency, or declaration for fire suppression assistance pursuant to section 420 of the Stafford Act.

§ 206.401 Definitions.

"Federal Hazard Mitigation Officer" (FHMO) is the FEMA employee responsible for representing the agency for each declaration in carrying out the overall responsibilities for hazard mitigation and for this subpart, including coordinating post-disaster hazard mitigation actions with other agencies of government at all levels.

"Hazard Mitigation" means any action taken to reduce or permanently eliminate the long-term risk to human life and property from natural hazards.

"Hazard Mitigation Grant Program" means the program authorized under section 404 of the Stafford Act, which may provide funding for certain

mitigation measures identified through the evaluation of hazards conducted under section 409 of the Stafford Act.

"Hazard Mitigation Plan" means the plan resulting from a systematic evaluation of the nature and extent of vulnerability to the effects of natural hazards present in society and includes the actions needed to minimize future vulnerability to hazards.

"Hazard Mitigation Plan Update" means an update to an existing hazard mitigation plan, which may be accomplished either by updating the status of mitigation actions within the existing plan, or by expanding the existing plan to address additional hazards or mitigation issues.

"Hazard Mitigation Survey Team" (HMST) means the FEMA/State/Local survey team that is activated following disasters to identify immediate mitigation opportunities and issues to be addressed in the section 409 hazard mitigation plan. the HMST may include representatives of other Federal agencies, as appropriate.

"Interagency Hazard Mitigation Team" (IHMT) means the mitigation team that is activated following flood related disasters pursuant to the July 10, 1980 Office of Management and Budget directive on Nonstructural Flood Protection Measures and Flood Disaster Recovery, and the subsequent December 15, 1980 Interagency Agreement for Nonstructural Damage Reduction.

"Local Hazard Mitigation Officer" (LHMO) is the representative of local government who serves on the HMST or IHMT and who is the primary point of contact with FEMA, other Federal agencies, and the State in the planning and implementation of post-disaster hazard mitigation activities.

"Measure" means any mitigation measure, project, or action proposed to reduce risk of future damage, hardship, loss or suffering from disasters.

"State Hazard Mitigation Officer" (SHMO) is the representative of State government who serves on the HMST and who is the primary point of contact with FEMA, other Federal agencies, and local units of government in the planning and implementation of post-disaster mitigation activities.

§ 206.402 Responsibilities.

(a) *General.* This section identifies the key responsibilities of FEMA, States, and local participants in carrying out the requirements of section 409 of the Stafford Act.

(b) *FEMA.* The key responsibilities of the FEMA Regional Director (RD) are to:

(1) Oversee all pre- and post-disaster hazard evaluation and mitigation programs and activities;

(2) Appoint a FHMO for each disaster to manage hazard mitigation programs and activities;

(3) Provide technical assistance to State and local governments in fulfilling mitigation responsibilities;

(4) Conduct periodic review of State hazard mitigation activities and programs to ensure that States are adequately prepared to meet their responsibilities under the Stafford Act;

(5) Assist the State on the identification of the appropriate mitigation actions that a State or locality must take in order to have a measurable impact on reducing or avoiding the adverse effects of a specific hazard or hazardous situation.

(6) Subsequent to a declaration, follow-up with State and local governments to ensure that mitigation commitments are fulfilled, and when necessary, take action, including recovery of funds or denial of future funds, if mitigation commitments are not fulfilled.

(c) *States.* The key responsibilities of the State are to coordinate all State and local responsibilities regarding hazard evaluation and mitigation, and to:

(1) Appoint a SHMO, who reports to the governor or his authorized representative, and who serves as the point of contact for all matters relating to section 409 hazard mitigation planning and implementation;

(2) Prepare and submit, in accordance with the FEMA/State Agreement and the requirements of this subpart, a hazard mitigation plan(s) or update to existing plan(s), as required under § 206.405. Such plan or update is to include an evaluation of the natural hazards in the declared area, and an identification of appropriate actions to mitigate those hazards;

(3) Participate in the Hazard Mitigation Survey Teams (HMST) or Interagency Hazard Mitigation Teams (IHMT) activated after the declaration;

(4) Arrange for appropriate local participation on the HMST or IHMT and in the section 409 planning process;

(5) Follow-up with State agencies and local governments to assure that appropriate hazard mitigation actions are taken. This involves coordination of plans and actions of local governments to assure that they are not in conflict with each other or with State plans;

(6) Ensure that the activities, programs and policies of all State agencies related to hazard evaluation, vulnerability, and mitigation are coordinated and contribute to the overall lessening or avoiding of vulnerability to natural hazards.

(d) *Local Governments.* The key responsibilities of local governments are to:

(1) Participate in the process of evaluating hazards and adoption of appropriate hazard mitigation measures, including land use and construction standards;

(2) Appoint a LHMO, if appropriate;

(3) Participate on HMST's and IHMT's, as appropriate;

(4) Participate in the development and implementation of section 409 plans or plan updates, as appropriate;

(5) Coordinate and monitor the implementation of local hazard mitigation measures.

§ 206.403 Pre-declaration activities.

(a) *General.* As part of FEMA's response to a Governor's request for a declaration, FEMA will evaluate information concerning the status of hazard mitigation efforts in the impacted State and localities.

(b) *Mitigation Evaluation.* The mitigation review of State and local government activities in the impacted area shall include:

(1) The status of a statewide comprehensive hazard mitigation plan, program, or strategy;

(2) The status of hazard mitigation plans or plan updates required as a condition of any previous declaration;

(3) The status of any actions which the State or localities agreed to undertake as a condition of past disaster assistance;

(4) The status of any mitigation measures funded under section 404 of the Stafford Act for any previous declaration;

(5) The status of any other hazard evaluation and mitigation projects funded under other FEMA or other Federal agency programs;

(6) An evaluation of the impact of the hazard(s) and any corresponding mitigation issues pertinent to the area for which Federal disaster assistance is being requested;

(7) Any other hazard evaluation and mitigation information available and considered relevant.

(c) *FEMA-State Agreement.* Based on the conditions warranted by the declaration, and on the findings of the mitigation evaluation, the FEMA-State Agreement shall include appropriate mitigation provisions, such as the requirement to prepare a hazard mitigation plan or update.

§ 206.404 Mitigation survey teams.

(a) *Hazard Mitigation Surveys.* Hazard mitigation surveys are performed immediately following the

declaration of a disaster to identify the following:

(1) Hazard evaluation and mitigation measures that must be incorporated into the recovery process;

(2) Possible measures for funding under the Hazard Mitigation Grant Program, or under other disaster assistance programs;

(3) Issues for inclusion in the section 409 plan.

(b) *Hazard Mitigation Survey Teams.* HMST's shall be activated by the Regional Director immediately following the declaration to conduct hazard mitigation surveys. The HMST shall consist of FEMA, State, and appropriate local government representatives, and representatives of any other Federal agencies that may be appropriate. In the case of flood declarations, the IHMT will serve the purpose of the HMST.

(c) *Survey Team Reports.* Within 15 days following a declaration a HMST report shall be prepared and distributed in accordance with FEMA policies and procedures. The Regional Director has the authority to extend this due date when necessary.

§ 206.405 Hazard mitigation plan.

(a) *General.* In order to fulfill the requirement to evaluate natural hazards within the designated area and to take appropriate action to mitigate such hazards the State shall prepare and implement a hazard mitigation plan or plan update. At a minimum the plan shall contain the following:

(1) An evaluation of the natural hazards in the designated area;

(2) A description and analysis of the State and local hazard management policies, programs, and capabilities to mitigate the hazards in the area;

(3) Hazard mitigation goals and objectives and proposed strategies, programs, and actions to reduce or avoid long term vulnerability to hazards;

(4) A method of implementing, monitoring, evaluating, and updating the mitigation plan. Such evaluation is to occur at least on an annual basis to ensure that implementation occurs as planned, and to ensure that the plan remains current.

(b) *Plan Approach.* Hazard mitigation plans should be oriented toward helping States and localities to develop hazard management capabilities and programs as part of normal governmental functions. All States are encouraged to develop a basic mitigation plan prior to the occurrence of a disaster, so that the basic plan can simply be expanded or updated to address specific issues arising from the disaster. At the time of a declaration, the Regional Director, in consultation with the State, shall determine whether a new mitigation plan is required as a result of the declaration, or whether an existing plan can simply be updated or expanded.

(c) *Plan Content and Format.* The specific content and format of a hazard mitigation plan or plan update shall be determined through guidance and technical assistance that the Regional Director provides to the State during the section 409 planning process. At a minimum, the plan or update must address the items listed in § 206.405(a).

(d) *Plan Submission.* All States shall submit a hazard mitigation plan or plan update on behalf of the State and any appropriate local governments included in the designated area. The plan or update is due to FEMA within 180 days of the date of the declaration. The Regional Director may grant extensions to this date not to exceed 365 days from the date of the declaration when adequate justification is received in writing from the State. Extensions beyond that date must be forwarded with justification to the Associate Director for approval.

(e) *Plan Approval.* Upon receipt of a hazard mitigation plan or plan update, the Regional Director shall acknowledge receipt in writing to the Governor or appropriate agency. Written comments shall state whether the plan is approved, shall detail any shortcomings that may exist, and shall include a suggested method and timeline for correction if necessary.

§ 206.406 Hazard mitigation planning process.

(a) *General.* A sound planning process is essential to the development and implementation of an effective hazard mitigation plan. A critical element of successful mitigation planning is the involvement of key State agencies, local units of government, and other public or private sector bodies or agencies that influence hazard management or development policies within a State or local unit of government. This section identifies principal components of the mitigation planning process.

(b) *FEMA Technical Assistance.* States may request the Regional Director to provide technical assistance and guidance throughout the planning process to ensure that the plan or update adequately addresses mitigation concerns related to the disaster. Technical assistance may include but is not limited to:

(1) Identification of mitigation issues through the IHMT or HMST report;

(2) Initial meeting with the State to identify key staff, timeline, and scope of work for development of the hazard mitigation plan or update;

(3) Review of timelines, outlines, drafts, and other appropriate material during development of the hazard mitigation plan or update.

(4) Provision of Federal technical assistance information and identification of technical experts, if needed.

(c) *State Involvement.* Though the primary responsibility for development of a hazard mitigation plan is assigned to one State agency, any State agency that influences development within hazardous areas through ongoing programs and activities should be involved in the development and implementation of hazard mitigation plans. This includes, but is not limited to, agencies involved with emergency management, natural resources, environmental regulations, planning and zoning, community development, building regulations, infrastructure regulation or construction, public information, and insurance. It is the responsibility of the State agency assigned lead responsibility for hazard mitigation to ensure that all other appropriate State agencies have the opportunity to participate in development and implementation of hazard mitigation planning.

(d) *Local Involvement.* Local participation in hazard mitigation planning is essential because regulation and control of development within hazardous areas normally occurs at the local level. It is the responsibility of the State to ensure that appropriate local participation is obtained during development and implementation of hazard mitigation planning.

(e) *Private Sector Involvement.* When appropriate, a State or local government may choose to involve the private sector in the planning process. Support from the private sector is often essential to successful implementation of mitigation strategies at the local level. Involvement of the private sector in the early stages of the planning process may facilitate understanding and support for mitigation.

(f) *Development of Hazard Mitigation Goals and Objectives.* The participants in the planning process shall develop the basic mitigation goals and objectives from which the proposed hazard mitigation strategies, programs, and actions required under § 206.405(3) shall be drawn.

(g) *Identification of Projects to be Funded Under Section 404.* Throughout the process of preparing a hazard mitigation plan or plan update, the State and local governments will be evaluating natural hazards and

identifying potential mitigation measures which may be eligible for funding under the Hazard Mitigation Grant Program. The State shall follow the regulations at 44 CFR part 206, subpart N, Hazard Mitigation Funding Program, for those measures for which Hazard Mitigation Grant Program funding will be requested.

(h) *Coordination with other Hazard Evaluation and Mitigation Planning Efforts.* During the process of developing a mitigation plan to satisfy requirements under this subpart, the State will ensure that the planning effort is coordinated with any other hazard evaluation and mitigation planning program within the State or local unit of government, including but not limited to the Disaster Preparedeness Improvement Grant Program, the Hurricane Program, the Earthquake Hazard Reduction Program, the Dam Safety Program, the National Flood Insurance Program, and other similar programs of FEMA and other Federal agencies.

(i) *Evaluation and Monitoring.* The State is responsible for monitoring and evaluating implementation of the hazard mitigation plan and for submitting annual progress reports to FEMA. The progress report will briefly indicate the status of implementation of the mitigation actions contained within the plan, and will include documentation relating to measures which have been implemented, where appropriate. The Regional Director may require the State to provide additional progress reports or more specific information on particularly critical mitigation actions, if necessary.

§ 206.407 Minimum standards.

(a) *General.* As a condition of any disaster loan or grant made under the Stafford Act, the recipient shall agree that any repair or construction shall be in accordance with applicable standards of safety, decency, and sanitation, and in conformity with applicable codes, specifications, and standards.

(b) *Local Standards.* The cost of bringing a facility up to minimum standards is an eligible cost under Subpart H of these regulations when such standards apply to the types of work being performed. These standards, including standards for hazard mitigation, can either be in place at the time of the disaster or can be adopted prior to approval of the project. Where current mitigation standards are inadequate, new standards may be identified in the following ways:

(1) Through the IHMT or HMST;

(2) Through the hazard mitigation planning process;

(3) By the State or local governments;

(4) Through the public assistance program; and,

(5) Through identification of mitigation measures under the Hazard Mitigation Grant Program.

(c) *Compliance.* The State shall ensure that the sub-grantee meets compliance with minimum standards as that term is used in section 409.

Dated: August 25, 1989.

R. Gregg Chappell,

Acting Associate Director, State and Local Programs and Support.

Note: This attachment will not appear in the CFR.

ATTACHMENT A:

July 10, 1980

Memorandum for: The Director of the Federal Emergency; Management Agency, The Secretary of Agriculture, The Secretary of the Army, The Secretary of Commerce, The Secretary of Health and Human Services, The Secretary of Education, The Secretary of Housing and Urban Development, The Secretary of the Interior, The Secretary of Transportation, The Administrator of the Environmental Protection Agency, The Administrator of the Small Business Administration, The Chairman of the Tennessee Valley Authority, The Chairman of the Council of Environmental Quality, The Chairman of the Water Resources Council.

From: James T. McIntyre, Jr., Director, Office of Management and Budget.

Subject: Nonstructural Flood Protection Measures and Flood Disaster Recovery.

On March 17, 1979 the President established the Federal Emegency Management Agency (FEMA) to coordinate and lead Federal disaster relief and long-term recovery activities, including the Federal response to riverine and coastal flood disasters. All Federal programs that provide construction funds and long-term recovery assistance must use common flood disaster planning and post-flood recovery practices. These common practices will ensure that Federal financial and technical assistance minimizes flood losses. Consistent with the President's July 1978 Water Policy Initiatives, nonstructural measures are to be used whenever practicable. This policy is also designed to encourage wise use of the Nation's floodplains. An interagency task force will be assembled under the leadership of the Director of FEMA to carry out the purposes of this memorandum.

Future Flood Disaster Planning

To accomplish the objectives of planning to avoid future flood disasters and encouraging wise use of the Nation's floodplains, I am requesting your respective departments and agencies, through an interagency task force, to develop procedures which shall:

—Seek to avoid redundant or competitive expenditures;

—Coordinate Federal technical assistance and other program resources and encourage the packaging of Federal program elements to promote the use of nonstructural measures for flood loss reduction;

—Provide for the development and dissemination of information on the packages of Federal program assistance available;

—Encourage the preparation of pre-disaster plans for reducing future flood losses and encouraging wise use of floodplains, as well as post-disaster plans under the authority of Section 406 of the Disaster Relief Act.

The interagency task force shall be responsible for preparing a handbook of these procedures for flood disaster mitigation planning. The handbook should be suitable for use by members of the hazard mitigation teams, and if appropriate, by State and local agencies in carrying out their responsibilities for eligibility under the National Flood Insurance Act. All final procedures should be operational by October 1, 1981.

While the procedures are being developed, you should maintain contact with the Water Resources Council on any nonstructural flood protection measures under consideration. They should be consistent with the Principles and Standards for Planning Water and Related Land Resources.

Quarterly progress reports on the development of a common post-flood response policy, flood hazard mitigation teams, and future flood disaster planning procedures shall be submitted to the Office of Management and Budget through fiscal year 1982.

Post-Flood Recovery

To accomplish the objectives of the post-flood recovery efforts, your departments and agencies should develop a common policy and enter into an interagency agreement that provides for Federal leadership and participation in interagency, interdisciplinary and integovernmental hazard mitigation teams. The teams shall be lead by a designated FEMA official in cooperation with affected State and local governments. At the time of

Presidentially declared disasters, the teams will:

—Assess the extent of damages;
—Identify riverine floodway and coastal high hazard zones, in which Federal investment to repair or replace structures and facilities should be avoided and the relocation of people and structures out of these areas encouraged;
—Identify floodplain fringe areas in which Federal assistance should seek to mitigate hazards through the floodproofing of structures, forecasting-warning-evacuation plans, floodplain regulations, and development and redevelopment policies;
—Prepare expeditiously, normally within 15 days, a hazard mitigation report recommending specific recovery actions to be taken by each Federal agency and each non-Federal level of government. Federal agencies shall conform their recovery actions to the recommendations of the report to the fullest extent practicable.

The Director of FEMA, working with the interagency task force, shall prepare and complete this agreement within 120 days. Operational hazard mitigation teams shall be established in each of the 10 Federal Regions within 90 days of completion of the agreement.

The Office of Management and Budget, the Council on Environmental Quality, and the Water Resources Council will oversee these procedures jointly.

[FR Doc. 89-20869 Filed 9-13-89; 8:45 am]

BILLING CODE 6718-02-M

DEPARMENT OF THE INTERIOR

Office of the Secretary

48 CFR Parts 1403, 1405, 1415, and 1453

Procurement Ethics

AGENCY: Department of the Interior.

ACTION: Proposed rule.

SUMMARY: Public Law 100-679, the Office of Federal Procurement Policy Act Amendments of 1988, dated November 17, 1988, included provisions on procurement integrity which prohibited certain activities by competing contractors and Government procurenent officials during the conduct of a Federal procurement. A subsequent Federal Acquisition Circular 84-47 amended the Federal Acquisition Regulation (FAR) on an interim basis to implement the procurement integrity provisions. This proposed rule supplements the FAR coverage to provide internal procedures for obtaining the required Departmental certifications, handling proprietary and source selection information, and processing violations of the conduct prohibitions.

In addition, guidance to avoid conflicts of interest for procurement officials is being proposed. Even the appearance of a conflict of interest in a procurement may discourage potential contractors and invite protests or litigation. Accordingly, we are proposing to strictly prohibit acceptance of any gift, gratuity, favor, entertainment, loan, or anything of monetary value from potential contractors by procurement officials who are appointed to perform especially sensitive duties such as evaluating proposals from potential contractors, signing contracts, and monitoring contractor performance; to prohibit acceptance of contractor help in developing specifications except through formal procurement channels; to further restrict contracts with Government employees; and to provide guidance on conflicts of interest for procurement officials evaluating or rendering advice on proposals.

DATE: To be considered comments must be received by October 16, 1989.

ADDRESS: Comments concerning these proposed regulations should be sent to Chief, Division of Acquisition and Assistance, Office of Acquisition and Property Management, U.S. Department of the Interior, Mail Stop 5512, 18th and C Streets NW., Washington, DC, 20240.

FOR FURTHER INFORMATION CONTACT: Mr. Dean Titcomb on (202) 343-3433.

SUPPLEMENTARY INFORMATION: The proposed additions, deletions and changes are outlined below:

The Department of the Interior Acquisition Regulation would be changed at 1403.101 to strictly prohibit solicitation or acceptance of any gift, gratuity, favor, entertainment, loan, or anything of monetary value from contractors by contracting officers, contracting officer representatives, or employees who evaluate proposals from potential contractors; to limit acceptance of gifts for the Department; and to include requirements for notices to be provided to affected employees. Guidance on avoiding conflicts of interest was previously published as a proposed rule (53 FR 17086, May 13, 1988). Public comments were received and a final rule was prepared which reflected resolution of such comments. Publication was delayed pending FAR implementation of Public Law 100-679 to ensure terminology consistency and to prevent possible regulatory duplication.

Section 1403.104, Procurement Integrity, would be added to provide agency procedures for handling proprietary and source selection information; obtaining the required certifications and action to be taken for failure to certify; processing violations of the conduct prohibitions; training procurenent officials; and applicability of the provisions to construction contracts awarded under the authority of the Indian Self-Determination and Education Assistance Act, Public Law 93-638, as amended.

Section 1403.602 would be added to restrict the waiver allowed by FAR 3.602 so that exceptions nay not be granted to allow the Government to contract with an employee whose duties are directly involved with a particular contract action.

Part 1405 would be changed to add a § 1405.403 which provides guidance when responding to an inquiry from an individual Member of Congress.

Part 1415 would be changed to add a § 1415.608-70 providing guidance on avoiding conflicts of interest.

Sections 1453.215-72 through 1453.215-75 would be added to provide certification forms pertaining to procurenent integrity and a conflict of interest certificate for procurement officials who evaluate or render advice on proposals.

Primary Author: The primary author of this rule is Ms. Miriam Phillips, Office of Acquisition and Property Management, Department of the Interior, telephone (202) 343-6705.

Executive Order 12291, Paperwork Reduction Act, Regulatory Flexibility Act, and National Environmental Policy Act: The Department has determined that this rule is not a major rule under Executive Order 12291 since its primary effects are on the Department's employees and since it merely implements Departmental standards of conduct found in 43 CFR 20.735 and supplements the FAR implementation of the procurement integrity provisions of Public Law 100-679. Such action is necessary to ensure the integrity of the procurement process within the Department. The Department also certifies that this rule will not have a significant economic effect on a substantial number of small entities or other parties eligible to contract with the Department since it will only affect the Department's employees. This rule does not contain any collections of information which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* The Department of the Interior has determined that this proposed

rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment pursuant to section 102(ii)(C) of the National Environxental Policy Act of 1969 (42 U.S.C. 4332(ii)(C)).

List of Subjects in 48 CFR Parts 1403, 1405, 1415, and 1453

Government procurement, Conflicts of interest, Government employees.

Accordingly, 48 CFR parts 1401, 1403, 1405, 1415, and 1453 are proposed to be amended as follows:

Dated: August 18, 1989.

Lou Gallegos,

Assistant Secretary—Policy, Budget and Administration.

1. The authority citation for 48 CFR parts 1401, 1403, 1405, 1415, and 1453 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390, 40 U.S.C. 486(c), and 5 U.S.C. 301.

PART 1403—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 1403.1—Safeguards

2. Section 1403.101–3 is revised to read as follows:

1403.101-3 Agency regulations.

(a)(1) Policy. The Department of the Interior (DOI) regulations governing the conduct and responsibilities of regular and special employees are contained in 43 CFR part 20. Authorized exceptions to FAR 3.101–2 are contained in 43 CFR 20.735–7 and 20.735–8. However, with regard to the provisions of 43 CFR 20.735–7, procurement officials, as defined in section 3.104, may not solicit or accept any gift, gratuity, favor, entertainment, loan or anything of monetary value from a competing contractor during the conduct of a procurenent except as authorized by (a)(2) below.

(2) Exceptions. Procurement officials may:

(i) Accept obvious advertising or promotional items that are not more than $5.00 in value;

(ii) With prior approval of the head of the contracting activity, attend widely attended public gatherings (including functions where lunch or dinner is served without separate charge) of mutual interest to Government and industry hosted by outside organizations, but not by individual contractors; and

(iii) Accept, on an occasional basis only, coffee, donuts, and similar refreshments incidental to the performance of duty when the employee is at a contractor's facility.

(b)(1) Notwithstanding the provisions of 43 CFR 20.735–7, procurement officials may not accept or solicit from any competing contractor any services which involve the development of specifications, statements of work, evaluation criteria, or formal cost estimates to be used in a procurement unless such services are formally contracted for in accordance with the Federal Acquisition Regulation (FAR), the Department of the Interior Acquisition Regulation (DIAR), and the Federal Information Resources Management Regulation (FIRMR); and until the organizational conflict of interest provisions in FAR Subpart 9.5 have been fully addressed. This does not preclude the issuance of formal Requests for Comment (RFC) by contracting officers.

(2) Automatic Data Processing (ADP) resources shall not be accepted, installed, or utilized by the Department on a no cost, free of charge basis (this includes donated equipment but not public domain software), except as permitted by law. Departmental regulations governing the use of ADP resources on a trial basis are set forth in part 376, Chapter 4 of the Departmental Manual (376 DM 4).

3. New section 1403.101–70 is added to Subpart 1403.1 to read as follows:

1403.101-70 Notice.

Bureaus shall include a notice similar to the following in all correspondence notifying employees of appointments to serve as procurement officials on Technical Evaluation Panels/Source Evaluation Boards:

Except as provided in 1403.101–3(a)(2) and regardless of the provisions at 43 CFR 20.735–7, the appointee shall not solicit or accept any gift, gratuity, favor, entertainment, loan, or anything of monetary value from a competing contractor involved in any action for which the appointee is a procurement official under this delegation of authority. Appointees are also reminded of other conduct prohibitions in FAR 3.104–3, including negotiating with competing contractors for future employment, disclosure of proprietary or source selection information, and post-Government employment restrictions. If an appointee does not have a signed form DI–1957, Procurement Official's Certificate of Procurement Integrity, on file in the servicing personnel office, he or she shall be required to do so before continuing to serve as a procurement official and provide a copy of the DI–1957 to the contracting officer.

4. Section 1403.104 and subsections 1403.104–2 through 1403.104–12 are added to read as follows:

Sec.

1403.104 Procurement integrity.
1403.104–2 Applicability.
1403.104–4 Definitions.
1403.104–5 Disclosure of proprietary and source selection information.
1403.104–6 Restrictions on Government officials, employees, and contractors serving as procurement officials.
1403.104–9 Certification requirements.
1403.104–11 Processing violation or possible violations.
1403.104–12 Ethics program training requirements.

1403.104 Procurement integrity.

1403.104–2 Applicability.

Construction contracts (or subcontracts in such cases where the tribal contractor has subcontracted the activity) awarded under the authority of the Indian Self-Determination and Education Assistance Act, Pub. L. 93–638, as amended, are subject to the provisions of FAR 3.104 and this section.

1403.104–4 Definitions.

(a) The term "procurement official" at 3.104–4(h) includes authorized bankcard users and originators of purchase requests.

(b) "Derivative document" means a copy of a document defined as proprietary or source selection information by FAR 3.104–4 (j) and (k) and any document or copy of a document that contains references to, directly cites or paraphrases proprietary or source selection information.

1403.104–5 Disclosure of proprietary and source selection information.

(a) The contracting officer or any other individual who prepares, makes, or controls proprietary and source selection information, including derivative documents, shall—

(1) Ensure documents are marked as prescribed in FAR 3.104–4 (j) and (k), 15.413–2 (if appropriate), and DIAR 1415.413–70(g).

(2) Provide physical security for documents in the office environment during and after duty hours.

(3) Ensure security of interoffice mailing of documents by using opaque envelopes, "double wrapping" with more than one envelope and sealing on envelopes.

(4) Maintain strict control over oral communications regarding the acquisition.

(b) Indivduals responsible for preparing derivative documents are responsible for marking such documents in accordance with FAR 3.104–5(b).

(c)(1) The following classes of persons are authorized access to proprietary and source selection information to the extent necessary to accomplish their

requisite duties and responsibilities with respect to a particular procurement:

(i) Requirements generators, including program and technical experts involved in the development of statements of work, specifications or similar documents.

(ii) Contracting personnel acting in support of the contracting officer.

(iii) Secretarial, clerical and administrative personnel of the contracting activity directly involved in the procurement.

(iv) Supervisors in the contracting officer's chain of command.

(v) Attorneys in the Office of the Solicitor.

(vi) Contract auditors in the Office of Inspector General.

(vii) Engineers and other technical support personnel who provide support to the contracting officer.

(viii) Small Business Technical Advisors.

(ix) Small Business Administration Procurement Center Representatives.

(x) Personnel in the Office of Federal Contract Compliance at the Department of Labor.

(xi) Personnel who review bid protests in the General Accounting Office and the General Services Board of Contract Appeals.

(xii) Contract clearance personnel.

(xiii) Personnel in the Office of Congressional and Legislative Affairs and in the Bureau Congressional liaison offices.

(xiv) Members of Congress and members of their staff.

(2) The Director, Office of Acquisition and Property Managment, has authority to authorize additional classes of persons access to proprietary or source selection information.

(3) The contracting officer may authorize persons access to proprietary or source selection information when such access is necessary to the conduct of the procurement and to the extent that the person has a "bona fide need to know." Access must be limited to only that information needed by the person to perform his/her responsibilities.

(4) The classes of persons in (c)(1) may be incorporated by reference in contract files. A record, by name and function, of other persons authorized access to proprietary or source selection information must be made by the contracting officer in the contract file.

(5) In accordance with FAR 3.104–5(j), the following caution notice must be prominently displayed on any document that releases proprietary or source selection information:

"This document, or portions thereof, contains proprietary or source selection information related to the conduct of a Federal agency procurement, the disclosure of which is restricted by section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423). The unauthorized disclosure of such information may subject both the discloser and recipient to contractual, civil, and/or criminal penalties as provided by law."

(6) For requests from an individual member of Congress see 1405.403.

1403.104–6 Restrictions on Government officials, employees, and contractors serving as procurement officials.

The certification required by FAR 3.104–6(b) shall be obtained by the servicing personnel office (SPO) during the exit clearance process using form 1957B, Procurement Integrity Certification of Departing DOI Officials and Employees, prescribed in 1453.203–72, and retained on the right side of the employee's Official Personnel Folder. The SPO shall update their master list of employees who have signed certificates and forward a copy of the form 1957B to the head of the contracting activity.

1403.104–9 Certification requirements.

(a)(1) If the contracting officer certifies that he/she has no information concerning a violation or possible violation of the statutory prohibitions, the certification must be included in the contract file. No other distribution is required.

(2) If the certification by the contracting officer contains information on a violation or possible violation of the statutory prohibitions, the procedures at FAR 3.104–11 and 1403.104–11 must be followed.

(b) The head of the contracting activity is the official authorized to request, in writing, additional certifications in accordance with FAR 3.104–9(d) using form DI–1957A, Procurement Official's Certificate of Procurement Integrity, prescribed in 1543.203–71.

(c) The Assistant Secretary—Policy, Budget and Administration is authorized to waive the certification requirement as prescribed in FAR 3.104–9(e)(2). The request for the waiver with supporting rationale shall be prepared by the contracting officer and submitted through the head of the contracting activity to the Director, Office of Acquisition and Property Management for further action.

1403.104–11 Processing violations or possible violations.

(a)(1) The contracting officer's determination, along with supporting documentation, that a reported violation or possible violation of a statutory prohibition has no impact on the pending award or selection of a source must be provided to an individual one level above the contracting officer for review and approval of the determination before award.

(2) The contracting officer's determination that a reported violation or possible violation of the statutory prohibitions has an impact on the pending award or selection of a source must be referred along with all related information available to the head of the contracting activity, who will:

(i) Recommend to the contracting officer the action to be taken on the procurement in accordance with FAR 3.104–11(c); and

(ii) Provide a copy of the reported violation and recommended action to the Office of Inspector General.

(b) The head of the contracting activity acts as the agency head's designee with respect to actions taken under the FAR clause at 52.203–10 Remedies for Illegal or Improper Activity.

(c) If urgent and compelling circumstances justify immediate award, the head of the contracting activity in accordance with FAR 3.104–11(d) may authorize the contracting officer to award the contract after first consulting with the Offices of the Solicitor and Inspector General and providing a copy of the determination to proceed with the award to the Director, Office of Acquisition and Property Management.

1403.104–12 Ethics program training requirements.

(a) The cognizant Ethics Counselor shall provide an annual ethics briefing for all procurement officials and, as required, employee assistance on conduct prohibitions in FAR 3.104–3.

(b) The certification required by FAR 3.104–12 prior to serving as a procurement official shall be obtained by the servicing personnel office (SPO) during the appointment process from appointees to positions with identified procurement official duties and placed on the right side of the employee's Official Personnel Folder (OPF) using form DI–1957, Procurement Official's Certificate of Procurement Integrity, prescribed in 1453.203–70.

(c) The SPO shall develop and maintain a master list of employees who have signed certificates and provide a copy of the list and its updates to the chief of the contracting office. The SPO will provide verification on request to interested parties that current certifications of particular employees are on file.

(d) Supervisors who subsequently assign procurement official duties to an

employee after the appointment process shall ensure that a signed form DI–1957 is forwarded to the SPO for addition to the master list of certified employees and placement of the certification in the OPF.

(e)(1) If a procurement official refuses to sign the form DI–1957 as required by 1403.104–6, 1403.104–9(b), and 1403.104–12(b), the employee can no longer serve as a procurement official or, in the case of an employee leaving the Department, final clearance during the exit clearance process shall be delayed until the matter is resolved.

(2) Failure to certify, upon request, may be cause for appropriate corrective, remedial, or disciplinary action. Employee appeals of their designation as procurement officials for purposes of the law may be considered under existing mechanisms for dispute resolution if otherwise eligible.

(f) The contracting officer is not responsible for ensuring that another agency's employee(s), who may function as a procurement official on behalf of that agency in interacting with Departmental personnel, has executed the Certificate of Procurement Integrity pursuant to FAR 3.104–12 beyond making a verbal inquiry and may rely on the verbal reply to such an inquiry. If another agency's employee has not completed a similar certificate, the contracting officer is responsible for obtaining the Department's form DI–1957 for placement in the contract file as well as obtaining the same form from non-Government personnel involved in a Departmental procurement but who are not otherwise covered by a contract which includes the certification requirement.

5. New subpart 1403.6 and section 1403.602 are added to read as follows:

SUBPART 1403.6—CONTRACTS WITH GOVERNMENT EMPLOYEES OR ORGANIZATIONS OWNED OR CONTROLLED BY THEM

1403.602 Exceptions.

The head of the contracting activity is authorized to except a contract from the policy in FAR 3.601. However, no exceptions shall be granted where the proposed contractor is owned or controlled by a Government employee or one or more members of the employee's immediate family and the employee or any subordinate is serving as a procurement official on the proposed contract.

PART 1405—PUBLICIZING CONTRACT ACTIONS

6. New subpart 1405.4 and section 1405.403 are added to read as follows:

Subpart 1405.4—Release of Information

1405.403 Requests from Members of Congress.

Particular care must be taken when responding to an inquiry from an individual Member of Congress which would result in disclosure of classified material, confidential business information, proprietary or source selection information defined in FAR 3.104–4, or information prejudicial to a competitive acquisition. In such cases, the contracting officer must consult with assigned legal counsel, refer the proposed reply to the head of the contracting activity, and include the caution notice prescribed in 1403.104–5(c)(5) in the response.

PART 1415—CONTRACTING BY NEGOTIATION

Subpart 1415.6—Source Selection

7. New section 1415.608–70 is added to Subpart 1415.6 to read as follows:

1415.608–70 Conflict of Interest.

(a) Technical evaluators and advisors, including numbers of proposal evaluation committees, must render impartial, technically sound, and objective assistance and advice to protect the integrity of the evaluation and selection process. 18 U.S.C. 208 prohibits an employee from participating in his or her Government capacity in any matter in which the employee, his or her spouse, minor child, outside business associate, or a person with whom the employee is negotiating for employment, has a financial interest.

(b) Employee Responsibility and Conduct Regulations of the Department of the Interior are contained in 43 CFR Part 20. Section 20.735–21 prohibits employees from having a direct or indirect financial interest that conflicts substantially or appears to conflict substantially with his or her Government duties and responsibilities. Section 20.735–21 also prohibits employees from engaging in, directly or indirectly, a financial transaction resulting from, or primarily relying on, information obtained through his or her Government employment. In addition, other regulations concerning conflicts of interest involving employees of specific bureaus and offices are contained in 43 CFR 20.735–22(c).

(c) With the exception of contracting personnel, proposal evaluators and advisors are not required to file a Statement of Employment and Financial Interest (DI–212) unless they occupy positions identified in 43 CFR 20.735–30(b). Therefore, each evaluator and advisor must sign and return to the contracting officer form DI–1960 Conflict of Interest Certificate (or a bureau substitute approved by the head of the contracting activity), as prescribed in 1453.215–72, upon receipt of a memorandum appointing the individual as an evaluator or advisor. If a potential conflict of interest exists, the appointee shall not be allowed to evaluate or advise on a potential contractor's proposal until the conflict has been resolved with the Ethics Counselor.

(d) During the evaluation process, each evaluator and advisor is responsible for assuring that there are no financial or employment interests which conflict or give the appearance of conflicting with his or her duty to evaluate proposals impartially and objectively. Examples of situations which may be prohibited or represent a potential conflict of interest include:

(1) Financial interest, including stocks and bonds, in a firm which submits, or is expected to submit, an offer in response to the solicitation;

(2) Outstanding financial commitments to any offeror or potential offeror;

(3) Employment in any capacity, even if otherwise permissible, by any offeror or potential offeror;

(4) Employment within the last 12 months by any offeror or potential offeror;

(5) Any non-vested pension or reemployment rights, or interest in profit sharing or stock bonus plan, arising out of the previous employment by any offeror or potential offeror;

(6) Employment of any member of the immediate family by any offeror or potential offeror; and

(7) Negotiation for outside employment with any offeror or potential offeror.

(e) Each proposal evaluator and advisor shall notify the contracting officer as soon as it becomes known that a potential or actual conflict of interest exists. The contracting officer shall refer the matter to the deputy ethics counselor for an opinion or resolution. A record of the disposition of all conflict of interest situations shall be included in the contract file.

PART 1453—FORMS

Subpart 1453.2—Prescription of Forms

8. New subsections 1453.203–70 through 1453.203–72 are added to new section 1453.203 to read as follows:

1453.203 Improper business practices and personal conflicts of interest.

1453.203-70 Procurement Official's Certificate of Procurement Integrity.

DI-1957, Procurement Official's Certificate of Procurement Integrity, is prescribed for use by procurement officials prior to serving as a procurement official as required in FAR 3.104-12(a)(2) and 1403.104-12(b).

1453.203-71 Procurement Official's Certificate of Procurement Integrity On Individual Contract Actions.

DI-1957A, Procurement Official's Certificate of Procurement Integrity, is prescribed for use whenever the head of the contracting office requests an additional certification as required in FAR 3.104-9(d) and 1403.104-9(b).

1453.203-72 Procurement Official's Certificate of Procurement Integrity—Exit Clearance.

DI-1957B, Procurement Integrity Certification of Departing DOI Officials and Employees, is prescribed for use when a procurement official leaves the Government during the conduct of a procurement as required in FAR 3.104-6(b) and 1403.104-6.

9. New subsection 1453.215-72 is added to section 1453.215 to read as follows:

1453.215-72 Conflict of interest.

DI-1960, Conflict of Interest Certificate, is prescribed for use by proposal evaluators and advisors as required in 1415.608-70(c).

Subpart 1453.3—Illustrations of Forms

10. New sections 1453.303-72 through 1453.303-75 are added to Subpart 1453.3 to read as follows:

1453.303-72 Form for Procurement Official's Certificate of Procurement Integrity.

U.S. Department of the Interior, Procurement Official's Certificate of Procurement Integrity

As a condition of serving as a procurement official I, _____ (name of procurement official) hereby certify that I, (1) am familiar with the prohibitions* of 41 U.S.C. 423 as implemented in the Federal Acquisition Regulation at 3.104-3; (2) agree not to knowingly engage in the conduct prohibited therein; (3) agree to immediately report to the respective contracting officer any information concerning a violation or possible violation of 3.104-3; (4) have been provided the terms of FAR 3.104-3 (together with applicable definitions); and (5) understand the continuing obligation not to disclose proprietary or source selection information relating to any procurement for which I have served as a procurement official, as well as the requirement to so certify upon leaving the Government during any such procurement.

_____

(Signature of Procurement Official and Date)

_____

(Telephone Number)

_____

(Position and Office Symbol)

THIS CERTIFICATION CONCERNS A MATTER WITHIN THE JURISDICTION OF AN AGENCY OF THE UNITED STATES AND THE MAKING OF A FALSE, FICTITIOUS, OR FRAUDULENT CERTIFICATION MAY RENDER THE MAKER SUBJECT TO PROSECUTION UNDER TITLE 18, UNITED STATES CODE, SECTION 1001.

*The prohibitions became effective on July 16, 1989.

DI-1957
(June 1989)

1453.303-73 Form for Procurement Official's Certificate of Procurement Integrity On Individual Contract Actions.

U.S. Department of the Interior, Procurement Official's Certificate of Procurement Integrity

(1) I, _____ (name of procurement official), hereby certify that, to the best of my knowledge and belief, with the exception of any information described in this certificate, I have no information concerning a violation or possible violation of paragraph (a), (b), (c), or (e) of section 27 of the Office of Federal Procurement Policy Act* (41 U.S.C. 423), as implemented in Federal Acquisition Regulation 3.104-3, occurring during the conduct of this procurement (project or solicitation/contract/modification number _____).

(2) Violations or possible violations: (Continue on plain bond paper if necessary, and label Procurement Official's Certificate of Procurement Integrity (Continuation Sheet). Enter "none" if none exist).

_____

_____

_____

(Signature of Procurement Official and Date)

THIS CERTIFICATION CONCERNS A MATTER WITHIN THE JURISDICTION OF AN AGENCY OF THE UNITED STATES AND THE MAKING OF A FALSE, FICTITIOUS, OR FRAUDULENT CERTIFICATION MAY RENDER THE MAKER SUBJECT TO PROSECUTION UNDER TITLE 18, UNITED STATES CODE, SECTION 1001.

*Section 27 became effective on July 16, 1989.

DI-1957A
(July 1989)

1453.303-74 Form for Procurement Official's Certificate of Procurement Integrity—Exit Clearance.

Department of the Interior, Procurement Integrity Certification of Departing DOI Officials and Employees

I, _____, hereby certify, pursuant to subsections 27 (c) and (d) of the Office of Federal Procurement Policy Act (41 U.S.C. 423 as implemented in Federal Acquisition Regulation 3.104-3), that I understand that, to the extent I have had authorized or unauthorized access to proprietary or source selection information relating to any procurement of this or any other Federal agency, I have a continuing obligation not to disclose such proprietary or source selection information to anyone not authorized by the Head of the Contracting Activity or the Contracting Officer to have access to such information, notwithstanding the fact that I may no longer be employed by, or working on behalf of, the Department of the Interior.

_____

(Date)

_____

(Signature of Departing Official)

_____

(Position and Office Symbol)

THIS CERTIFICATION CONCERNS A MATTER WITHIN THE JURISDICTION OF AN AGENCY OF THE UNITED STATES AND THE MAKING OF A FALSE, FICTITIOUS OR FRAUDULENT CERTIFICATION MAY RENDER THE MAKER SUBJECT TO PROSECUTION UNDER TITLE 18, UNITED STATES CODE, SECTION 1001 AS WELL AS ADMINISTRATIVE, CIVIL AND CRIMINAL PROSECUTION UNDER TITLE 41, UNITED STATES CODE, SECTION 423.

DI-1957B
(July 1989)

1453.303-75 Form for conflict of interest certification.

United States Department of the Interior, Conflict of Interest Certificate

To: _____
Name of Contracting Officer

I certify that I am not aware of any matter which might reduce my ability to participate in the proposal evaluation proceedings and activities associated with solicitation number/project _____ in an objective and unbiased manner or which might place me in a position of conflict, real or apparent, between my responsibilities as an evaluator or advisor and other interests.

In making this certification, I have considered all my stocks, bonds, other financial interests, and employment arrangements (past, present, or under consideration) and, to the extent known by me, all the financial interests and employment arrangements of my spouse, my minor children, and other members of my immediate household.

If, after the date of this certification, any person, firm, or organization with which, to my knowledge, I (including my spouse, minor children, and other members of my immediate household) have a financial interest, or with which I have or am actually considering an employment agreement, submits a proposal or otherwise becomes involved in the subject project, I will notify the contracting officer, and thereafter, based on advice to do so from the deputy ethics counselor, I will agree to not participate further in any way (e.g., by rendering advice, making recommendations, scoring proposals,

or otherwise in the particular subject matter or project).

I have read and understand Department of the Interior Acquisition Regulation 1415.608–70.

(Signature)

(Date)

THIS CERTIFICATION CONTAINS A MATTER WITHIN THE JURISDICTION OF AN AGENCY OF THE UNITED STATES AND THE MAKING OF FALSE, FICTITIOUS, OR FRAUDULENT CERTIFICATION MAY RENDER THE MAKER SUBJECT TO PROSECUTION UNDER TITLE 18, UNITED STATES CODE, SECTION 1001.

DI–1960
(July 1989)

[FR Doc. 21291 Filed 9–13–89; 8:45 am]
BILLING CODE 4310–RF–M

Notices

Federal Register
Vol. 54, No. 177
Thursday, September 14, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 89-147]

Availability of Environmental Assessment and Finding of No Significant Impact Relative to Issuance of a Permit to Field Test Genetically Engineered Tobacco Plants

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to Calgene, Incorporated, to allow the field testing in Yolo County, California, of tobacco plants genetically engineered to increase their tolerance to insect pests. The assessment provides a basis for the conclusion that the field testing of these genetically engineered tobacco plants will not present a risk of introduction or dissemination of a plant pest and will not have any significant impact on the quality of the human environment. Based upon this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESS: Copies of the environmental assessment and finding of no significant impact are available for public inspection at Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Sally McCammon, Biotechnologist, Biotechnology Permit Unit, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 845, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8761. For copies of the environmental assessment and finding of no significant impact, write Ms. Linda Gordon at this same address. The environmental assessment should be requested under permit number 89-074-01.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article can be introduced in the United States. The regulations set forth procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

Calgene, Incorporated, of Davis, California, has submitted an application for a permit for release into the environment, to field test tobacco plants genetically engineered to increase their tolerance to insect pests. The field trial will take place in Yolo County, California.

In the course of reviewing the permit application, APHIS assessed the impact on the environment of releasing the tobacco plants under the conditions described in the Calgene, Incorporated, application. APHIS concluded that the field testing will not present a risk of plant pest introduction or dissemination and will not have any significant impact on the quality of the human environment.

The environmental assessment and finding of no significant impact, which are based on data submitted by Calgene, Incorporated, as well as a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field testing.

The facts supporting APHIS, finding of no significant impact are summarized below and are contained in the environmental assessment.

1. A gene encoding a trypsin inhibitor from cowpea which enhances resistance to insect pests or a delta-endotoxin gene from *Bacillus thuringiensis* has been inserted into the tobacco chromosome. In nature, chromosomal genetic material of these plants can only be transferred to other sexually compatible plants by cross-pollination. In this field trial, the introduced gene cannot spread to other plants by cross-pollination because the field test plot is sufficiently distant from any sexually compatible plants susceptible to cross-pollination. In addition, tha tobacco plants will not be allowed to form viable seeds on the plant.

2. Neither the delta-endotoxin gene, the cowpea trypsin inhibitor gene, nor their gene products, confer on tobacco any plant pest characteristics. Traits that lead to weediness in plants are polygenic traits and cannot be conferred by adding a single gene.

3. Neither the micro-organism from which the delta-endotoxin gene was isolated nor the plant from which the cowpea trypsin inhibitor gene was isolated is a plant pest.

4. The delta-endotoxin gene and the cowpea trypsin inhibitor gene do not provide the transformed tobacco plants with any measurable selective advantage over nontransformed tobacco in the ability to be disseminated or to become established in the environment in the field test.

5. Select noncoding regulatory regions derived from plant pests have been incorporated into the chromosomal DNA but do not confer on tobacco any plant pest characteristics.

6. The vector used to transfer the delta-endotoxin gene or the cowpea trypsin inhibitor gene into tobacco plants has been evaluated for its use in this specific experiment and does not pose a plant pest risk in this experiment. The vector, although derived from a DNA sequence with known plant pest potential, has been disarmed; that is, genes that are necessary for producing plant disease have been removed from the vector. The vector has been tested and shown to be nonpathogenic to plants.

7. The vector agent, the bacterium that was used to deliver the vector DNA and either the delta-endotoxin gene or the cowpea trypsin inhibitor gene into the plant cell, has been shown to be eliminated and no longer associated with the transformed tobacco plants.

8. Horizontal movement of the introduced gene is not possible. The vector acts by delivering the gene to the plant genome (i.e., chromosomal DNA). The vector does not survive in the plants.

9. There were no listed (January 1, 1989, 50 CFR 17.11 & 17.12) threatened or endangered insect species present in the test site in California, so the introduction of the genetically engineered tobacco poses no risk to these threatened or endangered insects.

10. The field test site is very small (55 feet wide by 630 feet long). Therefore, the introduction of the genetically engineered tobacco poses no significant impact on susceptible insect populations.

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500–1509), (3) USDA Regulations Implementing NEPA (7 CFR Part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Done in Washington, DC, this 8th day of September, 1989

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-21638 Filed 9-13-89; 8:45 am]

BILLING CODE 3410-34-M

Forest Service

Sherwin Bowl Alpine Winter Sports Site

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare a revised Draft Environmental Impact Statement for a proposal to permit the development of a destination alpine ski resort at the Sherwin Bowl winter sports site on the Mammoth Ranger District of the Inyo National Forest, Mono County, California. The Fish and Wildlife Service, Department of Interior, will be invited to participate as a cooperating agency. The agency invites written comments and suggestions on the scope of the analysis. In addition, the agency gives notice of the full environmental analysis and decision-making process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATE: Comments concerning the scope of the analysis must be received by October 22, 1989.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to Dennis Martin, Forest Supervisor, Inyo National Forest, 873 North Main Street, Bishop, California 93514.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and Environmental Impact Statement to John Ruopp, Recreation Staff Officer, Inyo National Forest, Bishop, California, phone 619–873–5841.

SUPPLEMENTARY INFORMATION: The Inyo National Forest Land and Resource Management Plan was approved in August 1988. The Plan allocated the Sherwin area as a potential winter sports site being studied in an ongoing environmental analysis process.

This notice of intent will revise the original notice of intent to prepare an Environmental Impact Statement (EIS) which was published in **Federal Register**, Vol. 51, No. 30257 dated August 25, 1986. The Department of Agriculture, Forest Service will prepare a revised Draft EIS for a proposal to permit the development of a destination alpine ski resort at the Sherwin Bowl site on the Mammoth Ranger District.

This proposal has received thorough public review and comment in response to the original Draft EIS which was distributed to the public in March 1988.

Comments on that draft identified several areas of incomplete analysis or inadequate documentation. Analysis of the public comments, issues, and additional environmental analysis indicated there was sufficient new information to warrant a revised Draft EIS for full public review and comment.

A range of alternatives for this site will be considered. One of these will be nondevelopment of the site. Other alternatives will consider development of various portions or all of the Sherwin Bowl area. The alternatives also consider theoretical design capacities ranging from 4,000 to 8,000 skiers at one time.

The Fish and Wildlife Service, Department of Interior, will be invited to participate as a cooperating agency to evaluate potential impacts on the habitat of the Owens tui chub and any other threatened and endangered species which may be found to exist within or near the affected area.

Dennis Martin, Forest Supervisor, Inyo National Forest is the responsible official.

The Draft EIS is expected to be filed with the Environmental Protection Agency and to be available for public review by November 1989. At that time the Environmental Protection Agency will publish a notice of availability of the document in the **Federal Register**. Notice of public meetings to be held will be included in the notice of availability.

The comment period on the Draft EIS will be 45 days from the date of the notice of availability in the **Federal Register**. It is very important that those interested in the management of the Sherwin Bowl area participate at that time. To be most helpful, comments should be as specific as possible and may address the adequacy of the Draft EIS 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 EISs must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions, *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the Final EIS *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 EIS.

After the comment period ends on the Draft EIS, the comments will be analyzed and considered by the Forest Service in preparing the Final EIS, which is scheduled to be completed in April 1990. In the Final EIS the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the Final EIS, and applicable laws, regulations and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in the Record of

Decision. That decision will be subject to appeal under 36 CFR 217.3.

Dated: September 5, 1989.

Dennis W. Martin,

Forest Supervisor.

[FR Doc. 89-21614 Filed 9-13-89; 8:45 am]

BILLING CODE 3410-11-M

Stanley C & H Grazing Allotment, Sawtooth National Forest, Idaho

AGENCY: Forest Service, USDA.

ACTION: Revision of notice of intent to prepare and environmental impact statement.

SUMMARY: The Forest Service published a Notice of Intent to prepare an Environmental Impact Statement in the December 23, 1988 **Federal Register** (Vol. 53, No. 247) for a proposal to revise management practices on the Stanley Basin C & H allotment on the Sawtooth National Recreation Area of the Sawtooth National Forest in Custer County, Idaho. That notice is hereby revised to show that the Draft Environmental Impact Statement (DEIS) is expected to be available for public review in October 1989, and the Final Environmental Impact Statement (FEIS) is scheduled to be completed by June, 1990. No other revisions are made.

Dated: September 6, 1989.

Roland M. Stoleson,

Forest Supervisor Sawtooth National Forest.

[FR Doc. 89-21585 Filed 9-13-89; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Bureau of the Census

Number of Employees, Payrolls, Geographic Location, Current Status, and Kind of Business for the Establishments of Multiestablishment Companies; Determination for Surveys

In conformity with Title 13, United States Code, Sections 182, 224, and 225 and due notice of consideration having been published on April 1, 1985 (50 FR 12843), I have determined that a 1989 Company Organization Survey is needed to update the multiestablishment companies in the Standard Statistical Establishment List. The survey, which has been conducted for many years, is designed to collect information on the number of employees, payrolls, geographic location, current status, and kind of business for the establishments of multiestablishment companies. These data will have significant application to the needs of the public and to governmental agencies and are not publicly available from nongovernmental or governmental sources.

Report forms will be furnished to firms included in the survey and additional copies of the form are available on request to the Director, Bureau of the Census, Washington, DC 20233.

I have, therefore, directed that a survey be conducted for the purpose of collecting these data.

Dated: September 8, 1989.

C.L. Kincannon,

Deputy Director, Bureau of the Census.

[FR Doc. 89-21635 Filed 9-13-89; 8:45 am]

BILLING CODE 3510-07-M

International Trade Administration

New European Community Testing and Certification Procedures: Opportunity for Interested Parties To Comment

AGENCY: International Trade Administration, International Economic Policy, Commerce.

ACTION: Notice of opportunity to provide written comments.

SUMMARY: This is to advise the public that the U.S. Government Working Group on European Community (EC) Standards, Testing and Certification Issues is soliciting public comments, concerns and recommendations related to the EC Commission's newly-proposed procedures on EC-wide product testing and certification. Interested persons are invited to present written comments regarding this issue.

DATE: Written comments must be received by the Commerce Department no later than October 15, 1989.

FOR FURTHER INFORMATION CONTACT: Naomi Otterness or Mary Saunders, Office of European Community Affairs, Room 3036, International Economic Policy, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; (202) 377-5270 or (202) 377-5823.

SUPPLEMENTARY INFORMATION: The U.S. Working Group on EC Standards, Testing and Certification (part of the U.S. Government Interagency Task Force on the EC Internal Market) is soliciting views relating to the development of a new product testing and certification system in the European Community, its impact on U.S. business, and how the United States should respond.

On July 24, 1989, the Commission of the European Community issued a document entitled "A Global Approach to Certification and Testing—Quality measures for industrial products". This document outlines a system for assuring conformity with new essential health and safety requirements for industrial products in the EC market, and is intended to accompany the EC's "new approach" to product standards.

While the Working Group held public hearings on EC standards-related matters on July 26 and 27, 1989, the EC Commission's testing and certification proposal was not available until that week, therefore, many interested U.S. parties were unable to provide comments at that time.

The information and views obtained from the written comments on the EC's July 24, 1989 proposal will be used to supplement the findings of the Working Group in determining the need for future U.S.-EC coordination on testing and certification issues.

Written comments must be submitted to Charles Ludolph, Director, Office of European Community Affairs, Room 3036, Department of Commerce, Washington, DC 20230, no later than October 15, 1989.

Dated: September 7, 1989.

Thomas J. Duesterberg,

Assistant Secretary for International Economic Policy.

[FR Doc. 89-21534 Filed 9-13-89; 8:45 am]

BILLING CODE 3510-DA-M

National Oceanic and Atmospheric Administration

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The New England Fishery Management Council will meet on September 21, 1989, at the Colonial Hilton Inn, Routes 128/95, Wakefield, MA. The Council will meet at 10 a.m., and will adjourn when agenda items have been completed.

The Council will review the Groundfish, Scallop, and Large Pelagics Oversight Committees' reports, and will also discuss government support programs.

For more information contact Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906; telephone: (617) 231-0422.

Dated: September 8, 1989.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-21540 Filed 9-13-89; 8:45 am]

BILLING CODE 3510-22-M

South Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The South Atlantic Fishery Management Council will hold a public meeting of the Law Enforcement Committee and Advisory Panel on September 20-21, 1989. The meeting will begin at 10 a.m., on September 20 at the Club House Inn, 6800 Abercorn Street, Savannah, GA. The meeting will adjourn at 5 p.m. on September 21.

The Committee/Advisory Panel will discuss Cooperative Law Enforcement Agreements between state agencies and the National Marine Fisheries Service. It will also discuss a permit requirement for spiny lobster, review and make recommendations for modifications of proposed regulations to implement Amendment #5 to the Coastal Migratory Pelagics (mackerels) Fishery Management Plan (FMP), and to implement Amendment #1 to the FMP for Atlantic Swordfish. A detailed agenda will be available to the public on or about September 12, 1989.

For more information contact Carrie R.F. Knight, Public Information Specialist, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407, telephone: (803) 571-4366.

Dated: September 8, 1989.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-21541 Filed 9-13-89; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in the Socialist Republic of Romania

September 8, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: September 15, 1989.

FOR FURTHER INFORMATION CONTACT: Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-5810. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Governments of the United States and the Socialist Republic of Romania agreed to convert the current minimum consultation level for Category 350 to a designated consultation level.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 53 FR 49344, published on December 7, 1988.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

September 8, 1989.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 2, 1988 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Romania and exported during the period which began on January 1, 1989 and extends through December 31, 1989.

Effective on September 15, 1989, the directive of December 2, 1988 is being amended further to establish a limit of 27,000 dozen [1] for cotton textile products in Category 350 in Group I. Category 350 shall remain subject to the group limit.

Import charges already made to Group I for Category 350 shall be applied to the limit established in this directive.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

[1] The limit has not been adjusted to account for any imports exported after December 31, 1988.

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-21613 Filed 9-13-89; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Advanced Naval Warfare Concepts

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Advanced Naval Warfare Concepts will meet in closed session on September 26, October 17, and November 14, 1989 at the Center for Naval Analyses, Alexandria, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will examine advanced naval warfare concepts and assess relevant technology, equipment, and modernization plans.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly these meetings will be closed to the public.

Dated: September 11, 1989.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89-21628 Filed 9-13-89; 8:45 am]

BILLING CODE 3510-01-M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

September 6, 1989.

The USAF Scientific Advisory Board Munition Systems Division Advisory Group will meet on 28-29 Sep 1989 from 8:00 a.m. to 5:00 p.m. at Eglin AFB, Florida.

The purpose of this meeting is to review developments in the field of tactical missiles. This meeting will involve discussions of classified defense matters listed in section 552b(c) of title 5, United States Code, specifically

subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–8404.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 89–21577 Filed 9–13–89; 8:45 am]

BILLING CODE 3910–01–M

Department of the Army

Intent To Grant an Exclusive Patent License to Neil Dumas

The Department of the Army announces its intention to grant an exclusive license to Neil Dumas, 7110 Davis Court, McLean, VA 22101, under U.S. Patent Nos. 4,656,654 and 4,736,407, both entitled "Computer Assisted Graphic Teleconferencing Method and Apparatus".

The proposed exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and the Department of Commerce's regulations at 37 CFR 404.7. The proposed license may be granted unless, within 60 days from the date of this notice, the Department of the Army receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest. All comments and materials must be submitted to the Intellectual Property Counsel of the Army, Patents, Copyrights, and Trademarks Division, Office of The Judge Advocate General, Department of the Army, 5611 Columbia Pike, Falls Church, VA 22041–5013.

For further information concerning this notice, contact: Earl T. Reichert, Patents, Copyrights, and Trademarks Division, Office of The Judge Advocate General, Department of the Army, 5611 Columbia Pike, JALS–PC, Room 332–A, Falls Church, VA 22041–5013, Telephone No. (202) 756–2623.

Kenneth L. Denton,

Alternate Army Federal Register Liaison Officer, Department of the Army.

[FR Doc. 89–21587 Filed 9–13–89; 8:45 am]

BILLING CODE 3710–08–M

Corps of Engineers, Department of the Army, Intent To Prepare a Revised Draft Environmental Impact Statement (RDEIS) for the Northern California Streams, Dry Creek (Roseville) Interim Investigation

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of Intent to prepare a Revised DEIS.

SUMMARY: Revised alternative flood control measures are being studied in a feasibility investigation for Dry, Cirby, and Linda Creeks within the Dry Creek Basin. The study area is located in the corporate limits of the City of Roseville, California.

A draft EIS was submitted for public review in November of 1988, which addressed three alternative channel improvement plans along lower Cirby and Linda Creeks, and upper Dry Creek. The revised draft EIS will describe modifications in the previously preferred plan, 25-year one-sided channel plan, and a new preferred plan, 100-year combination plan. The 100-year combination plan would increase the level of flood protection, retain more natural stream channel, and reduce environmental impacts.

FOR FURTHER INFORMATION CONTACT: Requests for additional information concerning the revised plan should be requested, in writing to the Sacramento District, Corps of Engineers, 650 Capitol Mall, Sacramento, California 95814–4794. Questions concerning the revised RDEIS can be addressed to Mr. Richard Meredith at (916) 551–1855.

SUPPLEMENTARY INFORMATION:

Proposed Action

The proposed action includes development of a combination of a managed floodway, segments of low floodwalls and channel improvements along lower Cirby and Linda Creeks, and Dry Creek. These channel improvements include trapezoidal earth, one-sided, and natural channels. The combination plan alternative would preserve more existing riparian vegetation and to reduce mitigation measures from an earlier identified 25-year, one-sided channel plan.

Alternatives

Many alternatives were considered during earlier studies. These included the use of detention basins, reservoirs, managed floodways, channels, floodwalls, and nonstructural methods of avoiding flood damages. Based on these and more recent studies, three final alternatives are the no action, the 100-year combination plan, and 25-year one-sided earth channel plan. Other alternatives were not economically feasible or did not meet project objectives. The 100-year plan consists of a combination of managed floodway, one-sided, trapezoidal and natural channels, and low floodwalls on three segments of streams. The 25-year one-sided channel plan was described in the September 1988 report.

3. Scoping Process

The scoping process was initiated in August 1986 when the initial scoping meeting was conducted. The Notice of Intent to Prepare the DEIS was submitted for publication in the **Federal Register** in February 1987. Since that time, the Corps of Engineers and City of Roseville have maintained an active public involvement program to assure all relevant issues are discussed and analyzed. The public involvement program has included public meetings, workshops, field trips, and meetings with organizations and neighborhood groups. In addition, numerous comments on the initial draft EIS assisted in defining the issues critical to affected citizens, organizations, and public agencies.

4. Availability

The revised DEIS is scheduled to be available for public review and comment in fall 1989.

Dated: August 24, 1989.

Jack A. Le Cuyer,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 89–21588 Filed 9–13–89; 8:45 am]

BILLING CODE 3710–GH–M

DEPARTMENT OF EDUCATION

National Commission on Drug-Free Schools; Meeting

AGENCY: National Commission on Drug-Free Schools.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Commission on Drug-Free Schools. This notice also describes the functions of the Commission. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATES/TIMES: September 28, 8:30 a.m.–5:00 p.m. and September 29, 8:30 a.m.–4:00 p.m..

ADDRESS: MacArthur School, 4460 MacArthur Boulevard NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Modzeleski, Executive Director, National Commission on Drug-Free Schools, Washington, DC 20202–7584. (202) 732–6140.

SUPPLEMENTARY INFORMATION: The National Commission on Drug-Free Schools is established under section 5051 of the Anti-Drug Abuse Act of 1988 (Pub. L. 100–690; 20 U.S.C. 3172 note). The Commission was established to

advise on drug prevention in schools and to recommend strategies and criteria for achieving drug-free schools. Under the provision of 20 U.S.C. 3172 (f) the Commission is to: develop recommendations of criteria for identifying drug-free schools and campuses; develop recommendations for identifying model programs to meet such criteria; make such other fundings, recommendations and proposals as the Commission deems necessary to carry out the provisions of the 20 U.S.C. 3172; and prepare and submit a final report in accordance with the provisions of subsection (i) of 20 U.S.C. 3172.

The meeting of the Commission is open to the public. The agenda includes:

September 28:

—Briefing on Federal drug education and prevention efforts of the Departments of Education, Housing and Urban Development, and the ACTION Agency.

September 29:

—Briefing on Federal drug education and prevention efforts of various agencies within the Department of Justice, including the Federal Bureau of Investigations, Drug Enforcement Administration, and the Office of Justice Programs. The Department of Health and Human Services and Treasury will also provide briefings for the Commission. Further, the Commission will review subgroup work plans of the two Commission subgroups in the afternoon.

Records are kept of all Commission proceedings and are available for public inspection at the Office of the Commission, 330 C Street SW., Washington, DC from the hours of 9:00 a.m. to 5:00 p.m.

Dated: September 8, 1989.

Ted Sanders,

Under Secretary.

[FR Doc. 89-21582 Filed 9-13-89; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Financial Assistance Award Intent To Award Grant to Washington State Energy Office

AGENCY: U.S. Department of Energy.

ACTION: Notice of unsolicited financial assistance award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.14, it is making a financial assistance award under Grant Number DE-FG01-89CE26597 to the Washington State Energy Office (WSEO).

Scope: The funding for this grant will allow the grantee to develop a software program, HEATMAP, which will provide a computerized graphics tool for the design and relatively inexpensive analysis of district heating and cooling systems. This project will allow communities to improve or develop centralized energy production and distribution to buildings as a replacement for multiple individual heating and cooling systems.

The purpose of this project is to allow maximum use of district heating and cooling systems and thereby reduce energy consumption.

Eligibility: Based on acceptance of an unsolicited application, eligibility for this award is being limited to WSEO, a unique organization with experience in developing software programs specifically designed to assess district heating and cooling systems. WSEO is responsible for the design and construction of the nation's first dual purpose domestic water supply system, which supplied the needs of heating, cooling, and public water demand in Ephrata, Washington. HEATMAP will allow for a rapid determination of district heating and cooling favorableness, thus shortening time required for feasibility studies. Of particular interest will be the ability to rank geographic areas according to economic feasibility and to display this ranking graphically on the project maps which will be produced. WSEO's prior experience in this area is its distinguishing attribute. Key personnel in this project have academic backgrounds and experience in various energy related district heating and cooling areas that are unique and professional. This project represents a unique idea for which a competitive solicitation would be inappropriate. This is a project with high technical merit, representing an innovative technology which has a strong possibility of allowing for future reduction in the nation's energy consumption. DOE knows of no other organization with experience in this area.

The term of this grant shall be twenty-four (24) months from the effective date of this award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Procurement Operations, Attn: Phyllis Morgan, MA-453.2, 1000 Independence Avenue, SW., Washington, DC 20585.

Thomas S. Keefe,

Director Contract Operations Division "B", Office of Procurement Operations.

[FR Doc. 89-21654 Filed 9-13-89; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP89-2025-000, et al.]

ANR Pipeline Co., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. ANR Pipeline Company

[Docket No. CP89-2025-000]

August 31, 1989.

Take notice that on April 10, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89-1182-000 a request pursuant to § 157.205 of the Commission's Regulations (18 CFR 157.205) for authorization to transport natural gas on behalf of Koch Hydrocarbon, Inc. (Koch), a marketer of natural gas, under ANR's blanket certificate issued in Docket No. CP88-532-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

ANR proposes to transport on an interruptible basis up to 300,000 dt equivalent on a peak day for Koch, 300,000 dt equivalent on an average day and 109,500,000 dt equivalent on an annual basis for Koch. It is stated that ANR would receive the gas at designated poits on ANR's system in Oklahoma, Kansas, Texas, Louisiana, offshore Louisiana and offshore Texas, and would deliver equivalent volumes at designated points on ANR's system in Kentucky, Indiana, Ohio, Missouri, Iowa, Tennessee, Kansas, Wisconsin and Illinois. It is asserted that the transportation would be effected using existing facilities and that no construction of additional facilities would be required. It is explained that the transportation service commenced March 1, 1989, under the self-implementing authorization of Section 284.223 of the Commission's Regulation, as reported in Docket No. ST89-2874.

Comment date: October 16, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. Great Lakes Gas Transmission Company

[Docket Nos. CP87-467-005, CP79-462-011, and CP66-110-038]

September 1, 1989.

Take notice that on August 30, 1989, Great Lakes Gas Transmission Company (Great Lakes), 2100 Buhl Building, Detroit, Michigan 48226, filed in Docket Nos. CP87-467-005, CP79-462-

011, and CP66–110–038 a petition to amend the orders issued in Docket Nos. CP87–467–000, *et al.*, CP79–462, *et al.*, and CP66–110, *et al.*, to extend the authorized term of the firm transportation service for Texas Eastern Transmission Corporation (Tetco) and Tennessee Gas Pipeline Company (Tennessee), all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

It is indicated that Great Lakes is currently authorized by order isued October 27, 1988, in Docket Nos. CP87–467–003, *et al.* to provide a firm transportation service of 75,000 Mcf per day for both Tennessee and Tetco for a term expiring on the earlier of one year from the date of issuance of the order or the date Great Lakes accepts a blanket certificate issued pursuant to § 284.221 of the Commission's Regulations. In the current petition, Great Lakes requests authorization to extend the authorized term to expire November 1, 2000, the date Tetco's and Tennessee's import authorizations expire. No other changes are proposed.

Comment date: September 22, 1989, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

3. Columbia Gulf Transmission Company

[Docket No. CP89–2017–000]

September 1, 1989.

Take notice that on August 29, 1989, Columbia Gulf Transmission Company (Columbia Gulf), 3805 West Alabama, Houston, Texas 77027, filed in Docket No. CP89–2017–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to transport, on an interruptible basis, on behalf of Meth Corporation (Meth), a marketer of natural gas, under Columbia Gulf's blanket certificate issued in Docket No. CP86–239–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Columbia Gulf, pursuant to an agreement dated July 24, 1989, proposes to transport natural gas for Meth on an interruptible basis from points in South Pass Blocks 75 and 78, offshore Louisiana, and proposes to redeliver the gas for Meth at a point in Plaquemines Parish, Louisiana. It is stated that the volume anticipated to be transported on a peak day is a maximum of 35,000 MMBtu, on an average day approximately 4,600 MMBtu, and approximately 1,669,000 MMBtu on an annual basis.

Columbia Gulf states that this service commenced on August 1, 1989, as reported in Docket No. ST89–4455–000, pursuant to section 284.223(a) of the Commission's Regulations

Comment date: October 16, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. Northwest Pipeline Corporation

[Docket No. CP89–2029–000]

September 1, 1989.

Take notice that on August 29, 1989, Northwest Pipeline Corporation (Northwest) filed in Docket No. CP89–2029–000 a request pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act, to transport natural gas under its blanket certificate issued in Docket No. CP86–578–000 for the account of Texaco Inc. (Texaco), a producer, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northwest indicates that service commenced July 1, 1989, as reported in Docket No. ST89–4526–000 and estimates the volumes transported to be 50,000 MMBtu per day on a peak day, 8,000 MMBtu on an average day and approximately 3,000,000 MMBtu on an annual basis for Texaco.

Northwest states that no new facilities are to be constucted, as it will transport the gas through its system from existing wells located in La Plata County, Colorado and Lincoln and Sublette Counties, Wyoming, to delivery points located in La Plata County, Colorado and Rio Arriba County, New Mexico.

Comment date: October 16, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. Carnegie Natural Gas Company

[Docket No. CP89–2044–000]

September 1, 1989.

Take notice that on August 31, 1989, Carnegie Natural Gas Company (Carnegie), 800 Regis Avenue, Pittsburgh, Pennsylvania 15236, filed in Docket No. CP89–2044–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Aristech Chemical Corporation (Aristech), an end-user, under the blanket certificate issued in Docket No. CP88–363–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Carnegie states that pursuant to a transportation agreement dated July 1, 1989, under its Rate Schedule ITS, it proposes to transport up to 1,000 dekatherms (dt) per day equivalent of natural gas for Aristech. Carnegie states that it would transport the gas from receipt points in Greene County, Pennsylvania, and would deliver the gas to Aristech at Clairton, Pennsylvania.

Carnegie advises that service under § 284.223(a) commenced July 1, 1989, as reported in Docket No. ST89–4632–000 (filed August 31, 1989). Carnegie further advises that it would transport 800 dt on an average day and 292,000 dt annually.

Comment date: October 16, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. Trunkline Gas Company

[Docket No. CP89–2005–000]

September 1, 1989.

Take notice that on August 28, 1989, Trunkline Gas Company (Trunkline) P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP89–2005–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of American Central Gas Marketing Company (American Central), under the authorization issued in Docket No. CP86–586–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Trunkline would perform the proposed interruptible transportation service for American Central, a shipper and marketer of natural gas, pursuant to a transportation agreement dated September 14, 1988 (contract no. T–PLT–1222). The term of the transportation agreement is for a primary term of one month from the initial date for service, and shall continue in effect month-to-month thereafter unless terminated upon 30 days prior written notice by one party to the other party. Trunkline proposes to transport on a peak day up to 150,000 dekatherm; on an average day up to 20,000 dekatherm; and on an annual basis 7,300,000 dekatherm of natural gas for American Central. Trunkline proposes to receive the subject gas from various existing receipt points in the states of Illinois, Louisiana, Tennessee, and Texas, from the Panhandle receipt point at Douglas County, Illinois, and from the areas of Offshore Louisiana and Offshore Texas. Trunkline would then transport and redeliver the subject gas, less fuel and unaccounted for line

loss, to Illinois Power Company in Douglas County, Illinois. It is alleged that American Central would pay Trunkline the effective rate contained in Trunkline's rate schedule PT, which is currently 30.41 cents, which includes the ACA and GRI surcharge. Trunkline avers that construction of facilities would not be required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's regulations. Trunkline commenced such self-implementing service on July 13, 1989, as reported in Docket No. ST89-4352-000.

Comment date: October 16, 1989, in accordance with Standard Paragraph G at the end of this notice.

7. Trunkline Gas Company

[Docket No. CP89-2006-000]

September 1, 1989.

Take notice that on August 28, 1989, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, filed a request with the Commission in Docket No. CP89-2006-000 pursuant to § 157.205 of the Commission's Regulations (18 CFR 157.205) for authorization to transport natural gas on behalf of Hadson Gas Systems, Inc. (Hadson), a shipper and marketer of natural gas, under Trunkline's blanket certificate issued in Docket No. CP86-586-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is open to public inspection.

Trunkline proposes to transport for Hadson, on an interruptible basis, up to 60,000 dt equivalent of natural gas on a peak day, 40,000 dt equivalent on an average day, and 16,000,000 dt equivalent on an annual basis. Trunkline states that it would receive the gas for Hadson's account at various existing points on its system in Illinois, Louisiana, Tennessee and Texas, and would deliver equivalent volumes of gas, less fuel and unaccounted for line loss, to Consumers Power Company in Elkhart County, Indiana. Trunkline also states that no new facilities would be needed for implementing its proposed transportation service for Hadson. Trunkline began its transportation service for Hadson July 1, 1989, under the self-implementing provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89-4354.

This notice supersedes a notice of request under blanket authorization issued August 30, 1989, in this docket, CP89-2006-000. The 45 day notice period begins from the date of issuance of this notice.

Comment date: October 16, 1989, in accordance with Standard Paragraph G at the end of this notice.

8. ANR Pipeline Company

[Docket No. CP89-2022-000]

September 1, 1989.

Take notice that on August 29, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89-2022-000 a request pursuant to §§ 157.205 and 284.223 of the Commission Regulations for authorization to transport natural gas for Clinton Gas Marketing, Inc. (Clinton), a marketer of natural gas, under ANR's blanket certificate issued in Docket No. CP88-532-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

ANR states that the transportation service will be provided pursuant to a transportation agreement dated April 27, 1989, wherein ANR proposes to transport natural gas on an interruptible basis for Clinton. ANR states that it would receive the gas at ANR's existing points of receipt in the states of Illinois, Indiana, Kansas, Louisiana, Oklahoma, Texas and Wisconsin and the offshore Texas and Louisiana gathering areas and redeliver the gas for the account of Clinton at an existing interconnections located in the states of Indiana and Ohio.

ANR proposes to transport on a peak day up to 63,086 dekatherms (dt), with an estimated average daily quantity of 63,086 dt. On an annual basis, ANR could transport up to 23,026,000 dt.

ANR also states that no construction of new facilities will be required to provide this transportation service.

ANR states that service for Clinton under § 284.223(a) commenced July 1, 1989, as reported in Docket No. ST89-4294-000.

Comment date: October 16, 1989, in accordance with Standard Paragraph G at the end of this notice.

9. ANR Pipeline Company

[Docket No. CP89-2028-000]

September 1, 1989.

Take notice that on August 29, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89-2028-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Kaztek Energy Management, Inc. (Kaztek), a marketer, under its blanket authorization issued in Docket No. CP88-532-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

ANR would perform the proposed interruptible transportation service for Kaztek, pursuant to an interruptible transportation service agreement dated May 26, 1989. The transportation agreement is effective for a term until 120 days from the day of initial deliveries, and thereafter until June 30, 1994, and month to month thereafter until terminated by either party on thirty days written notice. ANR proposes to transport approximately 75,000 dth natural gas on a peak and average day; and on an annual basis 27,375,000 dth of natural gas for Kaztek. ANR proposes to receive the subject gas at various existing points of receipt located in the states of Kansas, Louisiana, Offshore Louisiana, Oklahoma, Texas and Offshore Texas. ANR states it will redeliver the gas for the account of Kaztek at existing interconnections located in the state of Wisconsin.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. ANR commenced such self-implementing service on July 1, 1989, as reported in Docket No. ST89-4290-000.

Comment date: October 16, 1989, in accordance with Standard Paragraph G at the end of this notice.

10. El Paso Natural Gas Company

[Docket No. CP89-1989-000]

September 1, 1989.

Take notice that on August 24, 1989, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed in Docket No. CP89-1989-000 a request pursuant to §§ 157.205 and 284.223(b) of the Federal Energy Regulatory Commission's (Commission) Regulations under the Natural Gas Act for authorization to continue an interruptible transportation service for Sunrise Energy Company (Shipper), under El Paso's blanket certificate issued in Docket No. CP88-433-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open for public inspection.

El Paso states that transportation service for Shipper was initiated under Part 284, Subpart B on April 29, 1987 and that El Paso's initial full report in accordance with § 284.106(a) of the Commission's Regulations was timely filed with the Commission on May 29,

1987 at Docket No. ST87–2727–000. El Paso states that in accordance with a transportation service agreement entered into on April 1, 1987, as amended and restated on June 29, 1989, Shipper and El Paso have agreed to continue such transportation under subpart G of the Commission's Regulations and to terminate the subpart B Transaction upon receipt of the appropriate regulatory approvals for the subpart G transaction. Therefore, El Paso requests authority to continue the transportation of up to 21,100 MMBtu of natural gas per day for Shipper from various points of receipt on El Paso's system to delivery points at the borderline between the States of Arizona and California near Topock, Arizona and Blythe, California. El Paso states that the estimated daily and annual quantities would be 10,550 MMBtu and 3,850,750 MMBtu, respectively.

Comment date: October 16, 1989, in accordance with Standard Paragraph G at the end of this notice.

11. El Paso Natural Gas Company

[Docket No. CP89–1988–000]

September 1, 1989.

Take notice that on August 24, 1989, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas, 79978, filed in Docket No. CP89–1988–000, a request pursuant to §§ 157.205 and 284.223(b) of the Federal Energy Regulatory Commission's (Commission) Regulations Under the Natural Gas Act for authorization to continue an interruptible transportation service for Sunrise Energy Company (Shipper), under El Paso's blanket certificate issued in Docket No. CP88–433–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open for public inspection.

El Paso states that transportation service for Shipper was initiated under Part 284, Subpart B on November 1, 1987, and that El Paso's initial full report in accordance with § 284.106(a) of the Commission's Regulations was timely filed with the Commission on November 25, 1987 at Docket No. ST88–914–000. El Paso states that in accordance with a transportation service agreement entered into on August 28, 1987, as amended and restated on June 29, 1989, Shipper and El Paso have agreed to continue such transportation under subpart G of the Commission's Regulations and to terminate the subpart B transaction upon receipt of the appropriate regulatory approvals for the subpart G transaction. Therefore, El Paso requests authority to continue the transportation, pursuant to subpart G of the Regulations, of up to 52,750 MMBtu of natural gas per day for Shipper from any point of receipt on El Paso's system to delivery points at the borderline between the States of Arizona and California near Topock, Arizona and Blythe, California. El Paso states that the estimated daily and annual quantities would be 10,550 MMBtu and 3,850,750 MMBtu, respectively.

Comment date: October 16, 1989, in accordance with Standard Paragraph G at the end of this notice.

12. Viking Gas Transmission Company

[Docket No. CP89–1999–000]

September 5, 1989.

Take notice that on August 25, 1989, Viking Gas Transmission Company (Viking), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89–1999–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Viking to transport natural gas on behalf of Tarpon Gas Marketing, Ltd. (Tarpon), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that Viking proposes to transport up to a maximum daily quantity of 150,000 dt equivalent of natural gas on an interruptible basis for Tarpon. Viking indicates that it would transport the gas from a point of interconnection with TransCanada Pipelines Ltd., near Emerson, Manitoba, to a point of interconnection with ANR Pipeline Company (ANR) near Marshfield, Wisconsin.

Viking states that the proposed transportation service for Tarpon will replace the service applied for by Midwestern Gas Transmission Company in Docket No. CP88–665–000.

Viking states that the rate to be paid by Tarpon will be equal to the rate set forth in Viking's Rate Schedule IT–2.

Comment date: September 26, 1989, in accordance with Standard Paragraph F at the end of this notice.

13. El Paso Natural Gas Company

[Docket No. CP89–2040–000]

September 5, 1989.

Take notice that on August 31, 1989, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed in Docket No. CP89–2040–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to perform an interruptible transportation service for Cabot Gas Supply Corporation (Cabot) under El Paso's blanket certificate issued in Docket No. CP88–433–000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

El Paso states that pursuant to a transportation service agreement dated June 14, 1989, it proposes to receive up to 20,000 Mcf per day from any interconnection on its system, except those requiring transportation by others, and to redeliver the gas to Cabot at any of three specified points located in the state of Texas. El Paso estimates that the peak day, average day, and annual volumes would be 21,000 million Btu, 21,000 million Btu, and 7,701,500 million Btu, respectively. It is stated that on July 19, 1989, El Paso initiated a 120-day transportation service for Cabot under § 284.223(a), as reported in Docket No. ST89–4423–000.

El Paso further states that no facilities need be constructed to implement the service. El Paso states that it would provide the service for a primary term of one year, but would continue the service thereafter from month to month until terminated by written notice given no less than fourteen days in advance by either party to the other. El Paso proposes to charge rates and abide by the terms and conditions of its Rate Schedule T–1.

Comment date: October 16, 1989, in accordance with Standard Paragraph G at the end of this notice.

14. CNG Transmission Corporation

[Docket No. CP89–2007–000]

September 5, 1989.

Take notice that on August 28, 1989, CNG Transmission Corporation (CNG), 445 West Main Street, Clarksburg, West Virginia 26302–2450, filed in Docket No. CP89–2007–000 a request pursuant to §§ 157.205 and 284.223(b) of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on an interruptible basis for several customers under its blanket certificate issued in Docket No. CP86–311–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

CNG proposes to transport gas for seven customers from various receipt points on its system to various interconnections between CNG and local distribution companies (LDCs) and pipelines. CNG indicates that it reported these transactions, as well as the commencement dates of these transactions, to the Commission in several ST dockets. The specifics of the

proposed transactions are listed below. CNG proposes to continue these transactions in accordance with §§ 284.221 and 284.223(b) of the Commission's Regulations.

PROPOSED TRANSPORTATON TRANSACTIONS

Docket No.	Customer	Date service began	Volumes [1] (Max. daily, avg. daily, annual)	Receipt point	Delivery point or LDC
ST89-4504	Brooklyn Interstate Natural Gas Company	7/1/89	20,000 104 37,960	B	NYSEG.
ST89-4511	Brooklyn Interstate Natural Gas Company	7/1/89	20,000 104 37,960	B	North Penn.
ST89-4510	Grand River Asphalt Company	7/7/89	200 150 54,750	D	EOG.
ST89-4507	Osborne Concrete & Stone Company	7/7/89	200 26 9,490	C	EOG.
ST89-4506	Cuyahoga Asphalt Company	7/7/89	500 26 9,490	C	EOG.
ST89-4513	Lake Erie Aspahlt Production Inc.	7/7/89	2,000 192 70,080	C	EOG.
ST89-4508	Brooklyn Interstate Natural Gas Company	7/1/89	20,000 519 189,435	B	NIMO.
ST89-4515	Brooklyn Interstate Natural Gas Company	7/1/89	20,000 104 37,960	B	River.
ST89-4512	Apex International Alloys, Inc.	7/12/89	1,500 42 234,330	D	EOG.
ST89-4509	Stand Energy Corporation	7/18/89	600 325 118,625	B	NYSEG.
ST89-4514	Brooklyn Interstate Natural Gas Company	7/1/89	20,000 147 17,640	B	Corning.
ST89-4505	Brooklyn Interstate Natural Gas Company	7/1/89	20,000 1,888 689,120	B	HGI.
ST89-4515	Brooklyn Interstate Natural Gas Company	7/1/89	20,000 784 286,160	B	NFG.
ST89-4517	Brooklyn Interstate Natural Gas Company	7/1/89	20,000 391 142,715	B	PNG.

[1] Volumes in dt equivalent of natural gas.

Legend of Receipt Points:

A—Various interconnects between Tennessee Gas Pipeline Company and CNG. B—Various receipt points in WV/PA/NY. C—Various interconnects between Texas Gas Transmission Corporation and CNG. D—Various interconnects between Texas Eastern Transmission Corporation and CNG.

Legend of Local Distribution Companies or Delivery Points:

HGI—Hope Gas, Inc.
NYSEG—New York State Electric & Gas Corp.
RGE—Rochester Gas & Electric Corp.
EOG—East Ohio Gas Company.
PNG—Peoples Natural Gas Company.
NIMO—Niagara Mohawk Power Corp.
NFG—National Fuel Gas Supply Corp.
Transco—Transcontinental Gas Pipeline Corporation.
Corgas—Corgas Pipeline Company.
North Penn—North Penn Gas Company.
H & B—Hanley & Bird.
Corning—Corning Natural Gas Company.
Tenn.—Tennessee Gas Pipeline Company.
Texas Eastern—Texas Eastern Transmission Corp.
Texas Gas—Texas Gas Transmission Corp.
River—The River Gas Company.

Comment date: October 20, 1989, in accordance with Standard Paragraph G at the end of this notice.

15. El Paso Natural Gas Company

[Docket No. CP89-2038-000]

September 5, 1989.

Take notice that on August 31, 1989, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas, 79978, filed in Docket No. CP89-2038-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to add a new delivery point to Southern Union Gas Company (SUG), an existing customer, under El Paso's blanket certificate issued in Docket No. CP82-435-000 pursuant to

section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

El Paso proposes to construct and operate one tap on its 34-inch Second Loop Line in Conconimo County, Arizona to deliver gas to SUG for resale to one residential customer. El Paso states the gas would be used for residential purposes with maximum daily and annual volumes of 2 Mcf and 150 Mcf respectively.

El Paso asserts that the proposed sales tap is not prohibited by any of its existing tariffs and that the additional tap will have no significant impact on El Paso's peak day and annual deliveries.

Comment date: October 20, 1989, in accordance with Standard Paragraph G at the end of this notice.

16. United Gas Pipe Line Company

[Docket No. CP89-2042-000]

September 5, 1989.

Take notice that on August 31, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, made a prior notice filing pursuant to §§ 157.205 and 284.223 in Docket No. CP89-2042-000, to provide interruptible transportation service on behalf of MidCon Marketing Corporation, a marketer of natural gas, under United's blanket certificate issued in Docket No. CP88-6-000, all as more fully set forth in the request on file with the Commission and open to public inspection.

United states that the Interruptible Gas Transportation Agreement TI-21-2186, dated June 14, 1989, proposes to transport a maximum daily quantity of 14,450 MMBtu, and that service commenced July 1, 1989, as reported in Docket No. ST89-4282-000, pursuant to § 284.223(a) of the Commission's Regulations.

Comment date: October 20, 1989, in accordance with Standard Paragraph G at the end of this notice.

17. Natural Gas Pipeline Company of America

[Docket No. CP89-2020-000]

September 5, 1989.

Take notice that on August 29, 1989, Natural Gas Pipeline Company of America (NGPL), 701 East 22nd Street, Lombard, Illinois 60148, filed a request with the Commission in Docket No. CP89-2020-000 pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to transport natural gas for Seagull Marketing Services, Inc. (Seagull), a natural gas marketer, under its blanket certificate issued in Docket No. CP86-582-000 pursuant to section 7 of the NGA, all as more fully set forth in the request which is open to public inspection.

NGPL proposes to transport for Seagull on an interruptible basis up to 20,000 MMBtu of natural gas on a peak day, 15,000 MMBtu on an average day, and 5,475,000 MMBtu on an annual basis. NGPL states that consistent with its Rate Schedule ITS, Seagull may request and NGPL may agree to accept additional quantities of overrun gas. NGPL states that the receipt points are in Iowa, Kansas, Nebraska, Oklahoma, and Texas, while the delivery point is in Texas. NGPL states that it commenced service under § 284.223(a) on June 22, 1989, as reported in Docket No. ST89-4583 (filed August 29, 1989). NGPL indicates that no new facilities are proposed herein.

Comment date: October 20, 1989, in accordance with Standard Paragraph G at the end of this notice.

18. Northern Natural Gas Company

[Docket No. CP89-2011-000]

September 5, 1989.

Take notice that on August 28, 1989, Northern Natural Gas Company, Division of Enron Corp., (Northern) 1400 Smith Street, Houston, Texas 77251, filed in Docket No. CP89-2011-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Sun Operating Limited Partnership (Sun), a producer of natural gas, under its blanket authorization issued in Docket No. CP86-435-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern would transport gas for Sun as follows: 40,000 MMBtu on a peak day, 30,000 MMBtu on an average day, and 14,600,000 MMBtu on an annual basis. It is stated that service commenced on July 31, 1989, pursuant to § 284.223(a) as filed in Docket No. ST89-4503-000.

Comment date: October 20, 1989, in accordance with Standard Paragraph G at the end of this notice.

19. Natural Gas Pipeline Company of America

[Docket No. CP89-2032-000]

September 5, 1989.

Take notice that on August 30, 1989, Natural Gas pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois, 60148, filed in Docket No. CP89-2032-000 a request pursuant to the notice procedure in §§ 157.205 and 284.223(b) of the Commission's Regulations for authorization to transport, on an interruptible basis, up to a maximum of 50,000 MMBtu (plus any additional volumes accepted pursuant to the overrun provisions of Natural's Rate Schedule ITS) for Sonat Marketing Company (Sonat), a marketer of natural gas. The receipt points are located in Texas and the delivery points are located in Illinois. Transportation would be performed under Natural's blanket certificate issued in Docket No. CP86-582 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Natural commenced the transportation of natural gas for Sonat on July 1, 1989 af Docket No. ST89-4608-000 for a one hundred and twenty (120) day period ending October 29, 1989, pursuant to § 284.223(a)(1) of the Commission's Regulations and the blanket certificate issued to Natural in Docket No. CP86-582. Natural proposes to continue this service in accordance with §§ 284.221 and 284.223(b).

Comment date: October 20, 1989, in accordance with Standard Paragraph G at the end of this notice.

20. Southern Natural Gas Company

[Docket No. CP89-2046-000]

September 5, 1989.

Take notice that on August 31, 1989, Southern Natural Gas Company (Southern) P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP89-2046-000, a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act, to transport on an interruptible basis under its blanket certificate Docket No. CP88-316-000, a maximum of 2,000 MMBtu of natural gas per day for Centran Corporation (Centran), a marketer, all as more fully set forth in the request on file with the Commission and open to public inspection.

Southern indicates that service commenced July 1, 1989, under § 284.223(a) of the Commission Regulations, as reported in Docket No. ST89-4479 and estimates the volumes transported to be 2,000 MMBtu per day on peak day and average day, and 730,000 MMBtu on an annual basis.

Southern also states that no new facilities are to be constructed.

Comment date: October 20, 1989, in accordance with Standard Paragraph G at the end of this notice.

21. Columbia Gas Transmission Corporation

[Docket No. CP89-635-001]

September 5, 1989.

Take notice that on August 28, 1989, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP89-635-001 an amendment to its pending application in said docket for a certificate of public convenience and necessity pursuant to section 7(c) of the Natural Gas Act for authorization to construct and operate certain natural gas facilities, all as more fully set forth in the application, which is on file with the Commission and open to public inspection.

Specifically, Columbia proposes in the amendment to construct and operate different facilities than those proposed in the original application. These facilities would be constructed for firm transportation service that is to commence in 1990, 1991 and 1994. The facilities for service in 1990 consist of: The installation of a 3,200 HP compressor unit at the new Rutledge Compressor Station in Harford County, Maryland; the installation of a 4,390 HP compressor unit addition and the uprating of eight existing 1,100 HP site-rated units to 1,350 HP per unit at the Loudoun Compressor Station in Loudoun County, Virginia; an increase in the maximum allowable operating pressure (MAOP) of the suction piping, from 500 psig to 1,000 psig, of the Downingtown Compressor Station located in Chester County, Pennsylvania, including replacement of existing station piping, valves and fittings; the construction of approximately 8.6 miles of 20" pipeline in Gloucester County, New Jersey, or alternatively, the construction of 3.5 miles of 20" pipeline and the acquisition of 5.7 miles of 20" pipeline from South Jersey Gas Company (South Jersey); the construction of 8.3 miles of 24" pipeline loop in York County, Pennsylvania; and the installation of measuring and interconnecting facilities at the proposed West Deptford Point of Delivery in Gloucester County, New Jersey. The facilities necessary for 1991 service include the installation of a 800 HP compressor unit at the new Paulding Compressor Station in Paulding, Ohio; the installation of a regulator station at Greely Chapel Road in Allen County, Ohio to reduce pressure to 495 psig; and the installation of a 3,200 HP compressor unit addition at the new Rutledge Compressor Station. The proposed facilities for 1994 are comprised of: an increase in the MAOP of 19.2 miles of pipeline, by hydrostatic testing and the replacement of 0.3 miles of 20" pipeline in Hardin and Allen Counties, Ohio along with a new LaRue Regulator Station and a new Greely Chapel Road Regulator Station No. 2, and a valve setting near Harrod, Ohio; the installation of a 3,200 HP compressor unit addition at the new Rutledge Compressor Station; the installation of two 600 HP compressor units at the new Hellertown Compressor Station in Northampton County, Pennsylvania; and the installation of a 800 HP compressor unit addition to the new Paulding Compressor Station.

Columbia estimates that the total cost of the proposed facilities is approximately $47,116,000.

Columbia asserts that the facility redesign that is the subject of this amendment is necessary due to: (1) A smaller service level reduction for Baltimore Gas & Electric Company than anticipated at the time the original application in this proceeding was filed; (2) a reduction from 57,000 Dt per day to 55,000 Dt per day in the quantity transported to the Eagle Point Cogeneration facility; (3) an agreement between Columbia and ANR Pipeline Company for the construction and operation and joint ownership of the 8.6 miles of pipeline to be constructed in Gloucester County, New Jersey (or, alternatively, the construction of 3.5 miles of pipeline and the acquisition of 5.7 miles of pipeline from South Jersey) to connect with Public Service Electric & Gas Company near West Deptford, New Jersey; and (4) revising facilities to permit the implementation of this proposal independent of Columbia's filing in Docket No. CP89-1929-000.

Comment date: September 26, 1989, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

22. ANR Pipeline Company

[Docket No. CP89-2026-000]

September 5, 1989.

Take notice that on August 29, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89-2026-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service for Dekalb Energy Canada Ltd. (Dekalb), a marketer, under ANR's blanket certificate issued in Docket No. CP88-532-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

ANR states that the transportation service would be provided pursuant to a transportation agreement wherein ANR proposes to transport up to 31,000 dekatherms(dt) per day equivalent of natural gas, on an interruptible basis, for Dekalb. ANR further states that it would receive the natural gas at ANR's existing points of receipt located in the state of Wisconsin and would redeliver the natural gas for the account of Dekalb at existing interconnections located in the state of Wisconsin. ANR indicates that the average day and annual volumes of natural gas to be transported would be 31,000 dt and 11,315,000 dt, respectively.

ANR states that service under § 284.223(a) of the Commission's Regulations (18 CFR 284.223(a)) commenced on July 1, 1989, as reported in Docket No. ST89-4297-000.

Comment date: October 20, 1989, in accordance with Standard Paragraph G at the end of this notice.

23. Natural Gas Pipeline Company of America

[Docket No. CP89-2051-000]

September 6, 1989.

Take notice that on September 1, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89-2051-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Pennzoil Gas Marketing Company (Pennzoil), a marketer, under the blanket certificate issued in Docket No. CP86-582-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Natural states that pursuant to a transportation service agreement dated June 21, 1989, under its Rate Schedule ITS, it proposes to transport up to 10,000 MMBtu per day equivalent of natural gas for Pennzoil. Natural states that it would transport the gas (plus any additional volumes accepted pursuant to the overrun provisions of Natural's Rate Schedule ITS) from a receipt point in the High Island Area, Block A-472, offshore Texas, and would deliver the gas to an interconnect described as the HI A472 HIOS/NGPL TAP A492 delivery point.

Natural advises that service under § 284.223(a) commenced July 1, 1989, as reported in Docket No. ST89-4645-000. Natural further advises that it would transport 2,500 MMBtu on an average day and 912,500 MMBtu annually.

Comment date: October 23, 1989, in accordance with Standard Paragraph G at the end of this notice.

24. Transwestern Pipeline Company

[Docket No. CP88-99-005]

September 6, 1989.

Take notice that Transwestern Pipeline Company ("Transwestern") on August 30, 1989, tendered for as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

Substitute Original Sheet No. 86
Substitute Original Sheet No. 86A
Substitute 2nd Revised Sheet No. 7
Substitute 1st Revised Sheet No. 13
7th Revised Sheet No. 73
12th Revised Sheet No. 74
8th Revised Sheet No. 75
2nd Revised Sheet No. 75A
10th Revised Sheet No. 76
4th Revised Sheet No. 76A
5th Revised Sheet No. 76B
5th Revised Sheet No. 76C

Transwestern states that these tariff sheets are filed to comply with the Commission's Order issued July 31, 1989 in Docket Nos. CP88-99-002 ("Order").

In addition, Transwestern included in its filing Substitute Proforma Sheet No. 5F.

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 provide the above listed tariff sheets to become effective on either July 1, 1989 or October 1, 1989, as appropriate.

Comment date: September 13, 1989, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

25. Southern Natural Gas Company

[Docket No. CP89-2045-000]

September 6, 1989.

Take notice that on August 31, 1989, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP89-2045-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Manville Sales Corporation (Manville), an end user, under Southern's blanket certificate issued in Docket No. CP88-316-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern requests authorization to transport, on an interruptible basis, up to a maximum of 5,500 MMBtu of natural gas per day for Manville from receipt points located in Louisiana, Offshore Louisiana, Texas, Offshore Texas, Mississippi and Alabama to various delivery points located in Chatham County, Georgia. Southern anticipates transporting 400 MMBtu of natural gas on an average day and an annual volume of 146,000 MMBtu.

Southern states that the transportation of natural gas for Manville commenced July 1, 1989, as reported in Docket No. ST89-4478-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to Southern in Docket No. CP88-316-000.

Comment date: October 23, 1989, in accordance with Standard Paragraph G at the end of this notice.

26. Natural Gas Pipeline Company of America

[Docket No. CP89-2053-000]

September 6, 1989.

Take notice that on September 5, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89-2053-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for BP GAS INC. (BP GAS), a marketer, under the blanket certificate issued in Docket No. CP86-582-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Natural states that pursuant to a transportation service agreement dated April 10, 1989, under its Rate Schedule ITS, it proposes to transport up to 200,000 MMBtu per day equivalent of natural gas for BP GAS. Natural states that it would transport the gas (plus any additional volumes accepted pursuant to the overrun provisions of Natural's Rate Schedule ITS) from receipt points in Texas, offshore Texas, Louisiana and offshore Louisiana, and would deliver the gas to delivery points located offshore Texas and offshore Louisiana.

Natural advises that service under § 284.223(a) commenced July 1, 1989, as reported in Docket No. ST89-4658-000. Natural further advises that it would transport 25,000 MMBtu on an average day and 9,125,000 MMBtu annually.

Comment date: October 23, 1989, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-21543 Filed 9-13-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CS89-46-000, et al.]

Chaparral Enegy, Inc., et al., Applications for Small Producer Certificates [1]

September 7, 1989

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7(c) of the Natural Gas Act and § 157.40 of the Commission's regulations thereunder for a small producer certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before September 26, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No.	Date filed	Applicant
CS89-46-000	8-28-89 [1]	Chaparral Energy, Inc., 1800 East Memorial, Suite 106, Oklahoma City, OK 73131.
CS89-47-000	8-31-89	Cohort Energy Company, 2715 Mackey Lane, Suite 200, Shreveport, LA 71118.
CS89-48-000	9-5-89	Tora Oil & Gas, P.O. Box 755, Hobbs, NM 88241.

[1] The application was received on August 21, 1989. The filing date is the date of receipt of the filing fee.

[FR Doc. 89-21571 Filed 9-13-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-10199-000, et al.]

Marathon Oil Co., et al.; Applications for Termination or Amendment of Certificates [1]

September 7, 1989.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to terminate or amend certificates as described herein, all as more fully described in the respective applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before September 26, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Filing code:
A—Initial service
B—Abandonment
C—Amendment to add acreage
D—Assignment of acreage
E—Succession
F—Partial Succession

Docket No. and date filed	Applicant	Purchaser and location	Description
G-10199-000 D 8-22-89	Marathon Oil Company, P.O. Box 3128, Houston, TX 77253.	Williams Natural Gas Company, Rhodes Field, Barber and Kiowa Counties, Kansas.	Assigned 4-1-89 to John O. Farmer, Inc.
CI61-323-003 D 8-31-89	Union Oil Company of California, P.O. Box 7600, Los Angeles, CA 90051.	Transwestern Pipeline Company, West Elmwood Field, Beaver County, Oklahoma.	Assigned 8-1-89 to Glenn Whittington.
CI62-1251-015 D 8-28-89	Oryx Energy Company P.O. Box 2880, Dallas, TX 75221-2880.	Arkla Energy Resources, a division of Arkla, Inc., Kinta Field, Haskell County, Oklahoma.	Assigned 8-1-89 to JMC Exploration, Inc.
CI62-1251-016 D 8-28-89	Oryx Energy Company	Arkla Energy Resources, a division of Arkla, Inc., Red Oak Field, Latimer County, Oklahoma.	Assigned 5-1-89 to D.M.S. Oil Company.
CI64-5-000 D 8-30-89	Exxon Corporation, P.O. Box 2180, Houston, TX 77252-2180.	Columbia Gas Transmission Corporation, Garden City Field, St. Mary Parish, Louisiana.	Assigned 1-10-89 to Linder Oil Company, a Partnership.
CI65-525-003 D 8-22-89	BHP Petroleum Company Inc., 5847 San Felipe, Suite 3600, Houston, TX 77057.	Natural Gas Pipeline Company of America, Indian Basin Field, Eddy County, New Mexico.	Assigned 5-1-88 to Sun Operating Limited Partnership.

Docket No. and date filed	Applicant	Purchaser and location	Description
CI89-518-000 (CI79-420) D 8-24-89	Diamond Shamrock Offshore Partners Limited Partnership, 717 Harwood Street, Suite 3100, Dallas, TX 75201-6505.	Trunkline Gas Company, High Island Block A-511, Offshore Texas.	Assigned 7-1-89 to Sun Operating Limited Partnership.
CI89-523-000 (G-10128) D 8-25-89	Chevron U.S.A. Inc., P.O. Box 3725, Houston, TX 77253-3725.	Florida Gas Transmission Company, Various Fields, Nueces County, Texas.	Assigned 7-1-89 to Merrico Resources, Inc.
CI89-524-000 (C-I68-1107) D 8-28-89	Unicon Producing Company, P.O. Box 2120, Houston, TX 77252-2120.	Western Gas Interstate Company, Dunn-Chiperfield #1 Well, Hansford County, Texas.	Assigned 7-1-86 to Vernon E. Faulconer, Inc.
CI89-525-000 (C-I77-752) D 8-28-89	Unicon Producing Company	Northwest Pipeline Corporation, Crisco Area, Grand County, Utah.	Assigned 5-14-84 to Grand Resources, Inc. and 2-26-88 to First Zone Production, Inc.
CI89-526-000 (G-10296) D 8-28-89	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, TX 75221.	Texas Eastern Transmission Corporation, East White Point Field, Nueces and San Patricio Counties, Texas.	Assigned 12-1-88 to Bristol Resources 1987-1 Acquisition Program.
CI89-531-000 (CI85-335) D 8-31-89	Sonat Exploration Company, P.O. Box 1513 Houston, TX 77251-1513.	Arkla Energy Resources, a division of Arkla, Inc., North Cooper Field, Blaine County, Oklahoma.	Assigned 12-1-88 to Indian Oil Company.
CI89-532-000 (CI85-336) D 8-31-89	Sonat Exploration Company	Arkla Energy Resources, a division of Arkla, Inc., Southeast Custer City Field, Custer County, Oklahoma.	Assigned 12-1-88 to Indian Oil Company.
CI89-533-000 (CI85-339) D 8-31-89	Sonat Exploration Company	Arkla Energy Resources, a division of Arkla, Inc., North Drummond Field, Garfield County, Oklahoma.	Assigned 12-1-88 to Indian Oil Company.
CI89-534-000 (CI85-344) D 8-31-89	Sonat Exploration Company	ANR Pipeline Company, Copeland Field, Woodward County, Oklahoma.	Assigned 12-1-88 to Indian Oil Company
CI89-535-000 (CI85-352) D 8-31-89	Sonat Exploration Company	Natural Gas Pipeline Company of America, Thomas Area, Dewey and Custer Counties, Oklahoma.	Assigned 12-1-88 to Indian Oil Company

[FR Doc. 89-21572 Filed 9-13-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CI89-519-000, et al.]

Samson Resources Co., et al.; Applications for Certificates [1]

September 7, 1989.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce as described herein, all as more fully described in the respective applications which are on file with the Commission and open to pubic inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before September 26, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,
Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Filing code:
A—Initial service
B—Abandonment
C—Amendment to add acreage
D—Assignment of acreage
E—Succession
F—Partial succession

Docket No. and date filed	Applicant	Purchaser and location	Description
CI89-519-000..... E..... 8-28-89.....	Samson Resources Company, Samson Plaza, Two West Second Street, Tulsa, OK 74103.	Arkla Energy Resources, a division of Arkla, Inc., North Ashland Field, Pittsburg County, Oklahoma.	Acreage acquired 3-1-88 from A. G. Randolph, Lessel Roy Papp and William F. Keefer.

Docket No. and date filed	Applicant	Purchaser and location	Description
CCi89-520-000.. (G-3812)..... F..... 8-28-89.....	Amoco Production Company, P.O. Box 3092, Houston TX 77253.	El Paso Natural Gas Company, Slaughter Gasoline Plant, Hockley County, Texas.	Acreage acquired 10-1-88 from Sun Operating Limited Partnership.
Ci89-521-000..... (G-6619)..... F..... 8-28-89.....	Amoco Production Company.....	El Paso Natural Gas Company, Levelland Gasoline Plant, Hockley County, Texas.	Acreage acquired 10-1-88 from Sun Operating Limited Partnership.
Ci89-522-000..... (G-3910)..... F..... 8-28-89.....	Amoco Production Company.....	El Paso Natural Gas Company, South Fullerton Plant, Andrews County, Texas.	Acreage acquired 10-1-88 from Sun Operating Limited Partnership.

[FR Doc. 89-21573 Filed 9-13-89; 8:45 am]
BILLIING CODE 6717-01-M

[Docket Nos. TQ90-1-31-000, RP88-248-002, TM90-1-31-000]

Arkla Energy Resources; Filing of Revised Tariff Sheets Reflecting Quarterly PGA Adjustment and Revised Take or Pay Recovery Amounts

September 7, 1989.

Take notice that on September 1, 1989, Arkla Energy Resources (AER), a division of Arkla, Inc., tendered for filing the following tariff sheets to become effective October 1, 1989:

Original Volume No. 3
5th Revised Sheet No. 185.1
First Revised Volume No. 1
52nd Revised Sheet No. 4
First Revised Volume No. 1
5th Revised Sheet No. 7A

AER states that these tariff sheets reflects its second quarterly PGA filing made subsequent to its annual PGA effective April 1, 1989 under the Commission's Order Nos. 483 and 483-A.

AER states that the proposed changes would increase its system cost by $17,061 and its revenue from jurisdictional sales and service by $196 for the PGA period of October, November and December 1989 as adjusted.

AER states that also included in this filing are copies of the following revised tariff sheets to track United Gas Pipe Line Company Revised Take or Pay amounts approved by the Commission in FERC Docket Nos. RP88-27, RP88-264, and RP89-138.

First Revised Volume No. 1
1st Revised Sheet No. 4.1
Original Volume No. 3
1st Revised Sheet No. 185.2

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with sections 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 14, 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 be proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 89-21563 Filed 9-13-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. TQ90-1-33-000]

El Paso Natural Gas Co.; Proposed Change in Rates

September 7, 1989

Take notice that on August 31, 1989, El Paso Natural Gas Company ("El Paso") tendered for filing pursuant to Part 154 of the Federal Energy Regulatory Commission's ("Commission") Regulations Under the Natural Gas Act, a notice of:

(i) A Quarterly Adjustment in Rates for jurisdictional gas service rendered to sales customers served by El Paso's interstate gas transmission system under rate schedules affected by and subject to Section 19, Purchased Gas Cost Adjustment Provision ("PGA"), of the General Terms and Conditions in El Paso's FERC Gas Tariff, First Revised Volume No. 1;

(ii) A request for waiver to enable El Paso to adjust its current Account 191 surcharge when market conditions merit such an adjustment, or in the alternative, a request for continued waiver to permit El Paso to suspend collection of its Account 191 surcharge during the period its Gas Inventory Charge ("GIC") mechanism is under consideration by the Commission; and

(iii) A request for waiver to permit El Paso to eliminate the RP86-157 Liquids Surcharge and in lieu thereof directly bill, each month, its east-of-California ("EOC") one-part rate firm sales customers their allocable share of the remaining net liquid revenue deficiency as settled at Docket No. RP86-157-000, or in the alternative an adjustment to the Special Liquids Surcharge rate.

El Paso states it is tendering certain tariff sheets which reflect a net increase of $4.3274 per dth above those rates placed in effect on July 1, 1989 at Docket No. TA89-1-33-000. The net increase is comprised of a current adjustment of ($0.0420) per dth and the surcharge rate of $4.3694. The surcharge rate is identical to the surcharge rate contained in El Paso's compliance filing tendered May 26, 1989 at Docket No. RP89-132-000, *et al.*

El Paso requests waiver of Section 19.6 of Section 19, Purchased Gas Cost Adjustment Provision, of the General Terms and Conditions in its FERC Gas Tariff, First Revised Volume No. 1, to allow the adjustment of the Account 191 surcharge when market conditions dictate such action to be prudent, after notifying the Commission at least twenty-four (24) hours prior to the adjustment. Such flexibility will allow El Paso to adjust the surcharge to a price range of the spot gas. This would permit the collection by El Paso of a portion of its Account 191 surcharge amount from those customers who have taken the option to purchase competitively priced gas from El Paso. Any adjustment shall be applicable to all jurisdictional sales customers and may reflect either an increase or decrease in the Account 191 surcharge. However, any increase in the Account 191 surcharge shall not exceed the level of the surcharge established in El Paso's most recent annual PGA filing.

If the Commission rejects El Paso's request for an adjustable Account 191 surcharge, El Paso requests continued waiver of the portion of Section 19.4 of Section 19, Purchased Gas Cost Adjustment Provision, of the General

Terms and Conditions in El Paso's FERC Gas Tariff, First Revised Volume No. 1, to continue suspension of the collection of Account 191 unrecovered purchased gas costs through the surcharge during the interim period prior to the effective date a GIC is approved for El Paso's interstate pipeline system.

El Paso also requests waiver of Article 2.10(b) of the Offer of Settlement at Docket No. RP86–157–000 to eliminate the RP86–157 Liquids Surcharge, and in lieu thereof, directly bill, each month, its EOC one-part rate sales customers for their allocable share of the remaining net liquid revenue deficiency. In the event the Commission denies El Paso's request for waiver of the Docket No. RP86–157–000 Liquids Settlement, El Paso proposes a revised Special Liquids Surcharge for its one-part rate customers, except Gas Company of New Mexico, of $0.3365 per dth, pursuant to said Settlement.

El Paso respectfully requests that the Commission grant such waivers of its applicable rules and regulations as may be necessary to permit the tendered primary tariff sheets to become effective October 1, 1989. In the event the Commission does not accept El Paso's primary tariff sheets, El Paso proposes that its three (3) sets of alternative tariff sheets be made effective in order of appearance, in lieu of their primary counterparts. However, if the Commission does not grant the waivers requested by El Paso and the permission to adjust the Account 191 surcharge, then those alternative tariff sheets under Tab 2 should be made effective in as much as the surcharge of $4.3694 is reflected thereon.

El Paso states that copies of the filing were served upon all of El Paso's interstate pipeline system sales customers, all parties of record at Docket No. RP86–157–000, and all interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 14, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestant parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89–21567 Filed 9–13–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ90–1–16–000 TM90–1–16–000]

National Fuel Gas Supply Corp.; Proposed Changes in FERC Gas Tariff

September 7, 1989.

Take notice that on August 31, 1989, National Fuel Gas Supply Corporation ("National") tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Twenty-First Revised Sheet No. 4, proposed to become effective on October 1, 1989.

National states that the purpose of the proposed revised tariff sheet is to reflect the quarterly Purchased Gas Cost Adjustment ("PGA") required under the Commission's Regulations. National seeks waiver of the Commission's Regulations to temporarily pass through transportation charges resulting from the conversion of sales to transportation service under the Columbia Gas Transmission Corporation Rate Schedule FTS. The filing also removes National's negative surcharge adjustment and reflects the latest Commission-approved annual charge adjustment ("ACA") surcharge.

National further states that the proposed tariff sheet results in a 26.14 cents per dekatherm (Dth) increase in its commodity gas costs and a 20.0 cents per dekatherm increase in its demand cost of gas in comparison with its July 1, 1989 Motion rates in Docket No. RP89–49–000. The proposed quarterly PGA is said to result in a commodity sales rate under National's Rate Schedules RQ and CD equal to $2.7895 per Dth.

National states that copies of this filing were posted in accordance with the Commission's Regulations and served upon the Company's jurisdictional customers and the Regulatory Commissions of the States of New York, Ohio, Pennsylvania, Delaware, Massachusetts and New Jersey.

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 214 or 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All such motions to intervene or protest should be filed on or before September 14, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–21568 Filed 9–13–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP89–225–000]

South Georgia Natural Gas Co.; Proposed Changes in FERC Gas Tariff

September 7, 1989.

Take notice that South Georgia Natural Gas Company ("South Georgia") and August 31, 1989 tender for filing proposed changes in its FERC Gas Tariff, First Revised Volume No. 1. The proposed changes are based on the twelve-month period ending April 30, 1989, as adjusted, and would increase jurisdictional revenues by $424,974.

South Georgia states that the principal reasons for the rate increase are increased operating costs, including an increase in return on equity, declining jurisdictional and non-jurisdictional sales, reduced transportation volumes and discounting of its transportation rates in order to retain the estimated test period throughput provided by transportation services.

Additionally, South Georgia respectfully requests the Commission to grant such waivers of its regulations as may be necessary to allow the proposed tariff sheets to become effective October 1, 1989.

Copies of South Georgia's filing were served upon all of South Georgia's jurisdictional purchasers, shippers and interested state commissions.

Any person designing 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 Procedcure (§§ 385.211 and 385.214). All such motions or protests should be filed on or before Sept. 14, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene Copies of this filing are on file

with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-21544 Filed 9-13-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ90-1-8-000 TM90-1-8-000]

South Georgia Natural Gas Co.; Proposed Changes to FERC Gas Tariff

September 7, 1989.

Take notice that on August 31, 1989, South Georgia Natural Gas Company ("South Georgia") tendered for filing Fifty-Fifth Revised Sheet No. 4 and Fifth Revised Sheet No. 34A to its FERC Gas Tariff, First Revised Volume No. 1. These tariff sheets are being filed with a proposed effective date of October 1, 1989, pursuant to the Purchased Gas Cost Adjustment provision set out in Section 14 of South Georgia's FERC Gas Tariff.

South Georgia states that Fifty-Fifth Revised Sheet No. 4 reflects a revised Current Adjustment computed in accordance with Section 154.305(c) of the Commission's Regulations. The Current Adjustment, which is proposed to be in effect from October 1, 1989, through December 31, 1989, reflects a decrease in jurisdictional revenue of approximately $149,000, which is attributable to a decrease in the D-1 component of $2.40 per MMBtu, a decrease in the D-2 component of Rate Schedules G-1/I-1 of $.14 per MMBtu, an increase in the D-2 component of Rate Schedules G-2/I-2 of $.01 per MMBtu and an increase in the commodity component of $.51 per MMBtu, for South Georgia's annual PGA filing in Docket No. TA89-1-8-000.

South Georgia states that copies of the filing will be served upon all of South Georgia's jurisdictional purchasers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (Sections 385.214 and 385.211). All such motions or protests should be filed on or before September 14, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-21569 Filed 9-13-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ90-1-7-000, TM90-1-7-000]

Southern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

September 7, 1989.

Take notice that on August 31, 1989, Southern Natural Gas Company (Southern) tendered for filing the following revised sheets to its FERC Gas Tariff, Sixth Revised Volume No. 1:

Eighty-Ninth Revised Sheet No. 4A
Eighth Revised Sheet No. 4J
Fifth Revised Revised Sheet No. 45M

Southern states that the proposed tariff sheets and supporting information are being filed with a proposed effective date of October 1, 1989, pursuant to the Purchased Gas Adjustment clause of its FERC Gas Tariff and § 154.308 of the Commission's Regulations. Southern further states that its proposed tariff sheets reflect a net increase of approximately 19.2¢ per Mcf in Southern's projected commodity cost of gas during the period October 1, 1989, through December 31, 1989.

Southern states that copies of Southern's filing were served upon all of Southern's jurisdictional purchasers 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 Procedures (§§ 385.211 and 385.214). All such petitions or protests should be filed on or before September 14, 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. 89-21545 Filed 9-13-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ90-1-9-000 TM90-1-9-000

Tennessee Gas Pipeline Co.; Rate Change Under Tariff Rate Adjustment provisions

September 7, 1989.

Take notice that on August 31, 1989, Tennessee Gas Pipeline Company (Tennessee) tendered for filing the following tariff sheets to its FERC Gas Tariff to be effective October 1, 1989:

Second Revised Volume No. 1

Item A:
- Fifteenth Revised Sheet No. 20
- Twelfth Revised Sheet No. 20A
- Sixteenth Revised Sheet No. 21
- Substitute Eighth Revised Sheet No. 22
- Second Substitute Fourth Revised Sheet No. 22A
- Second Substitute Seventh Revised Sheet No. 23
- Second Substitute Seventh Revised Sheet No. 24

Original Volume No. 2

Item B:
- Fifteenth Revised Sheet No. 5
- Fourteenth Revised Sheet No. 6
- Second Substitute Eighth Revised Sheet No. 10

The purpose of the revisions listed as Item A is to reflect PGA current rate adjustments pursuant to Section 2 of Artilce XXIII of the General Terms and Conditions of Tennessee's Tariff, including an out-of-cycle surcharge rate adjustment and a revision of the Annual Charge Adjustment.

The purpose of the revisions listed as Item B is to adjust transportation rate schedules to reflect changes in the cost of gas used for fuel pursuant to Section 5 of Article XXIII of the General Terms and Conditions.

Tennessee states that copies of the filing have been mailed to all of its customers and affected state regulatory commissions. Any persons 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, Washington DC 20426, in accordance with Rules 208 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before September 14, 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; provided, however, that any person who had previously filed a petition to intervene in this proceeding

is not required to file a further petition. Copies of this filing are on file with the Commission and are available are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-21570 Filed 9-13-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-177-064, CP88-136-009]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

September 7, 1989.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on August 31, 1989 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the following tariff sheets:

Second Substitute Original Sheet No. 302A

Texas Eastern states that purpose of this filing is to reflect the revisions to Texas Eastern's May 22, 1989 tariff filing in Docket Nos. RP85-177-061 and CP88-136-005 as required by the Commission's July 31, 1989 "Order Accepting Compliance Filing". This order approved tariff sheets which set forth the rates, terms and conditions under which Texas Eastern will operate pursuant to the blanket certificates granted by the Commission.

Texas Eastern states that Ordering Paragraph (B) requires Texas Eastern to extend the window period for nominations of firm transportation at points of receipt until October 1, 1989. Texas Eastern had originally filed tariff sheets reflecting a window period ending 30 days from the effective date of the tariff sheets for firm transportation nominations at points of receipt. The above listed tariff sheet reflects the extension of the window period until October 1, 1989. The window period is applicable only to requests which result in executed FT-1 Service Agreements prior to October 16, 1989.

The proposed effective date of the above tariff sheet is August 1, 1989.

Copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before September 14, 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. 89-21546 Filed 9-13-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM89-10-17-000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

September 7, 1989.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on August 31, 1989 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the following tariff sheets:

Second Substitute Seventh Revised Sheet No. 76

Second Substitute Seventh Revised Sheet No. 77

Second Substitute Seventh Revised Sheet No. 78

Second Substitute Seventh Revised Sheet No. 79

Texas Eastern states that the purpose of this filing is to track modifications made by United Gas Pipe Line Company (United) on July 31, 1989 to take-or-pay charges in United's Docket No. RP89-147, as required by the Commission in its order of May 26, 1989 in Texas Eastern's Docket No. RP89-153-000.

Texas Eastern states that on July 31, 1989 United filed substitute tariff sheets in Docket No. RP89-147 in purported compliance with a Commission order issued July 21, 1989 requiring United (1) to offer its customers an amortization period ending December 1990 (20 months) and (2) to offset the take-or-pay costs against the take-or-pay accounts of customers that still have a positive balance despite previous take-or-pay credits allocated to such customers. Pursuant to United's substitute tariff sheets filed July 31, United will bill and recover from Texas Eastern an aggregate principal amount of $12,070,939, which includes interest, by means of a fixed monthly charge of $603,547 for a 20 month period effective May 1, 1989. This represents a decrease in the aggregate principal amount from $14,550,579 filed by United on June 9, 1989.

Texas Eastern states that Second Substitute Seventh Revised Sheet Nos. 76 through 79 are being revised solely to track modifications made by United on July 31, 1989 in Docket No. RP89-147. The aforementioned sheets set forth the principal amount plus the allocation factor for carrying costs that each customer will be required to pay in order to recover United's take-or-pay charges billed to Texas Eastern pursuant to United's July 31, 1989 filing. Workpapers setting forth the allocation factor and monthly principal amounts (which include a predetermined carrying charge) each Texas Eastern customer will be required to pay are set forth under Appendix A of the filing.

Texas Eastern states that in tracking United's methodology, Texas Eastern has given recognition to purchases by Texas Eastern's Rate Schedule SGS customers under Rate Schedule I in the determination of the base and deficiency periods to the extent these customers did not request Rate Schedule I gas in lieu of Rate Schedule SGS gas, but were given the benefit of the lower I rate. This methodology is consistent with the methodology used and approved by the Commission in Texas Eastern's previous filings. Texas Eastern has filed a protest to United's July 31, 1989 filing.

Texas Eastern states that if at any time United is required by Commission order to change its take-or-pay procedures and/or the amounts to be recovered pursuant thereto, Texas Eastern will likewise change its take-or-pay procedure and/or the amounts to be recovered pursuant thereto. In addition, Texas Eastern expressly agrees to refund to its customers all refunds received from United in the above proceedings.

The proposed effective date of the above tariff sheets is May 1, 1989, the same effective date granted Texas Eastern by the Commission's July 24, 1989 order and proposed by United's July 31, 1989 filing.

Copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 14, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-21547 Filed 9-13-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-4-29-004]

Transcontinental Gas Pipe Line Corp. Tariff Filing

September 7, 1989.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing on August 31, 1989 revised tariff sheets to Second Revised Volume No. 1 of its FERC Gas Tariff, which tariff sheets are contained in Appendix A attached to the filing. The proposed effective dates of the revised tariff sheets are indicated in Appendix A.

Transco states that the purpose of this filing is to remove the special transition gas cost surcharge from Transco's sales rates effective May 1, 1989 for an indefinite period pending the outcome of litigation in Docket Nos. TA85-3-29 *et al.* On July 21, 1989 Transco filed a request for authority to defer collection of the transition gas cost surcharge which became effective May 1, 1989. The Commission accepted Transco's proposal in its order issued August 21, 1989 in the referenced docket subject to Transco (i) filing revised tariff sheets reflecting the removal of such surcharge and (ii) refunding with interest all collections of transition cost amounts since May 1, 1989. The instant filing is made in compliance with the Commission's August 21 order by removing the special transition gas cost surcharge effective May 1, 1989 and, as necessary, on dates subsequent to May 1.

Transco states that copies of the instant filing are being mailed to customers, State Commissions and interested parties to Docket No. TQ89-4-29-003. In accordance with provisions of Section 154.16 of the Commission's Regulations, copies of this filing are available for public inspection, during regular business hours, in a convenient form and place at Transco's main offices at 2800 Post Oak Boulevard in Houston, Texas.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC. 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before September 14, 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 the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-21564 Filed 9-13-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-198-010]

Transwestern Pipeline Co.; Compliance Filing

September 7, 1989.

Take notice that Transwestern Pipeline Company (Transwestern) on September 1, 1989 tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

Effective December 1, 1988
2nd Substitute Original Sheet No. 5C
Effective February 1, 1989
1st Substitute Original Sheet No. 5D
Effective April 1, 1989
Substitute 1st Revised Sheet No. 5D(i)
Substitute 2nd Revised Sheet No. 89

Information Being Filed

Transwestern states that these tariff sheets are filed to comply with the Commission's Order issued August 3, 1989 in Docket Nos. RP88-198-004 and 005, *et al.* (Order). The Order specifically directs Transwestern to extend the deficiency period to include the first six months of 1988 for purposes of calculating the Transition Cost Recovery (TCR) Fee. Transwestern has provided, herein, supporting workpapers which contain the computations underlying the revised TCR Fee allocation for each of Transwestern's previous TCR filings in Docket Nos. RP88-198-000, RP89-59-000 and RP89-130-000.

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 as shown above.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before Sept. 14, 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. 89-21565 Filed 9-13-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP89-118-004 and CP89-1118-001]

Williston Basin Interstate Pipeline Co.; Proposed Changes in FERC Gas Tariffs

September 7, 1989.

Take notice that on August 31, 1989, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, tendered for filing and moved into effect certain revised tariff sheets to First Revised Volume No. 1, Original Volume No. 1-A, Original Volume No. 1-B and Original Volume No. 2 of its FERC Gas Tariff.

Williston Basin states that these tariff sheets are filed pursuant to the Commission's April 28, 1989 and August 1, 1989 Orders in Docket Nos. RP89-118-000 and CP89-1118-000, respectively. These tariff sheets reflect the incorporation of Williston Basin's alternative take-or-pay cost recovery mechanism and the offering of Commission Order No. 500 transportation services. Williston Basin requests that the tariff sheets submitted in the instant filing be made effective August 31, 1989.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 14, 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 to the proceeding must file a motion to intervene. Copies of this filing are on file

with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-21566 Filed 9-13-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-223-000]

Black Marlin Pipeline Co.; Proposed Changes in FERC Gas Tariff

September 7, 1989.

Take notice that on August 31, 1989, Black Marlin Pipeline (Black Marlin), in accordance with Section 4 of the Natural Gas Act and the Commission's Regulations thereunder, tendered for filing as a part of its FERC Gas Tariff Original Volume No. 1, ten (10) copies each of the Primary Tariff Sheets listed below, which are proposed to be effective October 1, 1989. In addition, ten (10) copies of the below-listed Alternate Tariff Sheet to First Revised Volume No. 1 were submitted, the latter proposed to become effective should Black Marlin's application for an Order No. 436 blanket certificate be issued and its First Revised Volume No. 1 Tariff made effective prior to the effective date of the above-described tariff sheets.

Primary Tariff Sheets, Original Volume No. 1

2nd Revised Sheet No. 4
1st Revised Sheet No. 101
Original Sheet No. 101A
3rd Revised Sheet No. 102
2nd Revised Sheet No. 106
Original Sheet No. 106A
1st Revised Sheet No. 110
Original Sheet No. 110A
1st Revised Sheet No. 111
1st Revised Sheet No. 114
Original Sheet No. 114A
2nd Revised Sheet No. 200
1st Revised Sheet No. 201
Original Sheet No. 224
3rd Revised Sheet Nos. 225-299

Alternate Tariff Sheet, First Revised Volume No. 1

First Revised Sheet No. 4

Black Marlin states that the tariff sheets reflect rates which will provide for an increase in revenues, based upon test period volumes, of approximately $3 million per year. The primary causes of the increase are an increased depreciation factor, declining volumes and increased return.

Black Marlin states that copies of the filing were served upon all of its customers and interested State Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Commission, 825 North Capitol Street, NE., Washington, DC 20426 by Sept. 14, 1989, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). 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 application are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-21552 Filed 9-13-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-1-21-000]

Columbia Gas Transmission Corp; Proposed Changes in FERC Gas Tariff

September 7, 1989.

Take notice that Columbia Gas Transmission Corporation (Columbia) on August 31, 1989, tendered for filing the following proposed changes to its FERC Gas Tariff, Original Volume No. 1, to be effective October 1, 1989:

One hundred and thirty-seventh Revised Sheet No. 16
Twenty-fifth Revised Sheet No. 16A2

Columbia states that the listed tariff sheets set forth the adjustment to its sales and transportation rates applicable to the Annual Charge Adjustment, pursuant to the Commission's Regulations as set forth in Order No. 472, *et seq.* Columbia notes that the tariff sheets are unchanged from its currently effective tariff sheets but for effective date and pagination.

Columbia 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 motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 14, 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 Columbia's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-21555 Filed 9-13-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP89-229-000 and TM89-7-21-000]

Columbia Gas Transmission Corp; Proposed Changes in FERC Gas Tariff

September 7, 1989

Take notice that Columbia Gas Transmission Corporation (Columbia) on August 31, 1989, tendered for filing the following proposed changes to its FERC Gas Tariff, Original Volume No. 1:

To Be Effective August 1, 1989

Substitute Twenty-second Revised Sheet No. 16B
Substitute Twelfth Revised Sheet No. 16B1
Substitute Twelfth Revised Sheet No. 16B2

To Be Effective September 1, 1989

Twenty-third Revised Sheet No. 16B
Thirteenth Revised Sheet No. 16B1
Thirteenth Revised Sheet No. 16B2

Columbia states that the foregoing tariff sheets modify and supplement Columbia's previous filings in Docket Nos. RP89-214 and TM89-5-21 in which Columbia established procedures pursuant to Order No. 500 to recover from its customers the take-or-pay and contract reformation costs billed to Columbia by its pipeline suppliers. Specifically, Columbia proposes to modify its earlier filings to permit it to flow through revised take-or-pay and contract reformation costs from (i) Texas Eastern Transmission Corporation (Texas Eastern) pursuant to a filing made on July 3, 1989 which was accepted by the Federal Energy Regulatory Commission's (Commission) order issued on August 2, 1989 in Docket No. TM89-7-17, (ii) Texas Eastern pursuant to a filing made on July 20, 1989 which was accepted by Commission's order issued on August 18, 1989 in Docket No. TM89-8-17, (iii) Texas Eastern pursuant to a filing made on June 26, 1989 which was accepted by Commission order issued on July 24, 1989 in Docket No. RP89-153, (iv) Texas Gas Transmission Corporation (Texas Gas) pursuant to a filing made on June 30, 1989 in Docket No. TM89-3-18 which was accepted by Commission order dated July 31, 1989; (v) Texas Gas pursuant to a filing made on July 21, 1989 in Docket No. RP89-208 which was accepted by Commission order issued

on August 18, 1989; (vi) Transcontinental Gas Pipe Line Corporation pursuant to a filing made on June 27, 1989 in Docket No. TM89–4–29 which was accepted by Commission order dated July 28, 1989, and (vii) Tennessee Gas Pipeline Company (Tennessee) pursuant to a filing made on July 14, 1989 which was accepted by Commission's order issued on August 7, 1989 in Docket No. RP88–191–011.

Additionally, Columbia states that certain tariff sheets effective August 1, 1989 relating to Columbia's filings of July 31, 1989 in Docket Nos. RP89–214 and TM89–5–21 contained incorrect allocated costs. This resulted in incorrect Fixed Monthly Demand Surcharges being reflected on the tariff sheets for the flow through of take-or-pay costs attributable to Texas Eastern's Docket No. TM89–6–17 and Tennessee's Docket No. RP88–191. The revised tariff sheets to be effective August 1, 1989 submitted with the instant filing reflect the revised allocated costs and Fixed Monthly Demand Surcharges. However, Columbia states that billings to its customers are based upon actual billings from its pipeline suppliers and that billings to its customers have not been affected by the aforementioned clerical errors.

Copies of the filing were served upon Columbia's jurisdictional customers and interested state commissions and upon each person designated on the official service list compiled by the Commission's Secretary in Docket Nos. RP88–187, RP89–181, RP89–214, TM89–3–21, TM89–4–21, and TM89–5–21.

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, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 14, 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 proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–21559 Filed 9–13–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ90–1–2–000, TM90–1–2–000]

East Tennessee Natural Gas Co.; Rate Filing Pursuant to Tariff Rate Adjustment Provisions

September 7, 1989

Take notice that on August 31, 1989, East Tennessee Natural Gas Company (East Tennessee) is filing ten copies of Fifty-Second Revised Sheet No. 4 to be effective October 1, 1989.

The purpose of the revisions to Fifty-Second Revised Sheet No. 4 is to reflect a Purchased Gas Adjustment (PGA) to East Tennessee's Rates for the quarterly period of October 1989 through December 1989 pursuant to Section 22.2 of the General Terms and Conditions of East Tennessee's Tariff. East Tennessee is also reflecting on Fifty-Second Revised Sheet No. 4 the current Annual Charge Rate Adjustment of $0.0016 per dekatherm to be effective October 1, 1989 pursuant to Section 28 of the General Terms and Conditions.

East Tennessee states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 14, 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; provided, however, that any person who had previously filed a motion to intervene in this proceeding is not required to file a further motion. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–21560 Filed 9–13–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP89–230–000 TM90–1–33–000]

El Paso Natural Gas Co.; Tariff Filing

September 7, 1989

Take notice that on August 31, 1989, pursuant to Part 154 of the Federal Energy Regulatory Commission's ("Commission") Regulations Under the Natural Gas Act, El Paso Natural Gas Company ("El Paso") tendered for filing and acceptance certain tariff sheets which:

(i) Reflect a revision to the Monthly Direct Charge and Throughput Surcharge in accordance with Sections 21 and 22, Take-or-Pay Buyout and Buydown Cost Recovery, of the General Terms and Conditions in El Paso's FERC Gas Tariff, First Revised Volume No. 1 and Original Volume No. 1–A, respectively;

(ii) Revise certain language contained in Section 21 to provide that all firm sales customers will be direct billed their allocable share of the 25% take-or-pay buyout and buydown costs;

(iii) Eliminate the Order No. 500 Special Surcharge and in lieu thereof provide for a Monthly Direct Charge, as to firm sales customers only; and

(iv) Change the Annual Charge Adjustment ("ACA") for jurisdictional sales customers and shippers in accordance with Section 23 and 21, Annual Charge Adjustment Provision, of the General Terms and Conditions in El Paso's FERC Gas Tariff, First Revised Volume No. 1 and Original Volume No. 1–A, respectively.

El Paso states that the filing reflects that no additions have been made to the amount presently being amortized, as set forth in El Paso's compliance filing made on May 12, 1989 at Docket No. RP89–132–003. The only adjustments proposed by the filing are for adjustments to El Paso's Monthly Direct Charge and Throughput Surcharge (increase from $.1291 per dth to $.1826 per dth) for actual accrued interest for the period February 1, 1989 through July 31, 1989 and the estimated interest for the six month period commencing August 1, 1989. In addition, El Paso requested authorization to revise Section 21 of its First Revised Volume No. 1 Tariff to provide that all of El Paso's customers will be direct billed their allocated share of the buyout and buydown costs and eliminate the Order No. 500 Special Surcharge and in lieu thereof provide for a Monthly Direct Charge.

In the event the Commission denies El Paso's request to revise Section 21, El Paso tendered alternative tariff sheets which provide for the continuation of the Order No. 500 Special Surcharge for the collection of the buyout and buydown costs allocated to those east-of-California customers subject to a one-part rate, except for Gas Company of New Mexico.

El Paso further states that the ACA authorized by the Commission in its Statement of Annual Charges dated July 14, 1989, to be collected by pipelines for

the fiscal year commencing October 1, 1989, is $0.0017 per Mcf (the equivalent in El Paso's rates is $0.0016 per dth). Accordingly, the tendered tariff sheets when accepted for filing and permitted to become effective, will decrease El Paso's current ACA of $0.0017 per dth by $0.0001 per dth for sales and transportation rates.

El Paso respectfully requested that the Commission grant such waivers of its applicable rules and regulations as may be necessary to permit the tendered tariff sheets to become effective October 1, 1989.

Copies of the filing were served upon all interstate pipeline system sales customers and shippers of El Paso and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulatons. All such motions or protests should be filed on or before Sept. 14, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89–21556 Filed 9–13–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA90–1–51–000]

Great Lakes Gas Transmission Co.; Proposed Changes in FERC Gas Tariff Purchased Gas Adjustment Clause Provisions

September 7, 1989

Take notice that Great Lakes Gas Transmission Company ("Great Lakes") on September 1, 1989, tendered for filing Twenty-Fifth Revised Sheet Nos. 57(i) and 57(ii), and Eleventh Revised Sheet No. 57(v) to its FERC Gas Tariff, First Revised Volume No. 1.

Twenty-Fifth Revised Sheet Nos. 57(i) and 57(ii) reflect a purchased gas cost surcharge resulting from maintaining unrecovered purchased gas cost accounts for the period commencing July 1, 1988 and ending June 30, 1989. These surcharge rates are to be effective for the twelve month period commencing November 1, 1989. Also reflected on these tariff sheets, and with Eleventh Revised Sheet No. 57(v), are revised current PGA rates for the months of November and December, 1989 and January, 1990 which reflect the latest estimated gas costs as provided by Great Lakes' sole supplier of natural gas, TransCanada Pipelines Limited.

Any person desiring to be heard or to protest said filing should file a Motion to Intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before September 27, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–21561 Filed 9–13–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ90–1–5–000 and TM90–1–5–000]

Midwestern Gas Transmission Co.; Rate Filing Pursuant to Tariff Rate Adjustment Provisions

September 7, 1989

Take notice that on September 7, 1989, Midwestern Gas Transmission Company (Midwestern) filed Second Revised Sheet No. 5 to First Revised Volume No. 1 of its FERC Gas Tariff, to be effective October 1, 1989.

Midwestern states that the current Purchased Gas Cost Rate Adjustments reflected on Second Revised Sheet No. 5 consist of a $.2754 per dekatherm adjustment applicable to the gas component of Midwestern's sales rates, a $.04 per dekatherm adjustment applicable to the Demand D–1 component, and a $(.0001) per dekatherm adjustment applicable to the Demand D–2 component.

Midwestern states that copies of the filing have been mailed to all of its jurisdictional customers on its Southern System and affected state regulatory 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 petitions or protests should be filed on or before September 14, 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; provided, however, that any person who had previously filed a petition to intervene in this proceeding is not required to file a further petition. Copies of this filing are on file with Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–21557 Filed 9–13–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ89–1–59–000]

Northern Natural Gas Co.; Division of Enron Corp.; Proposed Changes in FERC Gas Tariff

September 7, 1989.

Take notice that Northern Natural Gas Company, Division of Enron Corp. (Northern), on August 31, 1989, tendered for filing changes in its FERC Gas Tariff, Third Revised Volume No. 1 (Volume No. 1 Tariff) and Original Volume No. 2 (Volume No. 2 Tariff).

Northern is filing the revised tariff sheets to adjust its Base Average Gas Purchase Cost in accordance with the Quarterly PGA filing requirements codified by the Commission's Order Nos. 483 and 483–A. The instant filing reflects a Base Average Gas Purchase Cost of $2.3341 per MMBtu to be effective October 1, 1989, through December 31, 1989. Northern further intends to use its flexible PGA, as necessary, to reflect actual market conditions throughout this time period.

Also the instant filing establishes new D1 and D2 rates in compliance with the above referenced PGA Rulemaking. Such required Northern to adjust its PGA demand rate components on a quarterly versus annual basis. This filing will establish a new D1 rate component of $.779 and a D2 rate component of $.0199 per MMBtu. These rates will be effective October 1, 1989, through December 31, 1989.

Northern states that copies of the filing were served upon the company's jurisdictional sales customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214

and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 14, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-21558 Filed 9-13-89; 8:45 am]

BILLING CODE 6717-01-M

Pelican Interstate Gas System; Compliance Filing

[Docket No. RP89-73-004]

September 7, 1989

Take notice that Pelican Interstate Gas System ("Pelican") on September 1, 1989 tendered for filing the following tariff sheets in compliance with Ordering Paragraph (B) of the Commission's Order dated August 2, 1989, in the captioned proceeding:

First Revised Sheet No. 36
Original Sheet No. 36A
First Revised Sheet No. 39
Original Sheet No. 39A
Second Revised Sheet No. 41
First Substitute First Revised Sheet No. 52
First Substitute First Revised Sheet No. 53
Original Sheet No. 53A
First Revised Sheet No. 55
Original Sheet No. 55A

Pelican has requested an effective date of April 1, 1989.

Pelican states that copies of its filing have been served on all parties and customers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedures. All such protests should be filed on or before September 14, 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 this 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. 89-21548 Filed 9-13-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. T090-1-6-000]

Sea Robin Pipe Line Co.; Filing of Revised Tariff Sheets

September 7, 1989

Take notice that on August 31, 1989, Sea Robin Pipe Line Company (Sea Robin) tendered for filing the following tariff sheets:

Original Volume No. 1

Effective July 1, 1989
First Revised Fifty-Seventh Revised Sheet No. 4

Original Volume No. 1

Effective October 1, 1989
Fifty-Eighth Revised Sheet No. 4
Thirtieth Revised Sheet No. 4-A
Seventh Revised Sheet No. 4-A1
Seventh Revised Sheet No. 4-A2

The above referenced tariff sheets are being filed pursuant to §§ 154.304 and 154.308 and part 382 of the Commission's Regulations to reflect the changes in the purchased gas cost adjustment provisions and the Annual Charge Adjustment contained in sections 1, 4 and 6 of the General Terms and Conditions of Sea Robin's FERC Gas Tariff, Original Volume No. 1.

Sea Robin states that the tariff sheets are filed to reflect a decrease in gas cost of $.0066 under Rate Schedule X-1 and X-2. This produces a current effective commodity charge of $3.2141. Sea Robin states that there is no change in gas cost under Rate Schedules X-7 and X-8. Additionally, Sea Robin's ACA is being reduced to $.17 per Mcf.

Sea Robin also states that the tariff sheet, First Revised Fifty-Seventh Revised Sheet No. 4, corrects a typographical error the commodity rate reflected on the tariff sheet filed in Docket No. TQ89-3-06 effective July 1, 1989. The Commodity rate should have been 2¢ higher than that filed in Docket No. TQ89-3-06.

Sea Robin states that the revised tariff sheets and supporting data are being mailed to its jurisdictional customers and to interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's regulations. All such motions or protests should be filed on or before September 14, 1989.

Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to Intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-21549 FIled 9-13-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-203-001]

Southern Natural Gas Co.; Proposed Changes to FERC Gas Tariff

September 7, 1989

Take notice that on August 30, 1989, Southern Natural Gas Company (Southern) tendered for filing the following revised sheets to its FERC Gas Tariff, Sixth Revised Volume No. 1, with a proposed effective date of September 1, 1989:

Eighth Revised Sheet No. 8B
First Revised Sheet No. 8B.1
Third Revised Sheet No. 11H.1
First Revised Sheet No. 11H.2
Third Revised Sheet No. 15A.1
First Revised Sheet No. 15A.2
Third Revised Sheet No. 26A.1
First Revised Sheet No. 26A.2

Southern states that these tariff sheets contain the changes directed by the Commission in its order of July 31, 1989, accepting Southern's filing in the above-captioned proceeding subject to conditions. Specifically, the revised tariff sheets provide that Southern may decline to authorize deliveries in excess of purchaser's D-2 determinants under circumstances in which such deliveries would disrupt existing interruptible service that Southern has already commenced to perform, or when the customer has failed to request such deliveries within a reasonable time in advance to reflect operational considerations. Additionally, the revised tariff sheets have been modified to provide for the use of seasonal rather than monthly D-2 determinants, consistent with Southern's general rate case filing to be made August 31, 1989.

Copies of Southern's filing were served upon all of Southern's jurisdictional purchasers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion 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 (§§ 385.214, 385.211) All such motions or protests should be filed on or before September 14, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-21553 Filed 9-13-89; 8:45 am]

BILLING CODE 6717-01-M

[RP89-224-000]

Southern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

September 7, 1989

Take notice that Southern Natural Gas Company (Southern) on August 31, 1989, tendered for filing proposed changes in its FERC Gas Tariff, Sixth Revised Volume No. 1, Original Volume No. 2, and First Revised Volume No. 2A. Southern states that the proposed tariff changes reflect a decrease of 2 percent in the non-gas component of each of its currently effective jurisdictional sales and transportation rates. Southern further states that although its test period costs support an overall increase in its jurisdictional rates, it is filing the proposed rate reduction in order to facilitate a prompt interim settlement in the proceeding.

Copies of the filing were served upon Southern's jurisdictional customers, shippers and interested state public service commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 14, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-21554 Filed 9-13-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM89-11-17-000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

September 7, 1989.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on August 31, 1989 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the following tariff sheets:

Seventh Revised Sheet No. 72
Seventh Revised Sheet No. 73
Seventh Revised Sheet No. 74
Seventh Revised Sheet No. 75
First Revised Sheet No. 483E
First Revised Sheet No. 483F

Texas Eastern states that the purpose of this filing is to track modifications made by Texas Gas Transmission Corporation (Texas Gas) on July 20, 1989 in Docket No. RP89-208 to take-or-pay charges to be billed Texas Eastern.

Texas Eastern states that on July 20, 1989 Texas Gas filed an amendment to its Order No. 500 take-or-pay recovery filing made on March 31, 1989 in Docket No. RP89-119. In its March 31, 1989 filing, Texas Gas proposed to bill and recover from Texas Eastern a total principle amount of $1,296,966, exclusive of interest, to be amortized over a 36 month period beginning May 1, 1989. On July 20, 1989 Texas Gas filed its amendment proposing to bill and recover from Texas Eastern an additional principal amount of $18,181, exclusive of interest, to be amortized over the remaining 33 months beginning August 1, 1989. The additional amounts relate to two litigation exception contracts and an adjustment resulting from a written settlement of a verbal agreement which was included in Texas Gas's March 31, 1989 filing. Texas Gas now proposes to bill Texas Eastern a total fixed monthly charge of $46,433, which includes a predetermined carrying charge.

Texas Eastern states that the tariff sheets proposed herein are being filed solely to track the amendment filed by Texas Gas on July 20, 1989 in Docket No. RP89-208. Seventh Revised Sheet Nos. 72 through 75 set forth the principal amount plus the allocation factor for carrying costs that each Texas Eastern customer will be required to pay in order to recover the charges in Docket Nos. RP89-119 and RP89-208 billed to Texas Eastern by Texas Gas. Workpapers setting forth the allocation factor and monthly amounts each customer will be required to pay are set forth under Appendix A of the filing.

Texas Eastern states that in tracking Texas Gas's methodology, Texas Eastern has given recognition to purchases by Texas Eastern's Rate Schedule SGS customers under Rate Schedule I in the determination of the base and deficiency periods to the extent these customers did not request Rate Schedule I gas in lieu of Rate Schedule SGS gas, but were given the benefit of the lower I rate. This methodology is consistent with the methodology used and approved by the Commission in Texas Eastern's previous filings.

Texas Eastern states that if at any time Texas Gas is permitted by Commission order to change its take-or-pay procedures and/or the amounts to be recovered pursuant thereto, Texas Eastern will likewise change its take-or-pay procedure and/or the amounts to be recovered pursuant thereto. In addition, Texas Eastern expressly agrees to refund to its customers all refunds received from Texas Gas in the above proceedings.

The proposed effective date of the above tariff sheets is September 1, 1989.

Copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 14, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-21550 Filed 9-13-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-1-17-000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

September 7, 1989

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on August 31, 1989 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the following tariff sheets:

Sixteenth Revised Sheet No. 50
Twelfth Revised Sheet No. 51

Texas Eastern states that the Commission, by Order No. 472 issued May 29, 1987, implemented procedures providing for the assessment and collection from interstate pipelines, *inter alia*, of annual charges as required by the Omnibus Budget Reconciliation Act of 1986. Pursuant to Order No. 472, the Commission authorized the tracking for automatic pass through to pipeline customers of the annual charges under an Annual Charge Adjustment ("ACA") clause. The ACA Unit Surcharge authorized by the Commission for fiscal year 1989 is $0.0017. As permitted by Order No. 472, Texas Eastern converted this Mcf rate to a dekatherm rate of $0.0017 per dth. Appendix A supports the derivation of such conversion to Texas Eastern's proposed rate.

Texas Eastern states that the purpose of this filing is to track, pursuant to Section 29 of Texas Eastern's General Terms and Conditions, Fifth Revised Volume No. 1, the fiscal year 1989 ACA charge in Texas Eastern's rates, including the revised ACA charge in CNG Transmission Corporation's (CNG) Rate Schedule GSS. CNG is filing revised tariff sheets to be effective October 1, 1989 reflecting a revised Annual Charge Adjustment. Section 4.F of Texas Eastern's Rate Schedule SS-2 and Section 4.F of Texas Eastern's Rate Schedule SS-3 provide for an automatic rate adjustment to flow through any changes in CNG's GSS rates which underlie Texas Eastern's SS-2 and SS-3 rates. Appendix B contains the calculations tracking the changes in CNG's Rate Schedule GSS to Texas Eastern's Rate Schedules SS-2 and SS-3.

The proposed effective date of the above tariff sheets is October 1, 1989.

Texas Eastern states that copies of the filing were served on Texas Eastern's jurisdictional customers, interested state commissions and all current Rate Schedule IT-1 shippers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 14, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-21551 Filed 9-13-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA90-1-58-000]

Texas Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

September 7, 1989

Take notice that on September 1, 1989, Texas Gas Pipe Line Corporation (TGPL) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1 (Tariff), the below listed tariff sheets to be effective November 1, 1989.

Twenty-Seventh Revised Sheet No. 4a

TGPL states that the purpose of the instant filing is to reflect rate adjustments pursuant to Section 12 of the General Terms and Conditions of TGPL's Tariff (Purchased Gas Cost Adjustments). Specifically, Twenty-Seventh Revised Sheet No. 4a reflects an average cost of gas of 186.98¢/Mcf, representing a current adjustment increase of 10.34¢/Mcf. The tariff sheet also reflects a surcharge adjustment reduction of .19¢/Mcf and a proposed total rate of 216.26¢/Mcf (at 14.65 psia).

TGPL states that copies of the filing were served upon TGPL's jurisdictional customers.

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 §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 27, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-21562 Filed 9-13-89; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3642-3]

Stratospheric Ozone Protection Advisory Committee; Establishment

ACTION: Establishment of Advisory Committee.

SUMMARY: The Environmental Protection Agency (EPA) has established a new Advisory Committee under the Federal Advisory Committee Act (FACA). The purpose of the committee, known as the Stratospheric Ozone Protection Advisory Committee, is to provide informed advise on policy and technical issues that relate to domestic and international aspects of the Montreal Protocol on Substances that Deplete the Ozone Layer. The Advisory Committee also will assist the Agency in serving the public interest during the transition to substitutes for ozone depleting chemicals.

The Agency has prepared a charter for the Advisory Committee to be filed with the U.S. Congress and has completed the requisite consultation process with the General Sevices Administration. As required by FACA, this notice states the purpose of the Advisory Committee and the public interest it serves.

FOR FURTHER INFORMATION CONTACT: Contact Stephen Seidel, Chief, Regulations and Analysis Branch, Global Change Division, Office of Air and Radiation, EPA, Washington, DC 20460; (202) 382-2787.

Purpose and Scope of Activity: The charter of the Stratospheric Ozone Protection Advisory Committee states that its purpose is to provide advice and counsel to the Assistant Administrator, Office of Air and Radiation, on issues that affect domestic and international activities relating to the Montreal Protocol. As reflected in the Protocol, the scientific evidence strongly supports reductions on a worldwide basis in the use of ozone-depleting chemicals. The Advisory Committee will be a part of EPA's efforts to serve the public interest and to address the global nature of the ozone layer problem. The Advisory Committee will assist EPA in the

consideration of specific technical, science, trade and policy issues.

The Advisory Committee will hold meetings, analyze issues, conduct reviews, perform studies, produce reports, make necessary recommendations and undertake other activities necessary to meet its responsibilities. The Committee will provide a forum for obtaining technical information and guidance in a timely manner as international discussions concerning actions to protect the ozone layer progress. Their assessments will take into consideration effects on the public in terms of changing environmental and economic conditions.

Composition: The committee will consist of no more than 25 participants. Each person will be appointed by the Deputy Administrator of the Agency for two years beginning October 1, 1989. All meetings will be open to the general public.

The Advisory Committee will meet at least twice a year. Subcommittees may be established and can meet as often as necessary. Meetings of the subcommittees also will be open to the general public.

Duration: The Advisory Committee shall be needed on a continuing basis and may be renewed beyond its initial two-year period, as authorized in accordance with section 14 of the Federal Advisory Committee Act.

Dated: September 7, 1989.

Eileen Claussen,

Director, Office of Atmospheric and Indoor Air Programs.

[FR Doc. 89-21580 Filed 9-13-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have 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 the 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 27, 1989.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *William H. Hadler,* Columbus, Ohio; to acquire an additional 15.28 percent of the voting shares of Boca Bancorp, Inc., Boca Raton, Florida, for a total of 25 percent, and thereby indirectly acquire Boca Bank, Boca Raton, Florida.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Paul E. Strickler,* Decatur, Indiana; to acquire 0.70 percent of the voting shares of Decatur Financial, Inc., Decatur, Indiana, and thereby indirectly acquire Decatur Bank and Trust Company, Decatur, Indiana.

C. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Robert Bauman,* Kerkhoven, Minnesota, to acquire 16.66 percent; James D. Bauman, Farmington, Minnesota, to acquire 16.66 percent; Douglas R. Bauman, Apple Valley, Minnesota, to acquire 16.66 percent; Paul Strandberg, Kerkhoven, Minnesota, to acquire 25 percent; and Dennis J. Zaun, St. Cloud, Minnesota, to acquire 25 percent of the voting shares of Kerkhoven Bancshares, Inc., Kerkhoven, Minnesota, and thereby indirectly acquire State Bank of Kerkhoven, Kerkhoven, Minnesota.

D. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Arvin Ryan Dillard, Jr.,* Wichita Falls, Texas; to acquire 17.3 percent of the voting shares of United Texas Financial Corporation, Wichita Falls, Texas, and thereby indirectly acquire First State Bank in Archer City, Archer City, Texas; The Farmers & Merchants National Bank, Nocona, Texas; The Farmers National Bank of Seymour, Seymour, Texas, and Parker Square State Bank, Wichita Falls, Texas.

Board of Governors of the Federal Reserve System, September 7, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-21578 Filed 9-13-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 89M-0354]

Lombart Lenses, Ltd.; Premarket Approval of Lombart™ (Polymacon) Soft (Hydrophilic) Contact Lens

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Lombart Lenses, Ltd., Norfolk, VA, for premarket approval, under the Medical Device Amendments of 1976, of the spherical Lombart™ (polymacon) Soft (Hydrophilic) Contact Lens for daily wear. The lens is to be manufactured under an agreement with CooperVision, Inc., San Jose, CA, which has authorized Lombart Lenses, Ltd. to incorporate information contained in its approved premarket approval application and related supplement for the Cooper™ 38 (polymacon) Hydrophilic Contact Lens. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of August 11, 1989, of the approval of the application.

DATES: Petitions for administrative review by October 16, 1989.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Docket Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville MD 20857.

FOR FURTHER INFORMATION CONTACT: David M. Whipple, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850-4302, 301-427-1080.

SUPPLEMENTARY INFORMATION: On May 3, 1989, Lombart Lenses, Ltd., Norfolk, VA 23507, submitted to CDRH an application for premarket approval of the spherical Lombart™ (polymacon) Soft (Hydrophilic) Contact Lens. The lens is indicated for daily wear for the correction of visual acuity in aphakic and not-aphakic persons with nondiseased eyes that are myopic or hyperopic. The lens may be worn by persons who may exhibit astigmatism of 1.50 diopters (D) or less that does not interfere with visual acuity. The lens is indicated in a power range of −20.00 D to +35.00 D and is to be disinfected using either a heat or chemical disinfection system. The application includes authorization from

CooperVision, Inc., San Jose, CA 95134, to incorporate information contained in its approved premarket approval application and related supplement for the Cooper™ 38 (polymacon) Hydrophilic Contact Lens.

On August 11, 1989, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact David M. Whipple (HFZ–460), address above. The labeling of the spherical Lombart™ (polymacon) Soft (Hydrophilic) Contact Lens states that the lens is to be used only with certain solutions for disinfection and other purposes. The restrictive labeling informs new users that they must avoid using certain products, such as solutions intended for use with hard contact lenses only.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)).

A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before October 16, 1989, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: September 6, 1989.

Walter E. Gundaker,

Acting Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 89–21528 Filed 9–13–89; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 89M–0363]

Pacesetter® Systems, Inc.; Premarket Approval of the Synchrony® Model 2020T Pulse Generator and the APS II Model 3000 Programmer With the Model 3032 Function Pack

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Pacesetter® Systems, Inc., Sylmar, CA, for premarket approval, under the Medical Device Amendments of 1976, of the Synchrony® Model 2020T Pulse Generator and the APS II Model 3000 Programmer with the Model 3032 Function Pack. After reviewing the recommendation of the Circulatory System Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of August 21, 1989, of the approval of the application.

DATES: Petitions for administrative review by October 16, 1989.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Mark D. Kramer, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1018.

SUPPLEMENTARY INFORMATION: On November 15, 1988, Pacesetter® Systems, Inc., Sylmar, CA 91342, submitted to CDRH an application for premarket approval of the Synchrony® Model 2020T Pulse Generator and the APS II Model 3000 Programmer with the Model 3032 Function Pack. The Synchrony® Model 2020T Pulse Generator is intended for use in patients that require permanent pacing and an increase in pacing rate concurrent with physical activity is desired. Indications for use include sinus node arrest or bradycardia, with or without AV conduction disorder; intermittent or complete AV conduction block; bradycardia/tachycardia syndrome, or other manifestations of sick sinus syndrome which results in symptomatic bradycardia; reentrant supraventricular tachyarrhythmias which can be suppressed by chronic AV sequential pacing; and atrial and ventricular ectopic arrhythmias which can be suppressed by chronic AV sequential pacing. Dual-chamber pacing is indicated for patients that require optimization of cardiac output. Rate adaptive pacing is indicated for patients that exhibit chronotropic incompetence and would benefit by increased pacing rates concurrent with physical activity.

The APS II Model 3000 Programmer is intended to be utilized to noninvasively interrogate and program the Synchrony® pacemaker. In addition, it may be utilized to program and/or interrogate other currenlty available programmable Pacesetter® pulse generators.

On June 30, 1989, the Circulatory System Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On August 21, 1989, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Mark D. Kramer (HFZ–450), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21

U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before October 16, 1989, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: September 6, 1989.

Walter E. Gundaker,

Acting Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 89–21530 Filed 9–13–89; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 89M–0361]

Storz Ophthalmics, Inc.; Premarket Approval of Coburn Posterior Chamber Intraocular Lens Models 72NUV, 720NUV, 72NLUV, 720NLUV, 94KUV, 94KLUV, P004UV, and PL04UV

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Storz Ophthalmics, Clearwater, FL, for premarket approval, under the Medical Device Amendments of 1976, of the Coburn Posterior Chamber Intraocular Lens Models 72NUV, 720NUV, 72NLUV, 720NLUV, 94KUV, 94KLUV, P004UV, and PL04UV. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of August 21, 1989, of the approval of the application.

DATES: Petitions for administrative review by October 16, 1989.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Nancy C. Brogdon, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1212.

SUPPLEMENTARY INFORMATION: On August 1, 1988, Storz Ophthalmics, Inc., Clearwater, FL 34616, submitted to CDRH an application for premarket approval of the Coburn Posterior Chamber Intraocular Lens Models 72NUV, 720NUV, 72NLUV, 720NLUV, 94KUV, 94KLUV, P004UV, PL04UV. The devices are intended to be used for primary implantation for the visual correction of aphakia in patients 60 years of age or older where a cataractous lens has been removed by extracapsular extraction methods. The devices are available in a range of powers from 4 diopters (D) through 34 D in 0.5–D increments.

On October 19, 1988, the Ophthalmic Devices Panel, and FDA advisory committee, reviewed and recommended approval of the application. On August 21, 1989, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

Under the amendments, intraocular lenses are regulated as class III devices (premarket approval). A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Nancy C. Brogdon (HFZ–460), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the timm and place where the review will occur, and other details.

Petitioners may, at any time on or before October 16, 1989 file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: September 6, 1989.

Walter E. Gundaker,

Acting Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 89–21532 Filed 9–13–89; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 89M-0355]

Connaught Laboratories, Ltd.; Premarket Approval of Microplate Anti-HAV IgM EIA

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Connaught Laboratories, Ltd., Swiftwater, PA, for premarket approval, under the Medical Device Amendments of 1976, of the Microplate Anti-HAV IgM EIA. After reviewing the recommendation of the Microbiology Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of August 17, 1989, of the approval of the application.

DATES: Petitions for administrative review by October 16, 1989.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joseph L. Hackett, Center for Devices and Radiological Health (HFZ-440), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1096.

SUPPLEMENTARY INFORMATION: On November 29, 1988, Connaught Laboratories, Ltd., Swiftwater, PA 18370, submitted to CDRH an application for premarket approval of the Microplate Anti-HAV IgM EIA. The device is an in vitro diagnostic solid-phase enzyme immunoassay (EIA) intended for use for the qualitative determination of specific IgM antibody to hepatitis A virus (anti-HAV IgM) in human serum or plasma and is indicated as an aid in the diagnosis of acute or recent hepatitis A virus infection (usually 6 months or less).

On May 8, 1989, the Microbiology Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On August 17, 1989, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Joseph L. Hackett (HFZ-440), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)[3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before October 16, 1989, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: September 6, 1989.

Walter E. Gundaker,

Acting Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 89-21531 Filed 9-13-89; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 89M-0344]

Edward Weck, Inc.; Premarket Approval of VITRAX™

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Edward Weck, Inc., Princeton, NJ, for premarket approval, under the Medical Device Amendments of 1976, of VITRAX™. After the reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of August 10, 1989, of the approval of the application.

DATES: Petitions for administrative review by October 16, 1989.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Robert A. Phillips, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1209.

SUPPLEMENTARY INFORMATION: On April 18, 1988, Edward Weck, Inc., Princeton, NJ 08543, submitted to CDRH an application for premarket approval of VITRAX™, a viscoelastic preparation of a highly purified high molecular weight fraction of sodium hyaluronate. (See 21 CFR 886.4275) VITRAX™ is indicated for use as a surgical aid in anterior segment procedures including cataract surgery with or without an intraocular lens, secondary intraocular lens implantation, corneal transplant surgery, and glaucoma surgery.

On October 19, 1988, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On August 10, 1989, CDRH approved the application by a letter to the applicant from the Acting Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Robert A. Phillips (HFZ–460), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before October 16, 1989, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: September 6, 1989.

Walter E. Gundaker,

Acting Deputy Director Center for Devices and Radiological Health.

[FR Doc. 89–21529 Filed 9–13–89; 8:45 am]

BILLING CODE 4160–01–M

Health Resources and Services Administration

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of November 1989:

Name: National Advisory Council on Health Professions Education

Date and Time: November 13–14, 1989, 9:00 a.m.

Place: Conference Room G and H, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857

Open on November 13, 9:00 a.m.–12:00 noon; Closed for Remainder of Meeting

Purpose: The Council advises the Secretary with respect to the administration of programs of Financial assistance for the health professions and makes recommendations based on its review of applications requesting such assistance. This also involves advice in the preparation of regulations with respect to policy matters.

Agenda: The open portion of the meeting will cover welcome and opening remarks, report of the Administrator, Health Resources and Services Administration, report of the Director, Bureau of Health Professions, a discission of the grants review process; financial management and legislative update, and future agenda items. The meeting will be closed at 12:00 noon on November 13, 1989, for the remainder of the meeting for the review of applications for financial assistance for Graduate Training in Family Medicine, Predoctoral Training in Family Medicine, Area Health Education Centers, Residency Training in General Internal Medicine and General Pediatrics, Departments of Family Medicine and Residency and Advanced Education in the General Practice of Dentistry. The closing is in accordance with the provisions set forth in section 552b(c)(6). Title 5 U.S.C. Code, and the Determination by the Administrator, Health Resources and Services Administration, pursuant to Public Law 92–463.

Anyone requiring information regarding the subject Council should contact Mr. James M. Hoeven, Executive Secretary, National Advisory Council on Health Professions Education, Room 8C–22, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301)443–6880.

Agenda Items are subject to change as priorities dictate.

Dated: September 11, 1989.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 89–21657 Filed 9–13–89; 8:45 am]

BILLING CODE 4160–15–M

National Institutes of Health

National Cancer Institute; Meeting

Notice is hereby given to amend the notice of two Subcommittees of the National Cancer Advisory Board meeting which was published in the **Federal Register** (54 FR 36053) on August 31, 1989.

The Subcommittee on Cancer Centers which was scheduled to meet on September 17 at 6 p.m., Building 31C, Conference Room 7, will now meet at 8 p.m. The Subcommittee on Planning and Budget which was scheduled to meet on September 17 at 7:30 p.m., Building 31C, Conference Room 8, will meet from 7 p.m. to 8 p.m. and now the entire meeting will be open to the public.

Dated: September 12, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–21897 Filed 9–13–89; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Section 8411 of Public Law 100–647, as Amended Hereafter, for Treatment of Certain Nursing Education Programs; Delegation of Authority

Notice is hereby given that in furtherance of the delegation of August 11, 1989, from the Secretary of Health and Human Services to the Assistant Secretary for Health, of the authority under Section 8411(a) of Public Law 100–647, as amended hereafter, excluding the authority to issue regulations and to submit reports to the Congress, the Assistant Secretary for Health has delegated to the Administrator, Health Resources and Services Administration, the authorities under Section 8411(a) of Public Law 100–647, as amended hereafter, concerning the demonstration of joint nursing graduate education programs. The joint undergraduate education program authority under Section 8411(b) will be administered by the Health Care Financing Administration.

Redelegation

This authority may be redelegated.

Effective Date

This delegation was effective on September 5, 1989.

In addition, provision was made to ratify and affirm any actions taken by officials within the Health Resources and Services Administration which, in effect, involved the exercise of this authority prior to the effective date of this delegation.

Dated: September 5, 1989.

James O. Mason,

Assistant Secretary for Health.

[FR Doc. 89-21584 Filed 9-13-89; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Notice of Intent/Notice of Preparation (NOI/NOP) To Prepare a Joint Environmental Impact Statement/ Environmental Impact Report (EIS/ EIR) on a Proposed Dam, Reservoir and Pumping Facility, the Geysers, Sonoma and Lake Counties, California

AGENCY: Bureau of Land Management (EIS), Interior; Northern California Power Agency (EIR).

ACTION: Notice of intent/notice of preparation to prepare an environmental impact statement for a dam, reservoir, and pumping facility in northern California, and notice of scoping.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Bureau of Land Management, Ukiah District, will be directing the preparation of an EIS to be prepared by a third party contractor on the impacts of a proposed dam, reservoir and pumping facility, the Northern California Power Agency (NCPA) Geysers Reservoir project, proposed on public lands in Sonoma and Lake counties located in northwestern California. This document will also serve as an Environmental Impact Report (EIR) pursuant to the regulations of the California Environmental Quality Act (CEQA).

DATES: Public scoping meetings will be held to solicit public input on issues or concerns to be assessed in the development of the Draft EIS/EIR, and to identify affected or interested parties. Public scoping meetings will be held beginning at 9 a.m. on October 9, 1989, at the County of Sonoma Planning Department office in Santa Rosa and at 9 a.m. on October 11, 1989, at City Hall in Cloverdale. Additional briefing meetings will be considered as appropriate. Written comments on the proposal will be accepted until November 15, 1989.

ADDRESS: Comments should be sent to the District Manager, Bureau of Land Management, 555 Leslie Street, Ukiah, California 95482, ATTN: NCPA Geysers Reservoir Project.

FOR FURTHER INFORMATION CONTACT: Linda Hansen, Planning and Environmental Coordinator, Bureau of Land Management, 555 Leslie Street, Ukiah, California 95482, at (707) 462-3872, or Steve Enedy, Northern California Power Agency, (707) 987-3101.

SUPPLEMENTARY INFORMATION: The NCPA Geysers Reservoir project will be jointly constructed by the Northern California Power Agency (NCPA) and Geysers Geothermal Company (GGC). The project consists of a dam, reservoir, and pumping facility to be operated by NCPA, and a jointly proposed ground-water injections program. The purpose of the reservoir and water injection program is to reduce steam pressure declines in nearby geothermal wells.

The project includes construction of a 105 foot dam on the headwaters of Big Sulphur Creek near the northern boundary of the NCPA leasehold in the Geysers, Sonoma County. Materials for dam construction exist at local borrow areas. Access roads would have to be improved before construction could begin. A pumping facility would pump the water through pipes up the canyon sides to the geothermal wells.

During an average water year, the dam is expected to capture and divert approximately 2,400 acre feet of water, which is 8 percent of total annual stream flow of Big Sulphur Creek, as measured at the USGS flow guage at Geysers Resort. Downstream appropriated water rights and instream flow requirements for fish and aquatic animals will be met.

Fish populations at the NCPA leasehold consist entirely of resident rainbow trout. Downstream populations of steelhead trout, California roach, and others are separated and prevented from migrating upstream by a large waterfall located approximately 3 miles downstream from the NCPA leasehold. Impacts to fish will be mitigated in part by the development of a flow schedule acceptable to the U.S. Fish and Wildlife Service and the California Department of Fish and Game.

The reservoir will inundate a small amount of Riparian Forest habitat and a larger amount of North Coast Mixed Coniferous Forest.

Discussion of Alternatives

A range of alternatives including a No Action alternative and possible mitigation measures will be considered in the environmental analysis. Alternatives to the proposed action include building the dam in another location, a smaller or larger dam, and the no project alternative.

The tentative project schedule is as follows:

Begin Public Comment Period—September 1989
File Final EIS—April 1990
Record of Decision—June 1990
Complete Licensing and Permitting—September 1990
Begin Construction—October 1990
Begin Operation—February 1991

Al Wright,

District Manager, Ukiah.

[FR Doc. 89-21589 Filed 9-13-89; 8:45 am]

BILLING CODE 4310-40-M

[CO-050-4212-08]

Notice of Intent To Consider Amending Royal Gorge Management Framework Plan, Canon City, CO

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of intent to determine the necessity to amend the Royal Gorge Management Framework Plan (MFP) regarding land exchanges.

SUMMARY: The proposed amendment would add a new realty decision to the Royal Gorge MFP which would allow exchange of certain lands in Teller County, Colorado. Implementation of the amendment would allow further consideration of a land exchange application.

DATES: This notice initiates a 45-day comment period on the issues and alternatives to be considered in the amendment and environmental assessment. The comment period ends October 31, 1989.

ADDRESS: Comments should be addressed to L. Mac Berta, Area Manager, BLM, 3170 East Main, P.O. Box 311, Canon City, Colorado 81212.

FOR FURTHER INFORMATION: Contact Stu Parker at the above address or phone (719) 275-0631. A copy of the Royal Gorge MFP is also available for review at the above address.

SUPPLEMENTARY INFORMATION: The Royal Gorge MFP was completed in 1978. The results of the planning process will be used to determine which lands are suitable for exchanging out of Federal ownership. The land under consideration includes six parcels of public land in Sections 28, 29, 32 and 33, Township 14 South, Range 70 West of

the 6th P.M. totalling about 780 acres. Public participation will include notifying interested parties and notices in newspapers about the proposed action and comment period.

The plan amendment and environmental assessment will be prepared in conformance with the requirements of 40 CFR parts 1500–1508 and 43 CFR parts 1600–1610. The exchange suitability requirements of Section 206 of the Federal Land Policy and Management Act will be followed.

Donnie R. Sparks,

District Manager.

[FR Doc. 89–21590 Filed 9–13–89; 8:45 am]

BILLING CODE 4310–JB–M

[MT–030–08–4410–02]

Dickinson District Advisory Council Meeting

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of meeting.

SUMMARY: The District Advisory Council for the Bureau of Land Management's Dickinson District will meet October 25, 1989, in Dickinson, North Dakota.

Major topics to be discussed at the council meeting include: (1) Recent oil and gas activity in the district, (2) progress of the Kid Creek Coordinated Resource Management Plan, and (3) the district's 10-year plan for land tenure adjustment.

The Council is chartered by the Secretary of Interior to give citizen advice to the Dickinson District Manager regarding planning and management of public lands and resources.

The meeting is open to the public, and members of the public will be given the opportunity to make statements before the Council. Persons wishing to submit a written statement to the Council should send it to the Dickinson District Manager.

Location, Date, and Time: October 25, 1989, from 8:30 a.m. to approximately 3:00 p.m. Mountain Daylight Time, Conference Room, Bureau of Land Management, 2933 3rd Avenue West, Dickinson, North Dakota.

FOR FURTHER INFORMATION CONTACT: William F. Krech, District Manager, 2933 3rd Avenue West, Dickinson, North Dakota 58601, Telephone 701–225–9148.

Dated: September 7, 1989.

William F. Krech,

District Manager.

[FR Doc. 89–21591 Filed 9–13–89; 8:45 am]

BILLING CODE 4310–DM–M

[AZ–020–08–4320–12]

Kingman Resource Area Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting—Kingman Resource Area Grazing Advisory Board.

SUMMARY: The Kingman Resource Area Grazing Advisory Board will hold a meeting on Thursday, November 9, 1989. The meeting will start at 9:00 a.m. in the Kingman Resource Area Conference Room, 2475 Beverly Avenue, Kingman, Arizona 86401.

The agenda for the meeting will include:

1. Update of the Bureau's Exchange Program.
2. Status of the Bureau's Planning and Environmental Impact Statements.
3. Report on Range Improvements for FY 89 and FY 90.
4. Range Policy Update.
5. Use of Helicopter and Motor Vehicles to Capture Wild Horses and Burros.
6. Request for Advisory Board Expenditures.
7. Arrangements for Future Meetings.

The meeting is open to the public. Anyone wishing to make oral or written statements to the Board is requested to do so through the office of the District Manager, 2015 West Deer Valley Road, Phoenix, Arizona 85027, at least seven days prior to the meeting date.

Summary minutes of the Board meeting will be maintained in the District Office and be made available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Dated: September 8, 1989.

Henri R. Bisson,

District Manager.

[FR Doc. 89–21640 Filed 9–13–89; 8:45 am]

BILLING CODE 4310–32–M

[NV–050–09–4320–13]

Las Vegas District Grazing Advisory Board Meeting; Nevada

Notice is hereby given in accordance with Public law 92–463 that a meeting of the Las Vegas District Grazing Advisory Board will be held Tuesday, October 17, 1989. The meeting will begin at 8:00 a.m. in the conference room of the Las Vegas District Office, 4765 W. Vegas Drive, and continue until 5:00 p.m..

The agenda is as follows:

1. Welcome and introductions.
2. Election of Chairperson and Vice Chairperson.
3. Desert tortoise emergency listing as endangered species.
4. Range improvement program, status update, and proposals.
5. Ephemeral range rule
6. Allotment management plans, evaluations, decisions, and agreements.
7. Public comments.
8. Arrangements for next meeting.

The meeting is open to the public. Interested persons may make oral comments to the board during the public comment period on the day of the meeting or they may file written statements for the board's consideration during the meeting. Notify the District Manager, BLM, 4765 West Vegas Drive, P.O. Box 26569, Las Vegas, Nevada 89126, if you wish to make an oral statement to the Board. Summary minutes of the board meeting will be maintained at the Las Vegas District Office. The minutes will be available for public inspection during regular office hours (7:30 a.m. to 4:15 p.m.) within 30 days after the meeting.

Colin P. Christensen,

Acting District Manager.

[FR Doc. 89–21592 Filed 9–13–89; 8:45 am]

BILLING CODE 4310–HC–M

Meeting; Medford District Advisory Council; Field Trip

[OR110–6310–11 OR910–GP9–326]

Notice is hereby given in accordance with Public Law 99–463 that a field trip for the Bureau of Land Management, Medford District Advisory Council will be held September 29, 1989.

On September 29, 1989, the field trip will begin at 8:00 a.m., leaving from the parking lot in front of the Bureau of Land Management office at 3040 Biddle Road, Medford, Oregon. The itinerary for the field trip will include seeing on the ground:

Effect of the Northern Spotted Owl issue on the availability of timber, the extent of damage from insect-killed trees and reforestation efforts on the Medford District.

Persons interested in joining the Council on its field trip may do so, but must provide their own transportation.

Summary minutes of any action taken by the Council will be maintained in the District Office and be available for public inspection and reproduction

(during regular business hours) within 30 days following the meeting.

David A. Jones,

District Manager.

Dated: September 5, 1989.

[FR Doc. 89-21593 Filed 9-13-89; 8:45 am]

BILLING CODE 4310-33-M

[AZ-020-08-4320-12]

Phoenix/Lower Gila Resource Areas Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting—Phoenix/Lower Gila Resource Areas Grazing Advisory Board.

SUMMARY: The Phoenix/Lower Gila Resource Areas Grazing Advisory Board will hold a meeting on Tuesday, November 7, 1989. The meeting will start at 9:00 a.m. in the Phoenix District Office Conference Room, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

The agenda for the meeting will include:

1. Update of the Bureau's Exchange Program.
2. Status of the Bureau's Planning and Environmental Impact Statements.
3. Report on Range Improvements for FY 89 and FY 90.
5. Range Policy Update.
6. Request for Advisory Board Expenditures.
7. Arrangements for Future Meetings.

The meeting is open to the public. Anyone wishing to make oral or written statements to the Board is requested to do so through the office of the District Manager, 2015 West Deer Valley Road, Phoenix, Arizona 85027, at least seven days prior to the meeting date.

Summary minutes of the Board meeting will be maintained in the District Office and be made available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Dated: September 8, 1989.

Henri R. Bisson,

District Manager.

[FR Doc. 89-21641 Filed 9-13-89; 8:45 am]

BILLING CODE 4310-32-M

[OR-100-09-6310-02; GP9-327]

Roseburg District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The District Advisory Council for the Bureau of Land Management, Roseburg District will meet October 19, 1989, beginning at 8:30 a.m. in the Roseburg District Office Auditorium. The agenda will cover issues related to public land management adjacent to rural residential areas. Following a get-acquainted session with the new District Manager, the Council Members will board a bus at approximately 9:15 a.m. for a tour of residential-public land interface areas within the Dillard Resource Area.

ADDRESS: Bureau of Land Management, Roseburg District Office, 777 NW Garden Valley Blvd., Roseburg, OR 97470.

FOR FURTHER INFORMATION CONTACT: Mel Ingeroi, Public Affairs Specialist, Roseburg District, (503) 672-4491.

SUPPLEMENTARY INFORMATION: The public is welcome at the meeting and on the tour, but transportation will not be provided. A public comment period will be provided at 9:00 a.m. Written statements for the Council can be mailed to the District Manager prior to the meeting or presented to the Council during the meeting. During the tour, Council members will be briefed on the following issues: Access, road maintenance, rights-of-way, potential impacts to the timber base, fire protection, slash burning, and trespass.

Dated: September 8, 1989.

G.L. Cheniae,

Acting District Manager.

[FR Doc. 89-21639 Filed 9-13-89; 8:45 am]

BILLING CODE 4310-33-M

[AZ-050-09-4212-02]

Arizona; District Advisory Council Meeting

AGENCY: Bureau of Land Management (BLM), Yuma District Office, Interior.

ACTION: Notice of meeting.

SUMMARY: A meeting of the Yuma District Advisory Council will be held Friday, October 27, 1989. The meeting will begin at 9:00 a.m. in the Yuma District Conference Room, 3150 Winsor Avenue, Yuma, Arizona. The agenda will include: (1) Election of officers; (2) Update on State, District, and Resource Area initiatives; (3) Scenic Byway Program; (4) A demonstration of the Bureau's Lands Information System (LIS); and (5) A discussion of issues to be addressed in upcoming activity plans.

The meeting is open to the public. Interested person may make oral statements to the council or file written statements for the council's consideration. Anyone wishing to make oral statements should make prior arrangements with the District Manager. Summary minutes of the meeting will be maintained in the District Office and will be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

DATE: October 27, 1989.

FOR FURTHER INFORMATION CONTACT: Robert V. Abbey, Assistant District Manager, Resources, Yuma District Office, 3150 Winsor Avenue, Yuma, Arizona 85365, 602-726-6300.

Herman L. Kast,

District Manager.

[FR Doc. 89-21642 Filed 9-13-89; 8:45 am]

BILLING CODE 4310-12-M

[U-59024]

Utah; Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

In accordance with title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97-451), a petition for reinstatement of oil and gas lease U-59024 for lands in Grand County, Utah, was timely filed and required rentals and royalties accruing from April 1, 1989, the date of termination, have been paid.

The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16⅔ percent, respectively. The $500 administrative fee has been paid and the lessee has reimbursed the Bureau of Land Management for the cost of publishing this notice.

Having met all the requirements for reinstatement of lease U-59024 as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective April 1, 1989, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Ted D. Stephenson,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 89-21643 Filed 9-13-89; 8:45 am]

BILLING CODE 4310-DQ-M

[AZ-050-9-4212-11; A-24004]

Arizona: Mohave County, Realty Action, Lease of Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action—lease of lands, Mohave County, Arizona.

SUMMARY: The following described lands and interests therein have been determined to be suitable to be classified for lease under the provisions of the *Recreation and Public Purposes Act* of June 14, 1926, as amended (43 U.S.C. 869 *et seq.*) and the regulations established by 43 CFR 2740 and 2910.

Salt River Meridian, Arizona

T. 20 N., R. 22 W.,
Sec. 20, portion of lot 2, containing 29.84 acres more or less.

The Mohave County Board of Supervisors has applied to lease the above described lands for recreation and public purposes. This Recreation and Public Purposes lease will combine two existing leases issued under Bureau of Reclamation authority. With the exception of a proposed library, existing facilities on Federal lands include a governmental complex, medical facility, and youth club.

The land is not required for any Federal purpose. The classification and subsequent lease are consistent with the Bureau's planning for the area.

Subject to all valid existing rights, the lands are hereby segregated from appropriations under any other public land law, including location under the mining laws. This segregation will terminate upon issuance of a lease, publication of a Notice of Termination, or 18 months from the date of this publication, whichever comes first.

DATES: Until October 30, 1989, interested parties may submit comments to the District Manager, 3150 Winsor Avenue, Yuma, Arizona 85365. Any objections will be reviewed by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior, effective November 13, 1989.

FOR FURTHER INFORMATION CONTACT: Mike Ford, Area Manager, Havasu Resource Area, Bureau of Land Management, 3189 Sweetwater Avenue, Lake Havasu City, Arizona 86403, 602–855–8017.

Dated: September 7, 1989.

Robert V. Abbey,

Acting District Manager.

[FR Doc. 89–21595 Filed 9–13–89; 8:45 am]

BILLING CODE 4310–32–M

[CA–940–09–5410–10–ZBAR; CACA 25668]

Conveyance of Mineral Interests in California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of segregative effect—conveyance of the reserved mineral interests.

SUMMARY: The private lands described in this notice will be examined for suitability for conveyance of the reserved mineral interests pursuant to section 209 of the Federal Land Policy and Management Act of October 21, 1976.

The mineral interests will be conveyed in whole or in part upon favorable mineral examination.

FOR FURTHER INFORMATION CONTACT: Joan Mangold, California State Office, Federal Office Building, 2800 Cottage Way, Room 2845, Sacramento, California 95825, (916) 978–4820.

The purpose is to allow consolidation of surface and subsurface ownership, for the lands described below, where there are no known mineral values or in those instances where the reservation of ownership of the mineral interests in the United States interferes with or precludes appropriate non-mineral development of the lands and such development would be a more beneficial use of the lands than its mineral development.

San Bernardino Meridian

T. 13 N., R. 15 E.,
sec. 34, W½W½SE¼, E½E½SW¼.

The area described contains 80.00 acres in San Bernardino County. Currently 100 percent of the mineral interest in these lands is owned by the United States.

Minerals Reservation—All coal and other minerals

The application was filed on July 14, 1989.

Upon publication of this Notice of Segregative Effect in the **Federal Register** as provided in 43 CFR 2091.3–1(c) and 2720.1–1(b), the mineral interests owned by the United States in the private lands covered by the application shall be segregated to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. The segregative effect of the application shall terminate by publication of an opening order in the **Federal Register** specifying the date and time of opening; or upon issuance of a patent or other document of conveyance to such mineral interests; or upon final rejection of the application; or two years from the date of publication of this notice, whichever occurs first.

Dated: September 9, 1989.

Nancy J. Alex,

Chief, Lands Section Branch of Adjudication and Records.

[FR Doc. 89–21596 Filed 9–13–89; 8:45 am]

BILLING CODE 4310–40–M

[MT–930–09–4212–13; MTM–66965]

Notice of Conveyance and Order Providing for Opening of Public Land in Phillips County, Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This order will open lands reconveyed to the United States in an exchange under the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1701 *et seq.* (FLPMA), to the operation of the public land laws. No minerals were transferred in the exchange. It also informs the public and interested state and local governmental officials of the issuance of the conveyance document.

EFFECTIVE DATE: November 8, 1989.

FOR FURTHER INFORMATION CONTACT: Edward H. Croteau, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–255–2941.

SUPPLEMENTARY INFORMATION: 1. Notice is hereby given that pursuant to section 206 of FLPMA, the following described surface estate was transferred to Phillips County in the State of Montana:

Principal Meridian, Montana

T. 25 N., R. 24 E.,
Sec. 28, N½SW¼SE¼SE¼.
T. 25 N., R. 25 E.,
Sec. 21, N½NE¼NW¼NW¼.
T. 30 N., R. 27 E.,
Sec. 8, SW¼NE¼, SE¼NW¼.
T. 20 N., R. 28 E.,
Sec. 21, E½SE¼SE¼.
T. 35 N., R. 29 E.,
Sec. 14, NE¼NE¼.
T. 35 N., R. 31 E.,
Sec. 25, NW¼NW¼.
Aggregating 190 acres.

2. In exchange for the above selected land, the United States acquired the following described surface estate from Phillips County:

Principal Meridian, Montana

T. 31 N., R. 34 E.,
Sec. 30, lots 1 and 2, E½NW¼.
T. 36 N., R. 28 E.,
Sec. 14, NE¼NE¼.
Aggregating 200.71 acres.

3. The values of the Federal public land and the County land were both appraised at $6,100.

Opening Date

4. At 9 a.m. on November 8, 1989, the lands described in paragraph 2 above that were conveyed to the United States of America will be opened to the operation of the public land laws generally, subject to valid existing rights and the requirements of applicable law. All valid applications under the public land laws received at or prior to 9 a.m. on November 8, 1989, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Dated: September 7, 1989.

John A. Kwiatkowski,

Deputy State Director, Division of Lands and Renewable Resources.

[FR Doc. 89-21594 Filed 9-13-89; 8:45 am]

BILLING CODE 4310-DN-M

[AK-932-09-4214-10; AA-41845]

Conformance to Survey; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This Notice provides official publication of the surveyed description for Public Land Order No. 544, a Railroad Reserve at Hurricane Gulch. The plat of survey was officially filed in the Alaska State Office, Bureau of Land Management, Anchorage, Alaska, August 14, 1989. Tract E of T. 22 S., R. 11 W., Fairbanks Meridian, containing 3,885.30 acres, represents the land that was previously described in 49 FR 146, January 12, 1949, for Public Land Order No. 544.

ADDRESS: Inquiries about this land should be sent to the Alaska State Office, Bureau of Land Management, 222 W. 7th Avenue, #13, Anchorage, Alaska 99513-7599.

FOR FURTHER INFORMATION CONTACT: Sandra C. Thomas, BLM Alaska State Office, 907-271-3342.

Sue A. Wolf,

Chief, Branch of Land Resources.

[FR Doc. 89-21644 Filed 9-13-89; 8:45 am]

BILLING CODE 4310-JA-M

Minerals Management Service

Development Operations Coordination Document; Forest Oil

AGENCY: Minerals Management Service.

ACTION: Notice of the receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Forest Oil Corporation, Unit Operator of the Eugene Island Block 292 Federal Unit Agreement No. 14-08-0001-8764, has submitted a DOCD describing the activities it proposed to conduct on the Eugene Island Block 292 Federal unit. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on August 30, 1989. Comments must be received September 29, 1989 or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 144, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, *Attention OCS Plans*, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Mr. Al Durr; Minerals Management Service; Gulf of Mexico OCS Region; Production and Development; Development and Unitization Section; Unitization Unit; Telephone (504) 736-2659.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local government, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised Section 250.34 of Title 30 of the CFR.

Dated: September 5, 1989.

J. Rogers Pearcy,

Regional Director Gulf of Mexico OCS Region.

[FR Doc. 89-21597 Filed 9-13-89; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Koch Exploration Co.

AGENCY: Minerals Management Service.

ACTION: Notice of the receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Koch Exploration Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 8184, Block A-519, High Island Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Cameron, Louisiana.

DATE: The subject DOCD was deemed submitted on September 6, 1989. Comments must be received September 29, 1989 or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans and Pipeline Section, Exploration/

Development Plans Unit; Telephone (504) 736–2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: September 7, 1989.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 89–21598 Filed 9–13–89; 8:45 am]

BILLING CODE 4310–MR–M

Development Operations Coordination Document; Kock Exploration Co.

AGENCY: Minerals Management Service.

ACTION: Notice of the receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Kock Exploration Company has submitted a DOCD describing the activities it proposes to conduct on Leases OCS–G 8426 and 4213, Blocks 274 and 289, respectively, Vermilion Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Cameron, Louisiana.

DATE: The subject DOCD was deemed submitted on September 6, 1989. Comments must be received September 29, 1989 or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans and Pipeline Section, Exploration/ Development Plans Unit; Telephone (504) 736–2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is avaialble for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: September 7, 1989.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 89–21599 Filed 9–13–89; 8:45 am]

BILLING CODE 4310–MR–M

Development Operations Coordination Document; McMoRan

AGENCY: Minerals Management Service.

ACTION: Notice of the receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that McMoRan Oil and Gas has submitted a DOCD describing the activities it proposes to conduct on Leases OCS–G 10882, Block 88, West Delta Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Venice, Louisiana.

DATE: The subject DOCD was deemed submitted on August 31, 1989. Comments must be received September 29, 1989 or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans and Pipeline Section, Exploration/ Development Plans Unit; Telephone (504) 736–2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: September 5, 1989.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 89-21600 Filed 9-13-89; 8:45 am]

BILLING CODE 4310-MR-M

Bureau of Mines

Advisory Committee on Mining and Mineral Resources Research; Meeting

The Advisory Committee on Mining and Mineral Resources Research will meet from 9:00 a.m. to 5:00 p.m. on Sunday, October 22, 1989, and from 9:00 a.m. to noon (or completion of business) on Monday, October 23, 1989, in Conference Rooms D and E of the Donaldson Brown Center for Continuing Education, Virginia Polytechnic Institute and State University, Blacksburg, Virginia 24061.

The proposed agenda is:

1. Welcome.
2. Approval of the minutes of the meeting of June 7, 1989.
3. Review of 1989 legislation affecting the Mineral Institutes program.
4. Status of final rulemaking.
5. Implementation and approval of 1989 grant awards program.
6. Selection of criteria for the review of Generic Mineral Technology Centers.
7. Review of the Mine Systems Design and Ground Control Generic Mineral Technology Center—

Report of review team members on site visits
Review of draft Committee report
Presentation by Mine Systems Design and Ground Control Generic Mineral Technology Center Director
Discussion with members of the Research Council and Board
Comments from the public
Approval of Committee report

8. Adoption of a 1990 Update to the National Plan including a response to the Congressional request for a proposal to establish a strategic and critical minerals center.
9. Review of the continued eligibility of the four mineral institutes in Iowa, Massachusetts, Georgia, and Washington.
10. New business.

This meeting is open to the public. Approximately 30 visitors can be accommodated on a first-come, first-served basis. Written statements concerning the subjects are welcome. Visitors who expect to attend or who wish to submit written statements should inform Dr. Ronald A. Munson, Chief, Office of Mineral Institutes, Bureau of Mines, Mail Stop 1020, 2401 E Street, NW., Washington, DC 20241, phone (202) 634-1328, no later than noon, Friday, October 20, 1989.

Dated: September 8, 1989.

T.S. Ary,

Director.

[FR Doc. 89-21616 Filed 9-13-89; 8:45 am]

BILLING CODE 4310-53-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Board for International Food and Agricultural Development; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of the Ninety-Sixth Meeting of the Board for International Food and Agricultural Development (BIFAD) on September 28 and 29, 1989.

The purposes of the Meeting are: (a) To hear a presentation on the role of the U.S. university in development, (b) to hear a presentation on Institutional Sustainability in Africa, (c) to hear a report on the INSTORMIL CRSP, (d) to hear a presentation on the Special Program for African Agricultural Researchers, (e) to hear a report of the African Agricultural Research Study Group, and (f) to hear a presentation on the World Bank Initiatives on African University Development.

The September 28, 1989 Meeting will be held in the Department of State, Room 5951, 2201 C Street, Washington, DC 20523. The September 29, 1989 Meeting will also be held in the State Department in Room 5951. Any interested person may attend and may present oral statements in accordance with procedures established by the Board and to the extent the time available for the meeting permits.

Curtis Jackson, Bureau of Science and Technology, Office of University Relations, Agency for International Development is designated as A.I.D. Advisory Committee Representative at this Meeting. It is suggested that those desiring further information write to Dr. Jackson, in care of the Agency for International Development, Rm 309, SA 18, Washington, DC 20523, or telephone him on (703) 235-8929.

Dated: September 8, 1989

Lynn Pesson,

Executive Director, BIFAD.

[FR Doc. 89-21656 Filed 9-13-89; 8:45 am]

BILLING CODE 6116-71-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Application by Arenol Chemical Corp.

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(h)), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on May 18, 1989, Arenol Chemical Corporation, 189 Meister Avenue, Somerville, New Jersey 08876, made application to the Drug Enforcement Administration to be registered as an importer of phenylacetone (8501), a basic class of controlled substance in Schedule II.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than October 16, 1989.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e) and (f). As noted in a previous notice at 40 FR 43745-46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e) and (f) are satisfied.

Dated: September 5, 1989.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 89-21535 Filed 9-13-89; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Application by Arenol Chemical Corp.

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on May 18, 1989, Arenol Chemical Corporation, 189 Meister Avenue, Somerville, New Jersey 08876, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug:	Schedule
Amphetamine, its salts, optical isomers, and salts of its optical isomers (1100).	II
Methamphetamine, its salts, isomers, and salts of its isomers (1105).	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than October 16, 1989.

Dated: August 31, 1989.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 89-21536 Filed 9-13-89; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Application by Parish Chemical Co.

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on May 24, 1989, Parish Chemical Company, 145 North Geneva Road, Orem, Utah 84057, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the Schedule II controlled substance phenylacetone (8501).

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than October 16, 1989.

Dated: September 5, 1989

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 89-21537 Filed 9-13-89; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Application by Radian Corp.

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on March 20, 1989, Radian Corporation, P.O. Box 201088, 8501 Mopac Blvd., Austin, Texas 78759, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug:	Schedule
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
Methaqualone (2565)	I
3,4-methylenedioxyamphetamine (MDA) (7400).	I
3,4-methylenedioxymethamphetamine (MDMA) (7405).	I
Amphetamine, its salts, optical isomers, and salts of its optical isomers (1100).	II
Methamphetamine, its salts, somers, and salts of its somers (1105).	II
Phencyclidine (7471)	II
Fentanyl (9801)	II
Methadone (9250)	II
Bulk dextropropoxyphene (nondosage forms) (9273).	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than October 16, 1989.

Dated: September 5, 1989.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 89-21538 Filed 9-13-89; 8:45 am]

BILLING CODE 4410-09-M

Importation of Controlled Substances Registration

By Notice dated June 5, 1989, and published in the **Federal Register** on June 12, 1989, (54 FR 24969), Wildlife Laboratories, Inc. 1401 Duff Drive, Suite 600, Fort Collins, Colorado 80524, made application to the Drug Enforcement Administration to be registered as an importer of Carfentanil (9743), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, § 1311.42, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: September 5, 1989.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 89-21539 Filed 9-13-89; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D-7901]

Withdrawal of the Proposed Exemption Involving Drs. Hodgin and Chongsiriwatana, P.A. Profit Sharing Plan (the Plan) Located in Albuquerque, New Mexico

In the **Federal Register** dated July 3, 1989 (54 FR 27958), the Department of

Labor (the Department) published a notice of proposed exemption from the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 and from certain taxes imposed by the Internal Revenue Code of 1986. The notice of proposed exemption concerned the prospective purchase of one partnership unit from Ulton G. Hodgin, M.D. (Dr. Hodgin) and his wife Jean by the individually directed accounts in the Plan of Dr. Hodgin and Krisna Chongsiriwatana, M.D., trustees of the Plan and, as such, parties in interest with respect to the Plan.

The Department has hereby determined to withdraw the notice of proposed exemption.

Signed at Washington, DC, this 8th day of September, 1989.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 89-21525 Filed 9-13-89; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-7751 et al.]

Proposed Exemptions; Kendall Homes, Inc., Defined Benefit Pension Plan & Trust, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this Federal Register Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Regulations and Interpretations, Room N-5671, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-5507, 200 Constitution Avenue NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the Federal Register. Such notice shall include a copy of the notice of pendency of the exemption as published in the Federal Register and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Kendall Homes, Inc., Defined Benefit Pension Plan & Trust (the Pension Plan) and Profit Sharing Plan & Trust (the P/S Plan; Together, the Plans) Located in Flanders, New Jersey

(Application No. D-7751)

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to: (1) a proposed series of loans, originated within a five year period, by the Plans to Kendall Homes, Inc. (the Employer), the sponsor of the Plans, and its affiliated real estate development corporations (the Operating Companies), and (2) the personal gurantee of such loans by K.G. Hunnewell, Jr. (Mr. Hunnewell), provided that:

(a) Eastbank, N.A. (Eastbank), a qualified, independent fiduciary acting for the Plans, expressly approves each loan as being in the best interests of the Plans and their participants and beneficiaries and monitors each loans to ensure that the Plans' interests are safeguarded;

(b) All terms and conditions of the loans are at least as favorable to the Plans as those which the Plans could obtain in arm's-length transactions with unrelated parties;

(c) The loans represent in the aggregate no more than 25% of the total assets of the Plans as of the date of each such transaction; and

(d) The aggregate total of all such loans made by either the Penison Plan or the P/S Plan will not exceed 25% of the assets of the particular Plan at the time of any individual loan transaction.

Temporary Nature of Exemption

This exemption, if granted, will be effective only for those loans which are originated within five years of the date on which the Final Grant of this proposed exemption is published in the Federal Register.

Summary of Facts and Representations

1. The Pension Plan is a defined benefit plan with total assets of $341,100.32, as of December 31, 1988. The P/S Plan is a defined contribution plan with total assets of $508,459.05, as of December 31, 1988. Both of the Plans had ten participants as of December 31, 1988. Mr. Hunnewell and his wife, Linda M. Hunnewell (Ms. Hunnewell; together, the Hunnewells), are the administrators and trustees of the Plans. The Hunnewells are the decision-makers with respect to the Plans' assets.

2. The Employer is a New Jersey corporation, located at 268 Route 206, Flanders, New Jersey. The Employer is wholly-owned by the Hunnewells, with Mr. Hunnewell and Ms. Hunnewell each owning 50% of the outstanding shares of the Employer's stock. The Hunnewells, through the Employer and the Operating Companies, are engaged in the business of developing single family residences and providing management and administrative services for such development. The Operating Companies

are also wholly-owned by the Hunnewells.

3. The Employer proposes to enter into a loan agreement (the Agreement) with the Plans and Eastbank under which the Employer and the Operating Companies may borrow sums of money from the Plans for working capital and refinancing for various real estate development projects. The Employer is requesting an exemption to permit the making of such loans (the Loans) by the Plans under the terms of the Agreement.

4. Under the Agreement, the Employer and the Operating Companies will have the right, subject to the approval of Eastbank, to borrow funds from the Plans in a amount not to exceed, in the aggregate at the time of any individual loan, 25% of the fair market value of the assets of the Plans. In addition, the Loans made by either the Pension Plan or the P/S Plan will not exceed 25% of the assets of the particular Plan at the time of the transaction.

5. Eastbank will represent the Plans for all purposes under the Agreement, including the execution of the Agreement and the enforcement of its terms. Eastbank represents that it has the appropriate trust powers to serve as an independent fiduciary for the Plans and that it understands its duties, responsibilities and liabilities as a fiduciary uder the Act. Eastbank states that it is independent of the Employer and the Operating Companies. In this regard, Eastbank states that it has no existing commerical or trust relationships with the parties in interest involved in the proposed transactions, except a $400,000 outstanding loan to the Hunnewells which represents less than 1% of all outstanding Eastbank loans.

6. Under the Agreement, Eastbank will be required to approve each of the Loans, which will be on the following terms:

(1) Five year installment loans, bearing interest at a 15% per annum rate with required semi-annual payments of interest and principal amortized over 30 years, with all unamortized principal due to maturity; or

(2) Five year term loans, bearing interest at a rate of 15% per annum with required semi-annual payments of interest, with all prinicipal due at maturity.

However, the Agreement states that Eastbank will take the responsibility to ensure that any new Loan made by the Plans will be set at the prevailing rate of interest for similar loans between unrelated parties, should the prevailing rate ever exceed 15% per annum.

Each loan will be evidenced by a written promissory note in accordance with the terms of the Agreement and will incorporate such terms by reference. All of the Loans will be originated within a five-year period commencing with the date on which this exemption, if granted, is published in the **Federal Register.**

The Agreement provides that in the event of default on any loan, the Employer will pay in addition to the amounts due as principal and interest, an amount equal to six months interest which would have been due under the terms of the particular Loan in default. The Agreement requires that each Loan will be secured by an irrevocable letter of credit in favor of the Plan from which the funds are drawn, from a bank acceptable to Eastbank, in the principal amount of such Loan, plus six months of interest. Each irrevocable letter of credit will be an agreement between the issuing bank and Eastbank, which permits Eastbank to immediately draw drafts on the issuing bank which the issuing bank agrees to pay unconditionally. Eastbank will evaluate the creditworthiness and financial ability of the issuer of the letter of credit to ensure that each Loan is adequately secured.

By letter dated January 10, 1989, Eastbank states that the issuing bank will be Prospect Park Savings Bank (Prospect Park) in West Paterson, New Jersey. Eastbank represents that Prospect Park has the financial capabilities for issuing the proposed letters of credit and that Eastbank is entirely independent from Prospect Park. In addition, Eastbank states that it will not issue any letters of credit to the Employer or the Operating Companies during the term of the Agreement.

The Agreement requires that each letter of credit will have a maturity date of not less than 30 days beyond the maturity date of the underlying loan. In the event of default under any Loan, Eastbank will draw on the respective letter of credit before its expiration to ensure that the Plan will not suffer any loss of principal or interest.

The Agreement states that the Employer will bear all costs associated with the letters of credit.

Finally, the Agreement provides that all Loans will be personally guaranteed by Mr. Hunnewell. The applicant represents that Mr. Hunnewell has a substantial net worth and has provided a financial statement from Mr. Hunnewell's accoutant, dated May 13, 1988, which indicates that Mr. Hunnewell's assets are sufficient to guarantee the Loans.

7. Eastbank has undertaken a review and analysis of all aspects of the Loans, as set forth in the Agreement, to determine whether the Loans constitute a prudent investment for the Plans, whether the Loans will be adequately secured, and whether the Loans will be in the best interests of the Plans and their participants and beneficiaries. Eastbank states that it has reviewed the terms of the Agreement, the financial statements of the Employer and Mr. Hunnewell, the Plans' overall investment portfolio, the funding policy of the Plans, the liquiditly needs of the Plans and the diversification of the Plans' assets. Based on this analysis, Eastbank represents that the Loans will not adversely affect the liquidity needs of the Plans and that the Employer and the Operating Companies are financially sound and able borrowers. Eastbank believes that the Loans, which will be adequately secured by the proposed letters of credit, are prudent investments which will be in the best interests of the Plans and their participants and beneficiaries. Finally, Eastbank states that the Loans, taking into account the security provided and the financial status of the Employer and Mr. Hunnewell, would be suitable for Eastbank and other similar lenders to make in normal banking practices under similar terms and conditions.

8. In summary, the applicant represents that the proposed transactions will satisfy the statutory criteria of section 408(a) of the Act because: (a) the interests of the Plans with respect to the Loans are represented by Eastbank, as an independent fiduciary for the Plans, which will be required to approve each loan under the Agreement; (b) the Loans will be limited in the aggregate to no more than 25% of the assets of the Plans and no particular Loan or Loans made by either the Pension Plan or the P/S Plan will exceed 25% of the assets of such Plan at the time of the transaction; (c) Eastbank has analyzed the Agreement and the terms of the Loans and has determined that the transactions will be in the best interests of the Plans; and (d) each Loan will be secured by an irrevocable letter of credit in favor of the Plan making the Loan, and the letter of credit will be in an amount equal to the Loan's principal plus six months of interest, which is a form of security that Eastbank believes is superior to other forms of security for similar loans between unrelated parties.

Tax Consequences of Transaction

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the plan either paying

less than or receiving more than fair market value, such excess may be considered to be a contribution by the sponsoring employer to the plan, and therefore must be examined under the applicable provisions of the Internal Revenue Code, including sections 401(a)(4), 404 and 415.

For Further Information Contact: Mr. E.F. Williams of the Department, Telephone (202) 523-8883. (This is not a toll-free number).

Prudential Insurance Corporation of America (Prudential) Located in Newark, New Jersey

[Application No. D-7965]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the sale, on February 10, 1989, of a parcel of unimproved real property (the Property) by Prudential's General Account (the General Account) to a limited partnership (the Partnership) in which the Prudential Retirement System for United States Employees and Special Agents (the PruPlan) holds a 50 percent limited partnership interest, provided the amount paid by the PruPlan for its interest in the Property was not more than fair market value at the time the transaction was consummated.

Effective Date: If granted, this proposed exemption will be effective February 10, 1989.

Summary and Representations

1. The parties and the real property involved in the subject transaction are described as follows:

a. Prudential is a mutual life insurance company organized under the laws of the state of New Jersey and subject to supervision and examination by the insurance commissioner of that state. Prudential is the largest insurance company in the United States with total consolidated assets of approximately $140 billion as of December 31, 1987. Among the various insurance products and services it offers, Prudential provides funding, asset management and other services for pension and profit sharing plans subject to the provisions of Title I of the Act.

Prudential has substantial experience in managing real estate investment. Of the more than $140 billion in total assets held by Prudential at the close of 1987, Prudential's General Account held nearly $2.8 billion in equity investments in real property and nearly $20.5 billion in mortgage loans. Prudential also manages more than $5 billion in real estate investments on behalf of its separate account contract holders.

b. The PruPlan is a defined benefit plan maintained by Prudential on behalf of its employees and special agents. As of December 31, 1988, the PruPlan had total assets of $4,275,000,000 of which $490 million was invested in real estate. Also as of December 31, 1988, the PruPlan had approximately 140,000 participants. The trustee of the PruPlan is Prudential Trust Company, a Pennsylvania corporation and a subsidiary of Prudential. Investment decisions for the PruPlan are made by the Investment Oversight Committee (the Investment Oversight Committee) which is comprised of three officers of Prudential. The Investment Oversight Committee is also the named fiduciary of the PruPlan.

c. The Virginia Supplemental Retirement System (VSRS) provides retirement benefits to former employees of the State of Virginia.[1] As of March 31, 1989, VSRS had total assets of $8.8 billion of which approximately $900 million was invested in real estate. VSRS is totally unrelated to Prudential and Prudential has no investment discretion with regard to VSRS' decision to participate in the Partnership described below. VSRS currently has approximately $60 million invested in a Prudential open-end commingled fund known as PRISA II.

d. The Boston Financial Consulting Group (BFCG), a real estate advisory and consulting firm located in Boston, Massachusetts, is a wholly-owned subsidiary of the Boston Financial Group, Incorporated. BFCG has substantial experience in providing advice, analysis and assistance on real estate investment and development, including property valuation and feasibility studies. BFCG is also experienced in negotiating the terms of joint ventures, administering construction contracts, overseeing project performance and evaluating public and private real estate investment programs. BFCG is neither affiliated with Prudential nor does it have an existing business relationship with Prudential. BFCG has performed an independent valuation of the Property described herein on behalf of the PruPlan and also serves as the independent fiduciary for such plan.

e. The Property consists of a 38 acre parcel of undeveloped and unencumbered land located in Westwood, Norfolk County, Massachusetts at the southeast quadrant of State Routes 128 (I-95) and 109. This intersection, which is approximately twelve miles southwest of downtown Boston, is located in the heart of the high technology corridor in the Boston area. Prudential acquired the Property in July 1987 form the Gillette Corporation for $2,901,800. The Property provides easy access from two major highways and it is in close proximity to five major hotels. The Partnership intends to develop the Property by 1990 into a high quality office park which will feature two, four-story buildings of approximately equal size, with a combined total of approximately 289,300 net rentable square feet. The buildings will be situated on a large wooded campus. It is anticipated that the total development cost will not exceed $50 million.

2. On January 31, 1989, the PruPlan and VSRS formed the Westwood Executive Center Limited Partnership for the purpose of acquiring, developing and operating the Property described herein as a high quality office development which is to be known as the Westwood Executive Center (the Center). Under the terms of the Agreement of Limited Partnership (the Partnership Agreement) entered into by the PruPlan and VSRS, the PruPlan has a 50 percent profit interest in the Partnership and VSRS has a 49 percent interest in such partnership. The remaining one percent profit interest is held by Prudential General Account in its capacity as the general partner of the Partnership.[2] The PruPlan and VSRS have equal authority with respect to the management of the Partnership and are obligated to make equal contributions to the Partnership. Concurrently with the establishment of the Partnership, the PruPlan and VSRS each made an initial, cash capital contribution of $6.75 million. Prudential was not required to

[1] The applicant represents that VSRS is a government plan within the meaning of section 3(32) of the Act and is, therefore, not subject to the provisions of the Act.

[2] Prior to its decision to invest in the Partnership, VSRS requested that the Partnership be structured as a limited partnership pursuant to which its potential liability would be limited to the amount invested. Since VSRS could not expect the PruPlan to assume the liability of a general partner, VSRS requested that Prudential act as the general partner. Prudential represents that it agreed to act as the general partner, in consideration for which it received a one percent profit interest in the Partnership.

make a capital contribution to the Partnership since it generally has no obligation to make capital contributions.

The PruPlan and VSRS have each appointed one representative to the Limited Partners Executive Committee (the Executive Committee) which is responsible for making investment decisions with respect to the conduct of the business affairs of the Partnership. As such, the Executive Committee must approve any construction contract; any contract to sell, lease, exchange, finance, refinance or otherwise dispose of any assets of the Partnership; and any loans made to the Partnership. In additiion, Prudential must obtain the approval of the Executive Committee prior to retaining any accountants, appraisers, attorneys and other professionals; establishing bank accounts; or obtaining insurance.

The Executive Committee may remove Prudential as the general partner, without causing dissolution of the Partnership, at any time the Executive Committee determines that such removal is appropriate. The Executive Committee may remove Prudential and substitute a new general partner if either the PruPlan or VSRS determines, in good faith, that Prudential has failed to perform its duties in a proper manner under the Partnership Agreement.

The Partnership Agreement requires the PruPlan and VSRS to each contribute 50 percent of the purchase price of the Property to the Partnership as well as 50 percent of the construction costs of the Center. The Partnership Agreement also permits the Partnership to retain a development manager (the Development Manager) to develop the Property and an asset manager (the Asset Manager) to provide certain supervisory and managerial services in connection with the operation, management, maintenance and leasing of the Property. Because the Partnership wishes to have the benefit of Prudential's real estate development experience, the Partnership Agreement provides that the Partnership may select Prudential or its affiliates to be the Development Manager and the Asset Manager with respect to the Partnership.[3] The Partnership Agreement further provides that, if either the PruPlan or VSRS determines, in good faith, that the Development Manager or the Asset Manager has failed to perform assigned duties in a proper manner, the Executive Committee will, at the request of either the PruPlan or VSRS, terminate the applicable management agreement for such manager.

3. As a condition of the Partnership Agreement and a purchase and sale agreement (the Purchase and Sales Agreement) entered into by Prudential, the PruPlan and VSRS, on February 10, 1989, the PruPlan and VSRS each contributed $5.5 million of their $6.75 million initial capital contributions toward the purchase price of the Property. (The $2.5 million in residual capital contribution funds was to be used for expenses incurred in connection with the development of the Property.) The sales price was based upon the fair market value of the Property as established by BFCG. Neither the PruPlan nor VSRS were required to pay any real estate fees or commissions in connection therewith. Following the sale, the deed to the Property was recorded in the name of Partnership.

4. As stated above, the PruPlan appointed BFCG to perform an independent valuation of the Property. In particular, Messrs. David S. Kirk, M.A.I., and Douglas P. Koch, Appraiser, who are independent appraisers affiliated with BFCG, undertook the specific appraisal tasks and determined the fair market value of such Property in an appraisal report dated January 31, 1989.

BFCG rendered its appraisal of the Property under three commonly-used approaches: the Cost Approach, in which the appraiser derives a value by estimating the current cost to reproduce or replace the existing structure; the Market Sales Approach, in which the appraiser compares the property being appraised to similar properties that have been sold recently; and the Income Approach, in which the appraiser converts anticipated financial benefits into property value. BFCG also determined that, given the difficulty of ascertaining the fair market value of undeveloped land, the appraisal would not be complete without an analysis of the feasibility of the proposed development and an estimate of the fair market value of the Center on completion.

In preparation for its valuation report, BFCG inspected the site, analyzed market comparable projects, market rates, and market trends; interviewed local real estate agents regarding market rental rates and market tenant inducements; performed a market absorption and vacancy analysis; analyzed local real estate assessments and taxes; reviewed and analyzed proposed building plans and specifications; and reviewed and analyzed current market development and asset management fee structures. To ensure that state government approval had been or would be obtained, BFCG also reviewed the site plan approvals from the town of Westwood, zoning ordinances and environmental permits.

Following an inspection of the Property and the surrounding neighborhood, BFCG investigated and analyzed recent sales of comparable land and existing office developments. BFCG found that the accessibility, visibility and natural amenities of the Property were equal to or superior to current and proposed competitive developments, and that the development of the Property into premium office space constituted the highest and best use of the land.

Based upon its analysis, BFCG determined that the Property had a value of $11,080,000 as of January 31, 1989. Further, BFCG determined that based upon foreseeable market conditions, the PruPlan could expect to receive an internal rate of return within a range of 12.8 percent to 14.1 percent.

5. The PruPlan also retained BFCG to perform several services in its capacity as independent fiduciary on behalf of the PruPlan. In addition to the preparation of the appraisal report discussed above, BFCG analyzed the proposed building plans and specifications and analyzed all financial projections relating to construction costs and leasing revenues submitted by Prudential or its affiliates. As part of this analysis, BFCG compared the estimates submitted by Prudential in connection with the proposed development to the costs and revenues of other comparable projects.

BFCG also evaluated whether the purchase price for the Property represented fair market value and whether the investment was feasible. Further, BFCG reviewed the investment objectives of the PruPlan to establish whether investment in the Partnership would be within the parameters of the

[3] Prudential represents that the Partnership will function as a "real estate operating company" within the meaning of 29 CFR 2510.3-101(e). Accordingly, Prudential explains that transactions involving the assets of the Partnership will not be deemed to involve plan assets and will not be subject to the prohibited transaction provisions of the Act. The Department expresses no opinion in this proposed exemption as to whether the Partnership will qualify as a "real estate operating company." In this regard, the Department is providing no exemptive relief herein with respect to the selection, provision of services and fees to be received by Prudential or its affiliates as Development and/or Asset Manager. Further, the Department notes that in making a decision to invest in a "real estate operating company" plan fiduciaries should consider, among other factors, that the fiduciary responsibility provisions of the Act do not apply to the operation of the "real estate operating company."

PruPlan's investment criteria. Based upon its findings, BFCG determined that the price for the Property was slightly below fair market value and that the PruPlan should participate in the Partnership.

In addition, BFCG reviewed, negotiated and modified the terms of the Partnership Agreement, the Development Management Agreement, the Asset Management Agreement and the Purchase and Sales Agreement on behalf of the PruPlan. Based upon its analyses of these agreements and Prudential's reputation, and after considering the reasonableness of the compensation that is being paid to Prudential for the contemplated services, BFCG determined that entering into such agreements would be in the best interest of the PruPlan.

Thus, on behalf of the PruPlan, BFCG negotiated a final sale of the Property to the Partnership of $11 million on February 10, 1989. In particular, BFCG determined that a guaranteed maximum construction contract would be desirable because it would provide a high degree of certainty to the PruPlan regarding construction costs and remove a significant degree of risk concerning the construction budget. BFCG also agreed that it would continue serving as the independent fiduciary for the PruPlan in order to consider, among other things, whether the Partnership should continue to retain Prudential or its affiliates to perform services for the Partnership. Further, BFCG agreed to act on behalf of the PruPlan with respect to the removal of Prudential as the general partner of the Partnership should the Executive Committee conclude that Prudential was not adequately performing its responsibilities.

If, for any reason, BFCG resigns or is terminated from its position as the independent fiduciary, Prudential will inform the Department of the reason and describe the qualifications of any successor independent fiduciary. Such appointment of the successor independent fiduciary will be subject to the Department's approval.

6. VSRS represents that it made its own independent decision to invest in the Partnership. In this regard, VSRS states that it retained staff professionals to evaluate the merits of the investment opportunity in the Partnership and negotiate the terms of the purchase, the Partnership Agreement and the retention of Prudential as both the Asset and Development Managers. In addition, VSRS states that it retained the services of BFCG to perform a feasibility/appraisal report of the Property as required by the guidelines of VSRS' real estate program. Based upon its independent analysis and appraisal, VSRS represents that it was appropriate to invest in the Partnership and it believes Prudential's expertise in the Boston, Massachusetts real estate market is valuable.

7. In summary, it is represented that the transaction satisfies the statutory criteria for an exemption under section 408(a) of the Act because: (a) the sale of the 50 percent interest in the Property by Prudential to the Partnership involved a one-time transaction for cash; (b) the PruPlan was not required to pay any real estate commissions or fees in connection therewith; (c) the sales price for the Property was based upon its appraised value as determined by BFCG; (d) BFCG, as the independent fiduciary, negotiated the sale of the Property by Prudential to the Partnership; (e) BFCG has agreed to monitor the performance by Prudential or its affiliates of various services rendered under the Partnership Agreement, the Asset Management Agreement and the Development Management Agreement; and (f) fiduciaries of VSRS, an entity unrelated to Prudential, independently determined that the investment by VSRS in both the Partnership and the Property would be in the best interest of VSRS.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Consolidated Lumber Company, Inc. Profit Sharing Plan (the Plan) Located in Overland Park, Kansas

[Application No. D–8005]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975(c)(1) (A) through (E) of the Code, shall not apply to a proposed cash sale by the Plan to the Consolidated Lumber Company, Inc. (the Employer), a party in interest with respect to the Plan of interests (the Interests) in the Krupp Commercial Properties Limited Partnership (the Limited Partnership), provided the Plan receives the greater of $30,000 or the fair market value of the Interests as determined at the time of the sale by an independent, qualified appraiser.

Summary of Facts and representations

1. The Plan, established on January 30, 1984, is a profit sharing plan with approximately 40 participants. As of March 31, 1988 the Plan had $38,718 in assets. The current trustees of the Plan are Howard L. Hatfield, Jr., president of the Employer and Connie J. Ray, vice-president of the Employer (the Trustees). The Employer is a Kansas corporation which is in the wholesale lumber business.

2. On July 6, 1984 the Plan bought the Interests which consisted of 30 units in the Limited Partnership for $30,000 from Smith-Barney brokerage firm, an unrelated third party.[4] The underlying assets of the Limited Partnership consist of the Outlet Malls, a series of shopping centers located in Tulsa, Oklahoma; Oklahoma City, Oklahoma; and Plano, Texas. The Interests in the Limited Partnership have decreased in value since the time of the purchase. The applicant represents that the decrease in value of the Interests is directly related to the location of the Outlet Malls and the depressed economies of those areas. In a letter dated January 29, 1988, Ross V. Keeler, a General Partner of the Krupp corporation represents that the decreased value of the Interests is due to the low occupancy in Outlet Malls.

3. The Interests were appraised on July 21, 1989 by Raymond Freeman, a qualified and independent Branch Manager of Paine Webber (the Freeman Appraisal). The Freeman Appraisal indicates that the appropriate fair market value for the Interests is $7,000. The Freeman Appraisal also states that no recent sales of the Interests have taken place and no ready market for the Interests exists.

4. The Employer proposes to purchase the Interests for the original purchase price of $30,000. The Employer represents that the transaction will be a one-time cash sale. The sale will enable the Trustees to purchase investment instruments with a higher yield. The Trustees represent that the sale for $30,000 cash is in the best interest and protective of the Plan. It is also represented that the limitations of section 415 of the Internal Revenue Code regarding employer contributions to defined contribution plans will not be exceeded as a result of the proposed transaction.

5. In summary, the applicant represents that the transaction satisfies the statutory criteria of section 408(a) of

[4] The Department is providing no opinion as to whether the Plan's acquisition or holding of the Interests violated any provision of Part 4 of Title I of the Act.

the Act and section 4975(c)(2) of the Code because:

(a) The proposed sale will be a one-time cash transaction;

(b) The price paid to the Plan will be the greater of $30,000 or the fair market value at the time of the sale as determined by an independent, qualified appraiser;

(c) The Plan will pay no expenses associated with the sale; and

(d) The sale will allow the Plan to liquidate its assets and to provide cash for investments with a higher yield.

Tax Consequences of Transaction

The Department of Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the plan either paying less or receiving more than fair market value, such excess may be considered to be a contribution by the sponsoring employer to the plan, and therefore must be examined under the applicable provisions of the Internal Revenue Code, including sections 401(a)(4), 404 and 415.

For Further Information Contact: Ekaterina A. Uzlyan of the Department telephone (202) 523-8194. (This is not a toll-free number.)

Western Telecom Profit Sharing and Employee Savings Plan (the Plan) Located in Orem, Utah

[Exemption Application No. D-8052]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale by the Plan of certain real property (the Property) located in Kamas, Utah to Kamas Woodland Telephone, Inc. (KWT), a party in interest with respect to the Plan; provided that the terms of such sale are no less favorable to the Plan than those which the Plan could obtain in an arm's-length transaction with an unrelated party.

Summary of Facts and Representations

1. The Plan is a defined contribution profit sharing plan sponsored by Utah Wyoming Telecom, Inc. (the Employer). The Employer is a privately-owned independent telephone company with its headquarters in Kamas, Utah. The trustees of the Plan are Carl J. Clark and Connie L. Clark (the Trustees), each of whom is an officer, employee and greater-than-ten-percent shareholder of the Employer. As of December 31, 1988 the Plan had 42 participants and total net assets of $609,101. KWT is a wholly-owned subsidiary of the Employer.

2. Among the assets of the Plan is the Property, a parcel of unimproved land located in the central commercial area of Kamas, Utah. The Trustees purchased the Property on behalf of the Plan as the Plan's sole investment in real estate with the expectation of realizing an investment return upon resale of the Property after subsequent appreciation in its fair market value. Since its acquisition by the Plan, the Property has remained vacant and has not been utilized by the Employer or any other party. The Employer and the Trustees represent that the Property's fair market value has not increased as expected due to downward trends in the local economy in general, influenced primarily by adverse developments in the oil and gas industry, and decreases in local commercial real property values in particular.

The Trustees represent that for two years they have engaged unsuccessfully in efforts to sell the Property at a price which would enable the Plan to realize an adequate return on its investment. Specifically, they represent that over a six-month period in 1986 and 1987, the Property was listed for sale with a commercial realtor without any purchase offers resulting from such listing. Additionally, the Trustees represent that advertisements of the Property's availability for sale have been placed in two local newspapers, without results, and that a "for sale" sign was posted on the Property, also without results, for two years. The Trustees relate that at one point they granted to an unrelated party an option to purchase the Property for $65,000, but that option expired after the party decided against purchasing the Property.

The Trustees remain committed to attempts to sell the Property at a price which will prevent a loss to the Plan. Because the Property is adjacent to other real property owned and used by KWT and would be useful to KWT's expansion plans, the principals of KWT have proposed to purchase the Property from the Plan. An exemption is requested to permit such sale transaction under the terms and conditions described herein.

3. The Plan is a vacant 12,375 square foot lot of commercial-zoned land located at North and Main Streets in Kamas, Utah. The Trustees purchased the Property on behalf of the Plan in 1983 from unrelated parties for a cash purchase price of $54,963. According to an appraisal of the Property conducted by J. Marvin Lewis, a professional real property appraiser in Marion, Utah, the Property had a fair market value of $48,500 as of January 28, 1989. Another valuation of the Property rendered by LeRoy J. Pia, MAI and Richard A. Cook, professional real property appraisers in Salt Lake City, Utah, concludes that the Property has a fair market value of $30,000 as of February 6, 1989. The Trustees represent that the Property has remained vacant and idle since its acquisition by the Plan and has not been used or occupied by the Employer or any other related parties.

4. KWT proposes to pay the Plan $65,000 in cash for the Property, the amount which the Trustees have determined to be the Property's fair market value at the commencement of efforts to sell the Property. KWT also proposes to pay all costs and expenses related to the sale transaction. The Employer represents that KWT is willing to pay this price, which exceeds the Property's current fair market value according to the aforementioned valuations, because of the Property's special value to KWT arising from its adjacency to other commercial property already owned and utilized by KWT. The Trustees represent that the proposed purchase price will also enable them to accomplish their objectives of preventing loss to the Plan from further depreciation of the Property's value and securing from the Property an adequate return on the Plan's investment therein.

5. In summary, the applicant represents that the proposed transaction will satisfy the criteria of section 408(a) of the Act for the following reasons: (1) The Plan will receive cash for the Property in an amount which is not less than its fair market value; (2) The Plan will not incur any costs or expenses related to the transaction; and (3) The transaction will enable the Plan to recoup and realize a return on its investment in real property which has not appreciated since its acquisition by the Plan.

Tax Consequences of Transaction

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the plan either paying less than or receiving more than fair market value, such excess may be considered to be a contribution by the

sponsoring employer to the plan, and therefore must be examined under the applicable provisions of the Internal Revenue Code, including sections 401(a)(4), 404 and 415.

For Further Information Contact: Mr. Ron Willett of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 8th day of September 1989.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 89-21526 Filed 9-13-89; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 89-81; Exemption Application No. D-7933 et al.]

Grant of Individual Exemptions; Wells Fargo Bank, N.A., et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit documents on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings.

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Wells Fargo Bank, N.A. Located in San Francisco, California

[Prohibited Transaction Exemption 89-81; Exemption Application No. D-7933]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sale by the Crocker Real Estate Loan Fund (CRELF), a collective investment fund of qualified employee benefit plan assets, of certain first mortgage notes (the Notes) to Wells Fargo & Company (Wells Fargo), the fiduciary and therefore a party in interest with respect to CRELF, or to a subsidiary of Wells Fargo, provided that the price paid be no less than the fair market value of the Notes as of the date of sale as determined by an independent and qualified appraiser.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on July 3, 1989 at 54 FR 27960.

For Further Information Contact: Joseph L. Roberts III of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Drs. Elliott, Halseth and Walker, P.C. Money Purchase Pension Plan and Drs. Elliott, Halseth and Walker, P.C. Profit Sharing Plan for William L. Halseth, M.D. (together, the Plans) Located in Denver, Colorado.

[Prohibited Transaction Exemption 89-82; Exemption Application Nos. D-7961 and D-7962]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the purchase from the Plans of two promissory notes by William L. Halseth, M.D., a party in interest with respect to the Plans; provided that all terms of such

transaction are no less favorable to the Plans than those which the Plans could obtain in an arm's-length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on Monday, July 3, 1989 at 54 FR 27961.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Pension Plan for Employees of Merrill Lynch & Co., Inc. and Affiliates (the Plan) Located in New York, New York

[Prohibited Transaction Exemption 89–83; Exemption Application No. D–7859]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to (1) the proposed cash sale by the Plan of certain parcels of improved real property (the Properties) and the transfer of all existing leases on the Properties, to Merrill Lynch & Co., Inc. (the Employer), the sponsor of the Plan, provided that the price paid for each of the Properties is the greater of either (i) the price originally paid for the particular Property by the Plan, plus the cost of all capital improvements made to the Property since the time of its acquisition by the Plan, or (ii) the fair market value of the Property as of the date of sale; and (2) the proposed cash sale by the Plan of a second mortgage note (the Note), which is secured by another parcel of improved real property unrelated to the Properties, to the Employer, provided that the price paid for the Note is the greater of either (i) the outstanding principal balance on the Note, plus any accrued but unpaid interest, or (ii) the fair market value of the Note on the date of sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 14, 1989 at 54 FR 25361.

Written Comments: The Department received five comment letters. However, these letters were concerned more with the termination of the Plan than with the transactions involved in the notice of proposed exemption (the Notice).

Paragraph 4 of the Notice states that the Employer has decided to terminate the Plan, effective December 1988, and that all of the Plan's assets, including the Properties and the Note, will be liquidated in order to provide the participants and beneficiaries of the Plan with annuities in an amount equal to their Plan benefits as of the date of termination. Paragraph 4 states further that the Employer anticipates that, following the satisfaction of Plan liabilities, there will be residual assets held by the Plan which will be transferred to an employee stock ownership plan sponsored by the Employer (the ESOP). The amount transferred to the ESOP will consist solely of cash or cash equivalents and will be used to purchase stock of the Employer.

One of the comment letters was from a former employee of the Employer who states that the rights of former employees and their beneficiaries are not protected under the terms of the proposed termination of the Plan. The commenter requests that the Employer: (1) allow former employees a choice of either accepting an annuity or taking a lump sum distribution; and (2) distribute any residual assets held by the Plan, after satisfaction of all Plan liabilities, to all participants of the Plan on a pro rata basis. In addition, the commenter suggests that former employees of the Employer should have an opportunity to enjoy the benefits of ownership of stock of the Employer through the ESOP.

Another comment letter was from a former employee of the Employer who wants to know who would be covered under the ESOP and how much of the residual assets of the Plan would be used to fund the ESOP.

The remaining letters did not raise any questions or comments with regard to the proposed exemption.

By letter dated August 17, 1989, the Employer responded to these comment letters.

With respect to the comment that former employees who were participants in the Plan should be proivded with the option of electing a lump sum distribution, the Employer states that such a form of payment of Plan benefits is not required either under the terms of the Plan or under the applicable provisions of the Act or the Code. With respect to the comment that residual assets remaining after termination of the Plan should be distributed on a pro rata basis to all participants, the Employer states that section 4044(d)(1) of the Act and the regulations under section 401(a)(2) of the Code allow the distribution to an employer of residual assets remaining after the termination of a qualified Plan if all liabilities to participants (and beneficiaries) have been satisfied and the plan expressly provides for such a reversion. In this regard, the Employer states that accrued benefits under the Plan for former employees, retirees, and current employees of the Employer will be provided through annuity contracts purchased from Metropolitan Life Insurance Company (Metropolitan). In addition, Section 13.2 of the Plan specifically provides for the distribution of residual assets to the Employer upon termination of the Plan.

With respect to the comment regarding who would be covered by the ESOP, the Employer states that the ESOP will cover all current employees of the Employer and most employees of its affiliates. Participants in the Plan will also be participants in the ESOP if they are still employed by the Employer at the time the ESOP is established. The Employer represents that the establishment of the ESOP, and the transfer of residual Plan assets thereto, is intended to comply with the requirements of section 4980(c)(3) of the Code. Section 4980(c)(3) allows a tax-free transfer of assets which are received by an employer as a reversion of such assets from a terminated plan if the assets are transferred to an ESOP which is established for the benefit of the employer's employees. The Employer notes that section 4980(c)(3) requires that at least half of the paritcipants in the plan also be participants in the ESOP as of the end of the first ESOP plan year. The Employer states that this requirement, as well as the other requirements of section 4980(c)(3), will be satisfied under the ESOP established with the Plan's residual assets. In addition, the Employer represents that neither section 4980(c)(3), nor any of the other applicable provisions of the Code, require that former employees or retirees be allowed to participate in such an ESOP. The Employer states that former employees and retirees of the Employer will not be covered by the ESOP because the ESOP and a new profit sharing plan are intended to replace the Plan as a means of providing a source of retirement income for current employees.

With respect to the comment regarding how much of the Plan's residual assets will be used to fund the ESOP, the Employer states that after satisfaction of all Plan liabilities (i.e. approximately $712 million), the entire balance of the remaining assets (i.e. approximately $307 million) will be transferred to the ESOP.

By letter dated August 21, 1989, the Employer has also clarified certain other matters referred to in the Notice. The Employer notes that Paragraph 4 of the Notice incorrectly cites the Plan's

termination date as December 31, 1988. The Employer states that the Plan was terminated effective December 13, 1988. In addition, the Employer notes that Paragraph 13(e) of the Notice incorrectly suggests that the proposed transactions will allow all of the Plan's assets to be distributed to the participants and beneficiaries of the Plan. The Employer states that most of the Plan's assets will be used to secure the accrued benefits of the Plan's participants and beneficiaries (through the purchase of annuities). The balance of the assets will be transferred to the ESOP for the benefit of the Employer's current employees.

In summary, the Employer represents that it has met its obligations under the terms of the Plan with respect to the Plan's termination and that the Plan will meet it obligations for the payment of benefits to the participants and beneficiaries. The Employer states further that the requirements of the Act and the Code will be satisfied with respect to the recapture of residual assets from the Plan and the establishment of the ESOP with such assets.

As mentioned above, the Department notes that none of the comment letters raise any objections to the proposed transactions for which exemptive relief would be granted (i.e. the sale of the Properties and the Note to the Employer). Paragraph 12 of the Notice states that the proposed transactions will facilitate a timely liquidation of the Plan's assets and will ensure that the Plan at least recoups its investment in the Properties and the Note. The trustees of the Plan also have made a determination that the proposed transactions are in the best interests of the Plan and its participants and beneficiaries.

Accordingly, after due consideration of the entire exemption file and record, the Department has determined to grant the proposed exemption.

For Further Information Contact: Mr. E.F. Williams of the Department at (202) 523–8883. (This is not a toll-free number.)

Jen Productions, Inc. Restated Money Purchase Pension Plan and Trust Agreement (the Plan) Located in Nashville, Tennessee

[Prohibited Transaction Exemption 89–84; Exemption Application No. D–7943]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to a proposed sale by the Plan of unimproved real property to Edward James Norman and Kimberly Norman, disqualified persons with respect to the Plan, provided that the Plan receives the greater of $165,000 or the fair market value at the time of the sale.[1]

For a more complete statement of facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on August 8, 1989 at 54 FR 32542.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

[1] Because Edward James Norman is the only participant in the Plan and the employer is wholly owned by Edward James Norman, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

Signed at Washington, DC, this 8th day of September, 1989.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 89–21527 Filed 9–13–89; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Meeting; Literature Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Literature Advisory Panel (Creative Writing Fellowships: Prose Section) to the National Council on the Arts will be held on October 5–6, 1989, from 9:00 a.m.–6:00 p.m. and on October 7, 1989, from 9:00 a.m.–2:00 p.m. in Room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on October 7, 1989, from 11:00 a.m.–2:00 p.m. The topic for discussion will be policy issues.

The remaining portion of this meeting on October 5–6, 1989, from 9:00 a.m.—6:00 p.m. and on October 7, 1989, from 9:00 a.m.–11:00 a.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

Yvonne M. Sabine,

Director Council and Panel Operations National Endowment for the Arts.

[FR Doc. 89–21601 Filed 9–13–89; 8:45 am]

BILLING CODE 7537–01–M

Meeting; Literature Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Literature Advisory Panel (Creative Writing Fellowships: Poetry Section) to the National Council on the Arts will be held on October 12–13, 1989, from 9:00 a.m.–6:00 p.m. and on October 14, 1989, from 9:00 a.m.–2:00 p.m. in Room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on October 14, 1989, from 11:00 a.m.–2:00 p.m. The topic for discussion will be policy issues.

The remaining portions of this meeting on October 12–13, 1989, from 9:00 a.m.–6:00 p.m. and on October 14, 1989, from 9:00 a.m.–11:00 a.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89–21602 Filed 9–13–89; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation Act of 1978, Pub. L. 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice of permits issued.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers, Permit Office, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

SUPPLEMENTARY INFORMATION: On July 26 and 31, 1989, the National Science Foundation published notices in the **Federal Register** of permit applications received. Permits were issued to the following individuals on August 31, 1989:

Wayne Trivelpiece
J. Alan Campbell

In response to the Foundation's invitation to interested parties to submit written data, comments, or views about these permit applications, one organization recommended that J. Alan Campbell not be authorized to enter Specially Protected Areas. The permit awarded to Mr. Campbell includes a special condition that entry to Specially Protected Areas is prohibited.

Charles E. Myers,

Permit Office, Division of Polar Programs.

[FR Doc. 89–21524 Filed 9–13–89; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–498 and 50–499]

Houston Lighting & Power Co., City Public Service Board of San Antonio, Central Power and Light Co., City of Austin, TX, South Texas Project, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (Commission) is considering the issuance of amendments to Facility Operating License Nos. NPF–76 and NPF–80, issued to Houston Lighting & Power Company, et al., (the licensee) for the South Texas Project, Units 1 and 2, located at the licensee's site in Matagorda County, Texas.

Environmental Assessment

Identification of Proposed Action

By letter dated April 18, 1989 (ST–HL–AE–3040) the licensee submitted proposed changes to the Final Safety Analysis Report (FSAR) documenting the results of safety evaluations that account for the effects of the reactor coolant system (RCS) flow anomaly. The flow anomaly, believed to be multiple rotational flows in the lower reactor vessel plenum, causes coolant flow maldistributions in the core. The flow maldistribution results in increased coolant temperatures, local reductions in power, and a reduction in the margin to Departure from Nucleate Boiling (DNB). The core DNB criterion were reevaluated using the WRB–1 critical heat flux correlation which resulted in a recalculated generic margin of 7.8% to accommodate DNBR penalties.

Need for Proposed Action

The proposed changes are needed to support the minimum RCS flow rate specified in the plant Technical Specifications (TS).

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed changes to the FSAR. It has concluded that the use of the WRB–1 correlation is acceptable and that there is sufficient margin to offset the DNBR penalty due to the RCS flow anomaly. Therefore, the proposed changes do not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed changes involve systems located within the restricted area as defined in 10 CFR part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed 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 June 15, 1989 (54 FR 25512). 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 result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statements for the South Texas Project, Units 1 and 2, dated August 1986 (NUREG–1171).

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 to this action, see the application for license amendments dated April 18, 1989. Copies are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the local public document rooms located at the Wharton County Junior College, J.M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488 and Austin Public Library, 810 Guadalupe Street, Austin, Texas 78701.

Dated at Rockville, Maryland, this 7th day of September 1989.

For the Nuclear Regulatory Commission.

Frederick J. Hebdon,

Director, Project Directorate IV, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89–21633 Filed 9–13–89; 8:45 am]

BILLING CODE 7590–01–M

RAILROAD RETIREMENT BOARD

Determination of Quarterly Rate of Excise Tax for Railroad Retirement Supplemental Annuity Program

In accordance with directions in section 3221(c) of the Railroad Retirement Tax Act (26 U.S.C., section 3221(c)), the Railroad Retirement Board has determined that the excise tax imposed by such section 3221(c) on every employer, with respect to having individuals in his employ, for each work-hour for which compensation is paid by such employer for services rendered to him during the quarter beginning October 1, 1989, shall be at the rate of 26 cents.

In accordance with directions in section 15(a) of the Railroad Retirement Act of 1974, the Railroad Retirement Board has determined that for the quarter beginning October 1, 1989, 33.5 percent of the taxes collected under sections 3211(b) and 3221(c) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Account and 66.5 percent of the taxes collected under such sections 3211(b) and 3221(c) plus 100 percent of the taxes collected under section 3221(d) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Supplemental Account.

Dated: September 7, 1989.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 89–21646 Filed 9–13–89; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[34–27213; File No. SR–ICC–89–03]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Intermarket Clearing Corporation Relating to Delivery and Settlement of On-The-Run Treasury Securities Futures Contracts for Which the ACC Commodities Corporation is the Designated Contract Market

September 1, 1989.

Pursuant to section 19(b) (1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b) (1), notice is hereby given that on August 18, 1989, The Intermarket Clearing Corporation ("ICC") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change is intended to facilitate the delivery and settlement of on-the-run Treasury Securities.

Futures contracts for which the AMEX Commodities Corporation ("ACC" or "Exchange") is the designated contract market. These contracts will be eligible for cross-margining.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change is intended to facilitate the delivery and settlement of on-the-run Treasury Securities Futures Contracts for which the AMEX Commodities Corporation ("ACC" or "Exchange") is the designated contract market. Identical rules were submitted to the Commodity Futures Trading Commission ("CFTC").[1] Although this rule change relates primarily to ICC's futures clearing activities, this rule change is being submitted pursuant to Section 19(b)(2) in that it is a product which ICC intends to make eligible for cross-margining.

Because the provisions of Chapter XV are based in numerous respects upon other ICC rules that already have been reviewed and approved by the Securities and Exchange Commission, the discussion below focuses principally upon those aspects of the rules in Chapter XV that differ significantly from other rules of ICC.

Rule 1501 provides generally that the Rules in Chapter XV are applicable to ACC on-the-run Treasury securities futures and that, except to the extent that specific rules in Chapter XV shall govern, the provisions of all other Rules of ICC continue to apply. Rule 1502 sets forth certain definitions for purposes of Chapter XV. The defined term "primary delivery date" establishes the second business day following the final trading day for any on-the-run Treasury securities futures contract as a fixed date from which various calculations of time, pertinent to other Rules in this Chapter, are made. For example, and as provided in Rule 1508, interest ceases to accrue to the delivering Clearing

[1] ICC submitted its rule filing to the CFTC on May 2, 1989 and June 20, 1989. The rule change is currently pending before the CFTC.

Member on the primary delivery date (although deliveries can be made for up to twenty calendar days thereafter). The remaining defined terms are self-explanatory. Delivery of on-the-run Treasury securities futures contracts may be made only during a delivery period that begins after those contracts have ceased trading. Rule 1503 corresponds to ACC's proposed Rule 1013(a) and provides that the delivery period for the proposed ACC contract is that period beginning on the primary delivery date and ending on the twentieth calendar day thereafter. Rule 1503(a) also contains provisions regarding the treatment of non-business days (including New York banking holidays). Rule 1503(b) provides the ICC may advance or postpone any delivery date for on-the-run Treasury securities futures contracts whenever such action is deemed by ICC to be necessary or desirable to meet unusual conditions. Similar provisions are contained elsewhere in ICC rules. *See, e.g.*, Rule 1202(b) (foreign currency futures); Rule 1304(b) (New York Futures Exchange ("NYFE") Treasury bond futures).[2]

Rule 1504 states the general obligation of a Clearing Member to cause all positions that remain open after the close of trading in a delivery month to be settled by making or taking delivery. Rule 1505(a) sets forth ICC's procedures for the assignment of delivery obligations after the last day of trading. Specifically, it provides that ICC will determine at or before 7:00 a.m. Chicago time (8:00 a.m. New York time) the number of long and short on-the-run Treasury securities futures contracts remaining open in each account of a Clearing Member. Having determined the remaining open positions in each account of a Clearing Member, ICC will net the settlement obligations of each Clearing Member in the firm account and any non-customer account of that Clearing Member and separately, in the customer accounts of the Clearing Member. Unlike certain other contracts cleared by ICC, such as the foreign currency contracts traded on the Philadelphia Board of Trade, ICC does not presently contemplate that it will net positions between the firm account of a Clearing Member and its customer accounts.[3] Thus, similar to ICC's Rule 1307(b) for NYFE's Treasury bond futures, any net long or short position remaining open in either of those types of accounts will be settled by delivery.[4]

Rule 1505(b) describes the reports issued by ICC to facilitate the delivery process. ICC will issue to each Clearing Member a report identifying for each Clearing Member: (i) The identity of the opposite Clearing Member with whom settlement is to be made; (ii) the account of the Clearing Member for which delivery is to be made or taken; (iii) the primary delivery date; (iv) the number of contracts for which delivery is being made; and (v) the settlement price of on-the-run Treasury securities futures. Where, however, the positions of a Clearing Member have been netted in accordance with Rule 1505 (a)(2) or (a)(3), a report specifying the term on which settlement by delivery is to be made is inappropriate. A proviso to Rule 1505(b) therefore provides that ICC will in such a case issue a report reflecting the netting that has already been conducted in the accounts of the Clearing Member.

Rule 1506(a) provides that where a Clearing Member's settlement obligations have been netted as described above, those obligations will be deemed to be discharged at 1:00 p.m. Chicago time (2:00 p.m. New York time) on the primary delivery date. This is similar to the treatment of netted foreign currency deliveries and netted Treasury bond deliveries, which pursuant to the terms of Rule 1206 and 1308, respectively, are deemed to be fully discharged at the time those contracts would otherwise have been settled by delivery. Rule 1506(a) also affords similar treatment to those situations in which the delivery instructions issued by a Clearing Member that is simultaneously net short and long in the firm and customer accounts (or vice versa) are allocated to that same Clearing Member.

Rule 1506(b) requires each delivering Clearing Member to issue delivery instructions to the receiving Clearing Members to whom its delivery obligations have been allocated. These instructions, which must be issued by the Clearing Member prior to 2:00 p.m. Chicago time (3:00 p.m. New York time) on the business day preceding the day on which delivery will be made, must include: a description of the on-the-run Treasury securities that are to be delivered; an invoice for the delivery amount for each contract; the primary delivery date and, if different, the date upon which delivery is to be made; the delivering Clearing Member's correspondent bank and account number at that bank; and such other information as ICC deems necessary. Rule 1506(c), in turn, requires the receiving Clearing Member to provide to the delivering Clearing Member by 3:00 p.m. Chicago time (4:00 p.m. New York time) on the same business day a Banking Notification containing the information necessary to complete delivery.

Rule 1506(d) provides, in essence, that the delivering Clearing Member must have on-the-run Treasury securities in place at a correspondent bank (as defined in Rule 1507) in time for these securities to be transferred on the delivery date. Delivery is to be made by book entry against payment of the delivery amount in Federal funds in accordance with applicable procedures of the Department of the Treasury. Except as otherwise provided in Rule 1503(a) and Rule 1506(f) (relating to banking holidays and failures of the "Fedwire" system), all deliveries must be completed prior to the close of the Federal Reserve Wire Network on the following issuance of instructions by the delivering Clearing Member pursuant to 1506(b).

Rule 1508 provides that the amount to be paid in settlement of an on-the-run Treasury securities futures contract is equal to the final settlement price as determined by the Exchange. Under Rule 1508, interest accrues to the delivering Clearing Member only through and including the primary delivery date so as to remove any incentive for a short Clearing Member to fail to make delivery on that date. Thus, although a Clearing Member may make delivery at any time during the twenty-day delivery period (Rule 1503), that Clearing Member will cease to receive interest on the delivered securities as of the primary delivery date.

Rules 1509–1511 relate to a Clearing Member's failure to make or take delivery. With the exception of paragraph (a) of Rule 1509, Rules 1509–1511 are similar to the provisions of

---

[2] Rule 1304(b), as well as all of Chapter XIII, is the subject of ICC's rule change currently pending before the Commission. *See*, SR–ICC–89–2. The CFTC has approved similar rules allowing ICC to clear NYFE Treasury Bond futures.

[3] ICC Rule 402 authorizes a Clearing Member to establish and maintain with ICC different types of accounts, including a "firm account," a "public customers' account," and various accounts for floor trades and others who, depending on their relationship to the Clearing Member, may appropriately be contained in a "proprietary trader's account," a "customer floor trader's account," a "combined floor trader's account," or an "off-floor trader's account." Rule 1505(a) provides that the firm (house) account of the Clearing Member is to be netted against any positions remaining open in any noncustomer accounts of the Clearing Member, such as a proprietary floor trader's account. That Rule further specifies that the public customers' account is to be netted against all other accounts of the Clearing Member (*i.e.*, any customer floor trader, combined floor trader, or off-floor trader accounts).

[4] Rule 1307(b), as well as all of Chapter XIII, is the subject of ICC's rule change pending before the Commission. *See*, SR–ICC–89–2. The CFTC has approved similar rules allowing ICC to clear NYFE Treasury Bond futures.

existing ICC Rules 1311–1313.[5] Rule 1509(a) provides that in the event a delivering Clearing Member fails to complete delivery by the close of the Fedwire on the last day of the delivery period, the receiving Clearing Member shall on the next business day buy in the undelivered securities for immediate delivery. Thus, although delivery may be made at any time during the delivery period, ICC's potential liability in guaranteeing the contract is limited to the price of the underlying commodity on the business day following the last day of the delivery period.

As required by Regulation 190.05(b) of the Commodity Exchange Act, ICC Rule 1512 permits customers to make or take delivery in the event that the Clearing Member carrying their account has been adjudicated bankrupt or has filed a voluntary petition in bankruptcy on or after the date trading has ceased or in the event trading has ceased before such contracts can be liquidated by a trustee. As delivery obligations arise under Rule 1504 only after the close of trading, no provision corresponding to Regulation 190.05(b)(1)(ii) is necessary. Rule 1512 is in all other respects materially identical to ICC Rule 1314, which is pending before the Commission.

* * * * *

The proposed rule change is consistent with the purposes and requirements of section 17A of the Securities Exchange Act of 1934 as amended, because it expands the products which would be eligible for cross-margining. Cross-margining of these positions would enhance the safety of the clearing system while providing lower clearing margin costs to ICC's Clearing Members.

B. Self-Regulatory Organization's Statement on Burden on Competition

ICC does not believe that the proposed rule change would impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were not and are not intended to be solicited with the proposed rule change and none were received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number SR–ICC–89–3 and should be submitted by October 5, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–21626 Filed 9–13–89; 8:45 am]

BILLING CODE 8010–01–M

[5] *See.* SR–ICC–89–2.

[Release No. IC–17129; File No. 812–7303]

Franklin Investment Trust, et al.

September 7, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicants: Franklin Investment Trust (the "Trust") and Franklin Valuemark Funds ("Valuemark").

Summary of Application: Applicants seek an order of exemption to the extent necessary to permit Valuemark to acquire substantially all of the assets of the Trust.

Filing Date: The application was filed on April 21, 1989 and amended on June 26, 1989 and September 5, 1989.

Hearing of Notification of Hearing: If no hearing is ordered the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any request must be received by the SEC no later than 5:30 p.m. on October 2, 1989. Request a hearing in writing, giving the nature of your interest, the reasons for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send a copy to the Secretary of the SEC along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549, Applicants, 777 Mariners Island Blvd., San Mateo, California 94404.

FOR FURTHER INFORMATION CONTACT: Wendell M. Faria, Staff Attorney, at (202) 272–3450 or, Clifford E. Kirsch, Acting Assistant Director, at (202) 272–2061 (Division of Investment Management, Office of Insurance Products and Legal Compliance).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from either the SEC's Public Reference Branch (if applying in person), or the SEC's commercial copier at (800) 231–3282 (in Maryland (301) 283–4300).

Applicants' Representations

1. The Trust, a Massachusetts business trust, is an open-end, diversified, management investment company registered under the 1940 Act. The Trust has established eleven Portfolios, each being a separate series of the Trust, as follows: Equity Portfolio; Gold Portfolio; Real Estate Portfolio; Utilities Portfolio; High Yield Income Portfolio; Money Market Portfolio; U.S. Treasury Portfolio; Zero Coupon Portfolio–1995; Zero Coupon Portfolio–2005; and Zero Coupon Portfolio–2010 (collectively referred to herein as the "Portfolios").

2. The shares of the Trust are currently sold only to a separate account of North American Life and Casualty Company ("NALAC"), NALAC Variable Account A. NALAC established NALAC Variable Account A, a unit investment trust registered under the 1940 Act. for the purpose of

holding assets attributable to certain variable life insurance policies. NALAC Variable Account A is divided into eleven subaccounts, each of which invests only in shares of one of the corresponding Portfolios of the Trust.

3. Valuemark, a Massachusetts business trust, is an open-end, diversified, management investment company registered under the 1940 Act. Valuemark has established fourteen Funds, each being a separate series of Valuemark, as follows: Equity Growth Fund; Precious Metals Fund; Real Estate Securities Fund; Utility Equity Fund; High Income Fund; Money Market Fund; Global Income Fund; Corporate Bond Fund; Income Securities Fund; U.S. Government Securities Fund; Zero Coupon Fund–1995; Zero Coupon Fund–2000; Zero Coupon Fund–2005; and Zero Coupon Fund–2010 (collectively referred to herein as the "Funds").

4. The shares of Valuemark are currently sold only to NALAC Variable Account B, a separate account of NALAC. NALAC established NALAC Variable Account B, a unit investment trust registered under the 1940 Act, for the purpose of holding assets attributable to certain variable annuity contracts. NALAC Variable Account B is divided into fourteen subaccounts, each of which invests only in shares of the corresponding Funds of Valuemark.

5. Applicants propose that eleven of the fourteen Valuemark Funds each acquire all of the assets of a corresponding Portfolio of the Trust pursuant to the terms and conditions stated in the Agreement and Plan of Reorganization (the "Agreement"). Under the terms of the Agreement, Valuemark, the surviving entity, will acquire all of the assets of the Trust in exchange for the issuance of shares of Valuemark to the shareholders of the Trust (the "Reorganization"). The Agreement provides that the exchange of shares of the Trust's Portfolios for shares of the Valuemark Funds shall be accomplished on the basis of the relative net asset values of the respective Portfolios and Funds. The transaction is intended to be a tax-free reorganization within the meaning of section 368(a)(1)(D) of the Internal Revenue Code of 1986, as amended.

6. Applicants state that on January 17, 1989, the Boards of Trustees of the Trust and Valuemark approved the Agreement. The Agreement will be submitted to a vote of shareholders of the Trust for approval at a special meeting of shareholders in accordance with the requirements of the 1940 Act and the regulations promulgated thereunder. Each owner of a variable life insurance policy that participates in NALAC Variable Account A is entitled to instruct NALAC how the number of shares related to his or her interest in NALAC Variable Account A will be voted. Shares held by NALAC and shares for which properly executed voting instruction forms are not received will be voted by NALAC in the same proportion as shares for which voting instructions have been received by NALAC. To be approved, the Agreement must receive approval of a majority of the outstanding shares of each Portfolio.

7. Applicants state that the Board of Trustees of the Trust, including all of the Trustees who are not interested persons as defined in the 1940 Act, has approved the proposed Reorganization as being in the best interest of the shareholders of the Trust. Applicants similarly state that the Board of Trustees of Valuemark, including all of the Trustees who are not interested persons as defined in the 1940 Act, has approved the proposed Reorganization as being in the best interest of the shareholders of Valuemark.

8. Applicants indicate that the Board of Trustees of the Trust believes that the proposed Reorganization will be advantageous in several respects. First, the transaction will afford Trust policyholders a greater variety of investment options since Valuemark has fourteen Funds from which they may choose while the Trust offers only eleven Portfolios. Second, certain economies of scale may be realized by combining the Portfolios and the Funds notwithstanding the Funds' higher management fee. In this respect, Applicants assert that the Reorganization should result in lower aggregate fees from attorneys, auditors and custodians, lower administrative expenses, and lower expenses for such items as the preparation of shareholder reports. In addition, Applicants anticipate that the assets related to the sale of single premium life insurance policies may not grow significantly in light of recent changes in the tax law, while the assets related to the sale of variable annuity contracts funded by Valuemark are expected to grow. In sum, the Board of Trustees of both the Trust and Valuemark have concluded that the Reorganization would be beneficial both from the standpoint of promoting effective investment management and from the standpoint of reducing overall operating expenses.

9. Franklin Advisers, Inc. ("Advisers") is the investment manager to both the Trust and Valuemark. Advisers will bear all of the expenses incurred in connection with entering into and carrying out the provisions of the Agreement, whether or not the Reorganization is consummated. Neither the Trust nor Valuemark will incur any expenses of the Reorganization, including the Application.

10. Because the fees paid to Advisers by Valuemark are higher than the fees paid to Advisers by the Trust, one effect of the Reorganization will be an increased management fee for the Trust's shareholders who will become Valuemark shareholders. Under the Trust's investment management agreement with Advisers, each Portfolio pays Advisers a fee computed at the annual rate of .40% of the net assets of that Portfolio on the first $100 million of net assets, plus .30% of net assets over $100 million. Under Valuemark's investment management agreement with Advisers, the fee to be paid by each Fund to Advisers is computed at the annual rate of .625% of net assets on the first $100 million, plus .50% of net assets over $100 million up to and including $250 million, plus .45% of net assets over $250 million. The fee rate for each Fund is reduced further on net assets over $10 billion.

11. Applicants submit that the "increased" Valuemark fee is not excessive, is fair to shareholders, and is in line with industry standards. Thus, notwithstanding the effect of a higher investment management fee, the terms of the transaction should be construed as "reasonable and fair" and not involving "overreaching on the part of any person concerned" under section 17(b) of the 1940 Act. Furthermore, the Proxy Statement and Prospectus which will be mailed to policyholders in connection with the Trust's Special Meeting of Shareholders convened for the purpose of approving the Agreement fully discloses to policyholders that one effect of the Reorganization will be increased management fees. The policyholders will therefore be fully informed in making their decision as to how to instruct NALAC to vote with respect to approval of the Agreement.

12. Applicants represent, and have been so advised by counsel, that no barriers currently exist under applicable state law or otherwise to the Trust's entering into an agreement with Advisers pursuant to which the maximum management fee is increased to a rate of .625% per annum, providing that shareholder approval is sought and obtained pursuant to the 1940 Act. Applicants also represent that if the management fee were so increased, no barriers currently exist under applicable state law or otherwise that would prevent the Trust from subsequently entering into an agreement to effect a reorganization, such as the proposed

Reorganization. Applicants further represent that no barriers currently exist under applicable state law or otherwise which would prevent Applicants from increasing the management fee in the manner proposed.

13. Applicants state that the Boards of Trustees of the Trust and Valuemark are composed of the same individuals and that Advisers serves as the investment manager to both the Trust and Valuemark. In addition, all of the outstanding shares of the Trust are owned of record by NALAC Variable Account A and all of the outstanding shares of Valuemark are owned of record by NALAC Variable Account B. As a result of these relationships, Applicants may be deemed to be under common control and, therefore, affiliated persons of each other for the purposes of the prohibitions set forth in section 17(a) of the 1940 Act. Alternatively, they may be deemed to be affiliated persons of affiliated persons of each other.

14. Applicants seek an order of the Commission, pursuant to section 17(b) of the 1940 Act, exempting them from the provisions of section 17(a) of the Act. In this regard, Applicants represent that (a) the terms of the proposed transaction, including the consideration to be paid or received, are fair and reasonable, and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policy of each registered investment company concerned, as recited in its registration statement and in reports filed under the 1940 Act; and (c) the proposed transaction is consistent with the general purpose of the 1940 Act. Applicants further represent that the interests of the life insurance policyholders of the Trust and the annuity contractholders of Valuemark will not be adversely affected by the Reorganization, nor will it result in the dilution of the interests of existing life insurance policyholders of the Trust. Finally, Applicants assert that the Reorganization may result in reduced operating costs and enhanced flexibility of asset management and opportunity for portfolio diversification.

Relief Requested

Applicants submit that the terms of the proposed Reorganization meet all of the requirements of section 17(b) of the 1940 Act. Accordingly, applicants request that the SEC issue an order exempting the proposed transactions from the provisions of section 17(a) of the 1940 Act.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-21621 Filed 9-13-89; 8:45 am]

BILLING CODE 8010-01-M

[FILE NO. 22-19550]

Application and Opportunity for Hearing; USAir, Inc.

September 8, 1989.

Notice is hereby given that USAir, Inc. (the "Company") has filed an application pursuant to clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (hereinafter sometimes referred to as the "Act") for a filing by the Securities and Exchange Commission (the "Commission") that the trusteeship of The Connecticut National Bank (the "Bank") under any one of two or more indentures to be qualified under the Act relating to the Pass Through Certificates is not so likely to involve a material conflict of interest with its trusteeship under (a) fourteen indentures dated January through July, 1989 that were not qualified under the Act because the securities were exempt from registration under the Securities Act and (b) nine indentures dated between 1985 and 1987 that were not qualified under the Act because the securities were exempt from registration under the Securities Act, as to make it necessary in the public interest or for the protection of investors to disqualify Bank from acting as trustee under the aforementioned indentures.

Section 310(b) of the Act provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest (as defined in the section), it shall within ninety days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of that section provides, with certain exceptions stated therein, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture of the same obligor.

The Company alleges:

(1) Bank currently acts as indenture trustee under fourteen separate loan indentures (each an "Indenture") entered into in January through July, 1989, each of which relates to a separate transaction in which the Company for the benefit of a group of banks issued equipment purchase notes (the "Notes") in a series of private placements exempt from registration under the 1933 Act. The proceeds of the Notes issued under each Indenture were used by the Company to finance 100% of the cost of one Boeing 737 aircraft (each an "Aircraft"). The Notes issued with respect to each Indenture are secured by a security interest in the Aircraft to which such Indenture relates. No Aircraft is covered by more than one Indenture and there are no cross-default or cross-collateralization provisions between the Notes issued under one Indenture and the Notes issued under any of the other thirteen Indentures.

(2) The Applicant has filed a Registration Statement on Form S-3 (the "Registration Statement") covering the proposed public offering of approximately $311,000,000 aggregate principal amount of Pass Through Certificates representing fractional undivided interests in two or more grantor trusts (each, a "Trust"), each to be formed under a Pass Through Trust Agreement ("Trust Agreement") between Bank as trustee, and the Company. Each Trust Agreement will be qualified as an Indenture under the Act and is referred to herein as a "Qualified Indenture." Notes with respect to each of the fourteen Aircraft will be purchased by the Bank under each Trust with the proceeds of the public offering of Pass Through Certificates. The Notes will be secured by a security interest in the Aircraft to which they relate, and may, in addition, be secured by an assignment of the lessor's rights to receive rentals payable by the Company on such Aircraft under an optional sale-leaseback transaction.

(3) Bank acts as indenture trustee under nine indentures (each, an "Other Indenture" and collectively, the "Other Indentures"), dated between 1985 and 1987. The proceeds of the issuance of the debt under each of eight of the Other Indentures were used to finance one aircraft. The proceeds of the issuance of the debt under the remaining Other Indenture were used to finance two aircraft. The debt issued under each of the Other Indentures is secured by a security interest in the aircraft to which such Indenture relates and by an assignment of the lessor's rights to receive rentals payable by the Company on such aircraft. None of the Other Indentures contains cross-default provisions, and the debt issued under each is not cross-collateralized by the security for (i) the debt issued under each of the eight Other Indentures, (ii) the Pass Through Certificates to be issued under the Qualified Indentures, and (iii) the Notes issued under the Indentures.

The Company is not in default in any respect under any of the Qualified Indentures, the Indentures or Other Indentures.

The Company has waived notice of hearing, hearing and any and all rights to specify procedures under the Rules of Practice of the Commission in connection with this matter.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to the application which is on file in the Offices of the Commission's Public Reference Section, File Number 22-19550, 450 Fifth Street, NW., Washington, DC 20549.

Notice is further given that any interested persons may, not later than October 2, 1989, request in writing that a hearing be held on such matter stating the nature of his interest, the reasons for such request and the issues of law or fact raised by such applicant which he desires to controvert, or he may request that he be notified if the Commission orders a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. At any time after said date, the Commission may issue an order granting the application, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and for the protection of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89-21622 Filed 9-13-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17128; File No. 812-7348]

Vermont Life Insurance Company, et al.

September 6, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the "Act").

Applicants: Vermont Life Insurance Company ("Vermont Life") and Vermont Variable Life Insurance Account ("Account").

Relevant 1940 Act Section: Order requested under section 26(b).

Summary of Application: Applicants seek an order to approve the substitution of securities issued by the Variable Insurance Products Fund and Zero Coupon Bond Fund for securities issued by the NLV Series Fund, Inc.

Filing Date: The application was filed on July 3, 1989 and amended on August 15, 1989.

Hearing or Notification of Hearing: If no hearing is ordered the application will be granted. Any interested person may request a hearing on the application or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on October 2, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send a copy to the Secretary of the SEC, along with proof of service by affidavit or, in the case of an attorney-at-law, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, Vermont Life Insurance Company, National Life Drive, Montpelier, Vermont 05604.

FOR FURTHER INFORMATION CONTACT: Jeffrey M. Ulness, Attorney at (202) 272-3027 or Clifford E. Kirsch, Acting Assistant Director at (202) 272-2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is the summary of the application; the complete application is available for a fee from either the SEC's Public Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 253-4300).

Applicants' Representations

1. Vermont Life is a stock life insurance company incorporated in Vermont on December 7, 1981.

The Account was established by Vermont Life as a separate investment account on February 5, 1985, and currently serves as the funding medium for two flexible premium variable life insurance contracts (the "Contracts") issued by Vermont Life. The Account is organized and registered under the Act as a unit investment trust. The Account currently has nine sub-accounts, each of which invest exclusively in the shares of an investment portfolio of NLV Series Fund, Inc., described below.

2. The Contracts permit contract owners to allocate net premium payments among any number of the nine sub-accounts as long as each sub-account has at least 10% of any net premium payment. Owners may transfer accumulated values at any time among the sub-accounts up to five times in any contract year. Currently, there is no charge for transfers but Western Life reserves the right to institute a charge.

3. NLV Series Fund, Inc. ("NLV Series") was organized as a Maryland corporation in 1985 and is registered under the 1940 Act as an open-end diversified management investment company of the series type and has nine portfolios: NLV Money Market Fund, NLV Aggressive Equity Fund, NLV Equity Fund, NLV Fully Managed Fund, NLV Bond Fund, NLV Real Estate Securities Fund, and three NLV Zero coupon Bond Funds (1992, 1997 and 2002).

The Variable Insurance Products Fund and Zero Coupon Bond Fund (together, the "Fidelity Funds") were established on November 13, 1981 and February 21, 1986, respectively, as Massachusetts business trusts and are both registered under the 1940 Act as open-end diversified management investment companies of the series type. Between them, the Fidelity Funds have eight investment portfolios. The Variable Insurance Products Fund has the Money Market Portfolio, the High Income Portfolio, the Equity-Income Portfolio, the Growth Portfolio, and the Overseas Portfolio. The Zero Coupon Bond Fund has the 1993 Portfolio, the 1998 Portfolio and the 2003 Portfolio.

4. NLV Series commenced operations on May 1, 1987, at which time National Life invested $30 million in it in order to provide sufficient assets for the nine portfolios to become diversified. Vermont Life began issuing the first Contracts in June 1987 and the other in early 1988. As of May 31, 1989, Vermont Life had only sold 43 Contracts, with total premium payments of $1,698,920. At the time NLV Series began operations it entered into a written expense limitation and reimbursement agreement with Vermont Life which provided that Vermont Life would reimburse NLV Series for expenses incurred by each investment portfolio equal to that portfolios advisory fee plus .25% of average daily net asset value per year. This written contract expired on December 31, 1988, but Vermont Life has continued to reimburse expenses of the NLV Series according to its terms. At the current size of net assets, this reimbursement policy effectively places a ceiling on annual expense ratios of .50% of average daily net assets for the three zero coupon bond portfolios and .75% of average daily net assets for the other six portfolios. NLV Series has also recently received a notice form National Westminster Bank, its transfer agent, custodian and fund accounting agent, that it was selling its mutual fund service operations and that it will

terminate its provision of these services as of August 31, 1989.

5. Applicants propose to substitute shares of eight series of the Fidelity Funds for nine series of shares of NLV Series by transferring accumulated values of contract owners from the nine sub-accounts holding shares of NLV Series to new sub-accounts which will hold shares of the Fidelity Funds. Applicants propose to do this by redeeming shares of the various NLV Series and purchasing with the proceeds shares of the Fidelity Funds according the reallocation instructions from contract owners. The sub-accounts investing in shares of the NLV Series would then be eliminated.

6. The substitution would take place at simple relative net asset value with no change in the amount of any contract owner's cash value or in the dollar value of his or her investment in an Account or underlying portfolio. Contract owners will not incur any fees or charges as a result of the substitution nor will their rights or Vermont Life's obligations under the Contracts be altered in any way. All expenses incurred in effecting the proposed substitution, including legal, accounting and other fees and expenses, will be paid by Vermont Life. In addition, the proposed substitution will not impose any tax liability on contract owners. The proposed substitution will not cause the fees and charges currently being paid by existing contract owners to be greater after the proposed substitution than before the proposed substitution. The substitution will not be treated as one of the five transfers permitted to each contract owner per contract year. All contract owners will receive notice in the form of a supplement to the May 1, 1989 prospectuses for the Account that Vermont Life is seeking an order from the SEC approving the substitution. In addition to this application, Applicants are seeking approval of the proposed substitution from the Vermont Insurance Commissioner. After the proposed substitution occurs, National Life intends to redeem its investment of seed money in NLV Series. By making this redemption after the proposed substitution, National Life, rather than contract owners, will bear any expense of liquidating portfolio investments. NLV Series will then apply to the Commission, pursuant to section 8(f) of the Act, for an order that it has ceased to be an investment company, and dissolve under Maryland Law.

7. The prospectus supplement sent to contract owners will include a complete explanation of the proposed substitution, notice that the contract owners will be asked for new allocation instructions if the substitution occurs, and a description of the Fidelity Funds. No less than forty-five days prior to the planned date of the proposed substitution, Vermont Life will supply all contract owners with copies of the current Fidelity Fund prospectuses and request instructions for reallocation of accumulated values and future purchase payment. No less than ten days prior to the planned date of the proposed substitution, Vermont Life will contact any contract owners who have not submitted new allocation instructions and request that they do so. In the event that any contract owner neglects to provide new allocation instructions his or her accumulated value will be tranferred from the sub-account holding shares of NLV Series to those holding shares of the Fidelity Funds, as follows:

For shares of the NLV Series	Shares of Fidelity Funds
Money Market Fund	Money Market Portfolio.
Aggressive Equity Fund	Growth Portfolio.
Equity Fund	Equity Income Portfolio.
Fully-Managed Fund	Money Market Portfolio.
Bond Fund	Money Market Portfolio.
Real Estate Securities Fund.	Money Market Portfolio.
1992 Zero Coupon Bond Fund.	1993 Zero Coupon Bond Portfolio.
1997 Zero Coupon Bond Fund.	1998 Zero Coupon Bond Portfolio.
2002 Zero Coupon Bond Fund.	2003 Zero Coupon Bond Portfolio.

Contract owners who become subject to this default option may, within ninety days of the proposed substitution, provide new allocation instructions to Vermont Life without the resulting transfer being counted as one of the five transfers permitted in any contract year.

8. The Contracts reserve to Vermont Life the right, subject to SEC approval, to substitute shares of another investment company or shares of another investment portfolio of NLV Series for shares of NLV Series held by a sub-account or to add or eliminate one or more sub-accounts. The prospectuses for the Account clearly discloses this under the caption "Addition, Deletion, or Substitution of Investments." Vermont Life reserved this right of substitution and elimination to protect itself and its contract owners in precisely the type of circumstances it faces now: failure of an underlying management investment company to meet the reasonable expectations of the legal and beneficial security holders that it would grow to sufficient size that it could attain reasonable net investment return and asset diversification.

9. With no new variable insurance products currently under development and few prospects for meaningful sales of the Contracts, Vermont Life does not believe that the current financial circumstances of NLV Series will improve in the foreseeable future. Moreover, Vermont Life may not always remain able to spend a large amount of money to maintain the favorable expense ratios that NLV Series has always enjoyed. Indeed, although Applicants recognize the burden that termination of the reimbursement policy would place on contract owners and will endeavor to avoid such an unfavorable event, Vermont Life cannot sustain the reimbursement policy indefinitely. Absent the proposed substitution or some other similar remedy, the contract owners will eventually have to bear the real expenses necessary to operate a series type investment company that has attracted very few assets.

10. Vermont Life has determined that under these circumstances it is in the best interests of contract owners to replace the investment portfolios of the NLV Series with alternative investment vehicles which, because of their size, have attained economies of scale not available to NLV Series and which can be expected to continue to increase their size and economies of scale in the future. Applicants believe that without assets representing seed money shares, NLV Series is too small (after being divided among several portfolios) to be profitably managed, except as part of a larger fund. The chief considerations of Vermont Life in selecting a substitute investment company were: (a) commitment of the variable insurance "funding" business demonstrated by several shared funding arrangements; (b) a strong "track record" for the investment adviser as a mutual fund manager; (c) the likelihood of asset growth from sources other than the Account; and (d) the name recognition (and consequent comfort level for contract owners) of the investment adviser. After determining that funds managed by competing life insurance companies would not be in the best interests of contract owners or itself, Vermont Life approached several of mutual fund groups that managed funds (which offer shares to insurance company separate accounts) similar in scope to NLV Series. Among these, only Fidelity Management & Research Company (investment advisers to the Fidelity Funds) ultimately offered to take over management of the assets of NLV Series attributable to contract owners.

11. The type and diversity of investment objectives among the various investment portfolios of the Fidelity Funds make them suitable and appropriate as investment vehicles for contract owners currently invested in NLV Series. The Zero Coupon Bond Fund offers investment portfolios that are substantially the same as their NLV Series counterparts. The Variable Insurance Products Fund's Money Market Portfolio, Growth Portfolio and Equity-Income Portfolio have investment objectives that are very similar to their NLV Series substitutes, and pursue their objectives by investing in the same types of securities as those invested in by their NLV Series substitutes. As for the NLV Fully Managed Fund, NLV Bonds Fund, and NLV Real Estate Securities Fund, the Fidelity Funds currently offer no similar counterpart. Nevertheless, despite this, the proposed substitution will benefit contract owners for several reasons. First, the Fidelity Funds offer a broad range of options for contract owners with respect to investment objectives and this array of options is comparable to that offered by NLV Series and at least as broad as that offered by any alternative funding vehicle available to Applicants. In addition, Applicants believe that the Fidelity Funds are likely to continue to develop new investment portfolios whereas NLV Series would not be at all likely to expand its offerings. Second, contract owners will have five income oriented investment options in the Fidelity Funds and should soon have an asset allocation portfolio similar to NLV Fully Managed Fund. (There is no comparable alternative to NLV Real Estate Securities Fund. However, only two Contract owners have allocated any portion of accumulated value to this investment option.) Third, the Fidelity Funds offer contract owners two investment options not available from NLV Series: the High Income Portfolio and the Overseas Portfolio. Fourth, all contract owners received prospectus disclosure indicating that Vermont Life Might change investment vehicles in the event an underlying fund became unsuitable as an investment for the Account or the purposes of the Contracts.

12. The Fidelity Funds' investment portfolios which Vermont Life proposes to substitute have significantly lower operating expenses (apart from investment advisory fees) than the NLV Series investment portfolios which they would replace. This can be seen from the fact that they have lower expense ratios notwithstanding that (with the exception of the Money Market Fund) NLV Series portfolios have slightly lower investment advisory fees. Applicants assert that lower expense ratios generally indicate a potential for higher investment returns for contract owners than would comparable portfolios having higher expense ratios. With respect to those portfolios of the Fidelity Funds that are likely to experience future expense ratios (investment advisory fees and operating expenses) greater than those of an NLV Series investment portfolio, Applicants believe that it is reasonable to anticipate that contract owners will benefit from the expense ratios of those portfolios of the Fidelity Funds that may be significantly lower than those of the investment portfolios of the NLV Series.

13. In further support of the proposed substitution, Applicants assert that contract owners may, subject to appropriate limitations, always exercise their own judgment as to the most appropriate type of investment vehicle and therefore, the proposed substitution retains for them the investment flexibility which is a central feature of the Contract. All contract owners may transfer their accumulated value, without costs or other disadvantages, to any other sub-account up to five times per contract year and for ninety days after the substitution, may make one transfer among or between the sub-accounts without it counting as one of the five permitted transfers. In this regard, the proposed substitution is not the type of substitution which section 26(b) was designed to govern. Unlike traditional unit investment trusts where a depositor or trustee can only substitute an investment security in a manner which permanently affects all the investors in the trust, the Account (although analogous to a unit investors in the trust, the ways) provides each contract owner with the right, in effect, to do his or her own substitutions and thereby protect his or her investments without redemption. The proposed substitution will not therefore, result in the type of costly forced redemption which section 26(b) was intended to guard against. No sales load deductions will be made beyond those already provided for in the Contracts and the substitutions will be effected at relative net asset value without the imposition of any transfer of other charges.

14. The application states that, for all the reasons stated above, the proposed substitution is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-21627 Filed 9-13-89; 8:45 am]

BILLING CODE 8010-01-M

[34-27214; File No. SR-MCC-89-11]

Self-Regulatory Organizations; Proposed Rule Change by Midwest Clearing Corporation Relating to MCC-Only Participation

September 1, 1989.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on August 24, 1989 the Midwest Clearing Corporation filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change of Midwest Clearing Corporation ("MCC") would (i) eliminate the current MCC rule requirement that limits MCC participation to those firms who are also Participants in Midwest Securities Trust Company ("MSTC"), and (ii) impose a revised fee for the new category of MCC-only Participants.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Currently, under MCC's Article VIII, Rule 1, Sec. 1, applicants to become a Participant of MCC are limited to,

among other things, persons that are also Participants of MSTC. MSTC and MCC are affiliates and wholly-owned subsidiaries of the Midwest Stock Exchange, Inc.

Effective upon implementation of the proposed rule change, MCC will eliminate the requirement of MSTC Participation. Pursuant to its existing rules, MCC may implement specific operational procedures regarding the settlement of transactions on behalf of MCC-only Participants.

The proposed rule change also contains an additional fee for MCC-only Participants. In addition to all applicable MCC fees (including the Standard Account Maintenance Fee), MCC will impose a Settlement Service Fee for MCC-only Participants of $200 per month. The purpose of the Settlement Service Fee is to cover costs and associated expenses incurred by MCC in (i) facilitating settlement (including physical receipt and delivery) when necessary and (ii) performing accounting and other administrative functions currently performed by MSTC on behalf of MCC and MCC Participants.

MCC believes that the proposed rule change is consistent with Section 17A of the Securities Exchange Act of 1934 (the "Act") in that it promotes the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MCC does not believe that any burdens will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

MCC has not received any comments from Participants regarding the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to file number SR–MCC–89–11 and should be submitted by October 5, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–21624 Filed 9–13–89; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–27230; File No. SR–NSCC–88–10]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by National Securities Clearing Corporation Regarding an Expanded Definition of Special Representative

The National Securities Clearing Corporation ("NSCC"), on November 10, 1988, filed a proposed rule change with the Commission under the Securities Exchange Act of 1934 ("Act"). The proposal expands NSCC's definition of Qualified Special Representative ("QSR"). Notice of the proposal was published in the **Federal Register** on January 3, 1989.[1] No comments were received. This order approves the proposal.

I. NSCC's Description of the Proposal

The proposed rule change would amend NSCC's Rule 39 (captioned "Special Representative").[2] Rule 39 currently defines a QSR as: (1) A person that operates an automated execution system and is always the contra side to each transaction; [3] or (2) such other persons as the NSCC may permit, at its discretion, to submit to NSCC trade data from such automated execution systems in automated form as locked-in trades [4] which appear on T-contracts.[5] The proposed text would expand NSCC's existing definition of QSR to include a Special Representative: (1) Whose parent corporation or affiliated corporation operates an automated execution system where such Special Representative is always the contra side to each transaction; or (2) who clears for a broker-dealer that operates an automated execution system where the broker-dealer is always the contra side to each transaction and where the subscribers to the automated execution system enter into an agreement with the broker-dealer and the Special Representative acknowledging the Special Representative's role in the

---

[1] *See* Securities Exchange Act Release No. 26223 (December 27, 1988), 54 FR 78.

[2] The term "Special Representative" has a defined status as set forth under NSCC Rules 1, 7, and 39. NSCC Rule 39 provides in part: "For the purposes of these rules, a Special Representative shall be either a Member or a Clearing Agency which applies to the Corporation for such status and designates those members and non-participants for whom it will act * * *."

NSCC states that, while technically a clearing agency can qualify as a Special Representative in its rules, the vast majority of NSCC's Special Representatives are and always have been member broker-dealers. With few exceptions, a "Special Representative" is an NSCC member that, by agreement, effects trades on behalf of third party broker-dealers and reports the resulting trade data to NSCC, with such data ordinarily representing one side of two-sided trade input. Telephone conversation between Alison N. Hoffman, Associate Counsel, NSCC, and Thomas C. Etter, Attorney, SEC, July 13, 24, August 1, 2, 1989.

Under NSCC's current practices, Special Representatives may be designated QSRs provided they: (1) Operate automated execution systems (*i.e.*, their own proprietary systems with their own subscribers), and (2) serve as the contra side for all trades in those systems. QSRs provide NSCC with the trade data for both sides of trades in their automated systems in much the same way as the primary exchanges provide trade data for both sides of trades in their automated systems except that a QSR is always the contra-side to each transaction. *Id.*

[3] NSCC advised the Commission that currently three NSCC members act as QSRs: Herzog, Heine, Geduld, Inc.; Mayer & Schweitzer, Inc.; and Spear, Leeds and Kellogg. *See* letter from Alison N. Hoffman, Associate Counsel, NSCC, to Thomas C. Etter, Attorney, SEC, dated April 24, 1989.

[4] The term "locked-in trade" refers to a trade in an automated system, where the entity (*e.g.*, the exchange) that operates the system or one of its specialists becomes the contra-side to each half of the trade. *See* Division of Market Regulation, U.S. Securities and Exchange Commission, *The October 1987 Market Break*, note 3 at 10–3.

[5] A "T-contract" is a basic document that NSCC uses to report back to a participant on the trade date concerning locked-in trades. Telephone conversation between Alison N. Hoffman, Associate Counsel, NSCC, and Thomas C. Etter, Attorney, SEC (July 13, 1989).

clearance of trades executed on the automated execution system

NSCC states that this proposed rule change would not be self-executing and would not automatically create any additional QSRs. NSCC states that each prospective QSR would be required to submit a standard application form ("Application for Status as a Special Representative") with NSCC before it could be granted QSR status. In NSCC's standard application form, the QSR applicant must agree, among other things, that: (1) It accepts responsibility for its financial obligations; and (2) NSCC, at any time, may terminate the status of any particular QSR.[6] Moreover, NSCC has agreed to provide notice to the Commission in writing of the name of each applicant for QSR status and copies of its application papers which would identify any entity that would be operating an automated execution system in connection with such application.[7]

II. NSCC's Rationale for the Proposal

NSCC states that the proposed rule change, by increasing the availability to NSCC participants of one-sided trade input [i.e., one person reporting both sides of a trade] for a transactions executed in an automated system, would result in earlier trade comparison at reduced cost. NSCC further states that the proposal is consistent with Section 17A of the Act inasmuch as the proposal would promote the prompt and accurate clearance and settlement of securities transactions and would foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions.

III. Discussion

The Commission believes that the proposal is consistent with the Act. The Commission notes, moreover, that Section 17A of the Act expressly encourages the use of automated systems to make the processing of securities transactions more prompt and more efficient.

The Commission, however, is concerned that NSCC's expanded meaning of QSR could permit access to NSCC's facilities by entities and by types of entities that currently are unforeseeable. Accordingly, as a condition of this Order, NSCC has represented to the Commission that it will: (1) Notify the Commission in writing of the identity of each person who applies for QSR status; and (2) provide the Commission with copies of all signed QSR agreements, which will include, among other things, the identity of each person that would be operating an automated execution system in connection with this provision.[8]

IV. Conclusion

For the reasons discussed in this order, the Commission finds that the proposal is consistent with the requirements of the Act, particularly section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change (SR–NSCC–88–10) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 7, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–21625 Filed 9–13–89; 8:45 am]

BILLING CODE 8010–01–M

[34–27212; File No. SR–NSCC–89–14]

Self-Regulatory organizations: Notice of Proposed Rule Change by National Securities Clearing Corporation ("NSCC") Relating to a modification of NSCC's Reconfirmation and Repricing Service.

September 1, 1989.

Comments requested within 21 days after the date of this publication.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on August 30, 1989, NSCC filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would modify NSCC's Rules and Procedures as described in section II. A. below.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(i) The primary purpose of the proposed rule change is to make NSCC's Reconfirmation and Pricing Service ("RECAPS") mandatory for NSCC Members for all RECAPS eligible securities. Currently, RECAPS eligible transactions are fails in previously compared municipal securities which are at least 15 business days old and fails in equities and zero coupons which are at least five business days old. This rule change is complementary to a rule that the NASD will be filing which will mandate participation in RECAPS for its participants who are members of a clearing agency that offers such a service.

It was recognized by the securities industry that RECAPS would be enhanced by increased participation of NSCC Members. Forcing transactions into RECAPS will increase the resolution of fail items. The proposed rule change will modify the frequency that NSCC will offer the service from "periodically" to "no less than quarterly." NSCC believes that a quarterly cycle is warranted at the present time. The rule is flexible, however, to enable NSCC to offer the service more frequently than quarterly if the volume of fails increases or Members request that it be made available more often. The rule will enable NSCC to continue to include within RECAPS such securities as the Corporation shall determine, with the age of fails also to be determined by the Corporation, even though past RECAPS cycles were offered only for equities, municipals and zero coupons, and for the fail ages as indicated above. Members will be advised of the transactions eligible for RECAPS at least three months prior to the cycle, and of the age of the fails to be

---

[6] NSCC states that it has no formal termination standards. NSCC states that a termination may occur, however, where a clearing agent that has been designated for the non-participant does not accept the obligations of the non-participant and where the QSR does not accept responsibility for such obligations. Telephone conversation between Allison Hoffman, Counsel, NSCC, and Thomas C. Etter, Attorney, SEC, July 14, 1989.

[7] *See* letter from Karen L. Saperstein, Associate General Counsel, NSCC, to Thomas C. Etter, Attorney, SEC, dated August 21, 1989.

[8] See Id.

submitted six weeks prior to the cycle. The rule is also being clarified to indicate that RECAPS is available for securities previously compared by NSCC or other means. The rule is further being clarified that CNS items are not submitted to RECAPS because the CNS system automatically marks these transactions to the market daily, but that reconfirmed items may be forwarded to CNS. The reason such may happen is that the issue may have become eligible after it was initially compared, or it may have been compared ex-NSCC, e.g. a cash trade.

The proposed rule change modifies the procedures for processing of RECAPS trade data by describing the time frames for input and output in general terms so that NSCC can vary the processing schedule in response to Members' needs. For example, originally, Members input RECAPS fail information on a Friday. On Saturday, NSCC would produce RECAPS contracts containing standard contract categories (Compared, Uncompared, and Advisory). Members would be able to correct and resolve traders including submission of Advisories and As-Of trades on that Saturday. On Sunday, NSCC would distribute a second set of RECAPS contracts reflecting the additional input received on Saturday, along with settlement information. Settlement would occur on Tuesday for both the Friday input and Saturday input.

It was recognized that requiring the input of the supplemental information on Saturday resulted in increased overhead expenses by Members and insufficient time to review the RECAPS contracts, research adjustments and submit supplemental input. Therefore, in order to accommodate Members, NSCC has recently eliminated the Saturday input and allowed input of supplemental information on Monday, resulting in two settlement cycles.

Members input RECAPS fail information (referred as "RECAPS Input") on Friday. NSCC makes available RECAPS Contracts and settlement information available on Sunday for Friday's compared items. These compared transactions will settle two business days after RECAPS Input (Tuesday). Members submit supplemental information (referred to as "Supplemental RECAPS Input") on Monday. On Tuesday, NSCC generates a second RECAPS Contract along with settlement information for the Supplemental RECAPS Input. These compared transactions will settle two business days after input (Wednesday). If Friday input is no longer deemed desirable the rule will permit the input and output time frames to be altered.

NSCC will further enhance the RECAPS service by allowing Members to submit RECAPS input through personal computers. Currently, Members transmit information by tape transmission, through service bureaus, or by submitting paper input to NSCC's branch offices where the information is keypunched.

Members who want to access RECAPS via PCs will be required to have their computers meet certain minimum hardware and software requirements. Specifically, Members must have a PC that is compatible with the specifications. The PC must have adequate space to insert an additional modem that is designed to transfer output through dial-up lines for communication with NSCC. Members must have a wide carriage printer which is capable of printing 132 positions per line. NSCC will provide the modem, and software package, which contains the menu of controls and the specific RECAPS program. The RECAPS program was designed by NSCC and provides the participant with all required instructions and formats for input of RECAPS data. Additional costs for the PC service have not been determined at this time. Once the appropriate system is in place, Members will transmit data through dial up lines for processing with other RECAPS data. At this time, the application will be available only for input, not output. This is due to the fact that current output methods are sufficient for Members' needs. It is possible that, if necessary, NSCC will develop PC applications for RECAPS output in the future. Additional costs for the PC service have not been determined at this time. NSCC intends to implement the ability to transmit by PC in September, 1989, in order to give participants the opportunity to use this vehicle before the system becomes mandatory. It is anticipated that mandatory RECAPS will begin in December 1989.

(ii) The proposed rule filing facilitates the prompt and accurate clearance and settlement of securities transactions for which NSCC is responsible and, therefore, is consistent with the requirements of the 1934 Act and the rules and regulations thereunder applicable to NSCC.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not perceive that the proposed rule will have an impact or or impose a burden on competition.

C. Self-Regulatory Organization's Satement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments on the proposed rule change have not been solicited. However, the Securities Operation Division of the SIA established a RECAPS committee in 1987. The committee, comprised of industry members, had numerous meetings and advised NSCC of the need for increased participation in RECAPS, as well as Member needs in other facets of the service. Two letters in support of mandating RECAPS have been received, and copies of such letters may be examined at the places specified in section IV below.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and published its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be approved.

IV. Solicitation of Comments

Interested persons are invited to submit writen data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change that are filed with Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5. U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions

should refer to file number NSCC–89–14 and should be submitted by October 5, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–21618 Filed 9–13–89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–27228; File No. SR–NYSE–89–23]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change Relating to Examination Specifications for the Compliance Official Qualification Examination

Pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 23, 1989, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NYSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange has filed the Examination Specifications for its Compliance Official Qualification (Series 14) Examination.

II. Self-Regulatory Organization's Statements Regarding the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Compliance Official Qualification Examination was created as one of a number of Exchange regulatory initiatives designed to codify, clarify, and provide specificity to compliance obligations of Exchange members and member organizations.[1] The Series 14 Examination is a qualification examination intended to insure that the individuals designated as having overall day-to-day compliance responsibilities for their respective firms or who directly supervise ten or more persons engaged in compliance activity have the knowledge, skills, and abilities necessary to carry out their job responsibilities. The Examination Specifications detail the areas covered by the exam and break down the number of examination questions culled from each area.

The Exchange intends to commence administration of the Compliance Official Qualification Examination during the latter part of the third calendar quarter of 1989. Individuals who are Compliance Supervisors as defined in Rule 342.13(b) must take and pass the Series 14 examination wtihin six months of the date of the first administration of the examination in order to be in compliance with the requirements of the rule.[2]

The statutory basis for the Series 14 Exam lies in Section 6(c)(3)(B) of the Act. Under that section, it is the Exchange's responsibility to prescribe standards of training, experience, and competence for persons associated with Exchange members. Pursuant to this statutory obligation, the Exchange has developed examinations that are administered to establish that persons associated with Exchange members have attained specified levels of competence and knowledge.

[1] The NYSE proposal to require persons responsible for direct day-to-day compliance activity within NYSE member firms and persons with direct supervision of ten or more persons engaged in compliance activity to take and pass a Compliance Official Qualification Examination was approved by the Commission in conjunction with a group of proposed changes to NYSE rules. These rules were intended to supplement the internal compliance procedures of NYSE members and member organizations by imposing additional trade review, inquiry, and reporting requirements. *See* File No. SR–NYSE–87–10, approved by the Commission in Securities Exchange Act Release No. 25763 (May 27, 1988), 53 FR 20925; NYSE Rule 342.13(b).

[2] Rule 342.13(b) defines "Compliance Supervisors" as "[e]ach member not associated with a member organization and in the case of a member organization, the person (or persons) designated to direct day-to-day compliance activity (such as the Compliance Officer, Partner or Director) and each other person at the member organization directly supervising ten or more persons engaged in compliance activity." Under Rule 342.13(b), compliance supervisors are required to have overall knowledge of the securities laws and Exchange rules and must pass the Compliance Official Qualification Examination.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the Compliance Official Qualfiication (Series 14) Examination Specifications for the Series 14 examination imposes any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing also will be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 5, 1989.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission has reviewed the proposed Series 14 Examination Specifications and has concluded that they describe accurately the areas covered by the exam. The Commission believes that the proposed Examination Specifications are consistent with the requirements of the Act and the rules and regulations thereunder pertaining to national securities exchanges. In particular, the Commission believes that the proposed rule change is consistent with Section 6(c)(3)(B) of the Act,[3] which provides that a national securities exchange may prescribe standards for training, experience, and competence for

[3] 15 U.S.C. 78f(c)(3)(B) (1982).

its members or persons associated with its members.

In addition, the Commission believes that the proposed rule change is consistent with the requirements of Sections 6(b)(1) and 19(g)(1) of the Act.[4] Section 6(b)(1) requires a national securities exchange to be so organized and have the capacity to enforce compliance by its members and persons associated with its member with the Act, the rules and regulations thereunder, and the rules of the exchange. Section 19(g)(1) requires national securities exchanges to comply with the Act, the rules and regulations thereunder, and, absent reasonable justification or excuse, enforce compliance with such provisions by its members and persons associated with its members.

As noted above, the requirement that individuals having overall day-to-day compliance responsibilities for their firms, or who directly supervise persons engaged in compliance activity, pass a Compliance Official Qualification Examination was approved by the Commission as part of a package of rule changes proposed by the Exchange that were intended to supplement compliance procedures of NYSE members and member organizations.[5] In its order approving this requirement, the Commission stated that the compliance official examination will ensure that those persons responsible for day-to-day compliance activity will have the requisite specialized knowledge of broker-dealer compliance responsibilities under the federal securities laws and NYSE rules.[6] The proposed Examination Specifications detail the areas covered by the exam and break down the number of examination questions culled from each area. The Commission believes that the Examination Specifications are designed so that persons engaged in compliance activity who pass the exam should have the knowledge, skills and abilities necessary to carry out their job responsibilities.

The Exchange has requested accelerated effectiveness of the rule change pursuant to Section 19(b)(2) of the Act. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof. The Commission approved the Series 14 Examination Content Outline on July 11, 1989 in Securities Exchange Act Release No. 34-27019.[7] The Examination Specifications are an adjunct to the Examination Content Outline which is currently being disseminated to candidates for the examination, which the Exchange plans to administer in the fall of 1989. The Commission believes it is appropriate to approve the Examination Specifications at this time so that applicants will be able to prepare for the exam based on approved exam specifications.

It therefore is ordered, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Dated: September 7, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-21619 Filed 9-13-89; 8:45 am]

BILLING CODE 8010-01-M

[File No. 22-20068]

Application and Opportunity for Hearing; American Airlines, Inc.

September 7, 1989.

Notice is hereby given that American Airlines, Inc. (the "Applicant") has filed an application under clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding by the Securities and Exchange Commission ("Commission") that (*a*) the trusteeship of The Connecticut National Bank ("CNB") under two or more indentures to be qualified under the Act and (*b*) the trusteeship of CNB under one or more of such qualified indentures and under certain other indentures described below, is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify CNB from acting as trustee under such qualified indentures or such other indentures.

Section 310(b) of the Act provides, in part, that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest (as defined in the section), it shall within ninety days after ascertaining that it has such conflicting interest either eliminate such conflicting interest or resign. Subsection (1) of such section provides, with certain exceptions, that a trustee is deemed to have a conflicting interest if it is acting as trustee under another indenture under which any other securities of the same obligor are outstanding. However, pursuant to clause (ii) of subsection (1), there may be excluded from the operation of this provision another indenture or indentures under which other securities of such obligor are outstanding, if the issuer shall have sustained the burden of proving on application to the Commission, and after opportunity for a hearing thereon, that trusteeship under the qualified indenture and such other indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as trustee under any of such indentures.

The Applicant alleges that:

1. The Applicant has filed one or more Registration Statements on Form S-3 covering the proposed issuance of up to seven new series of 1989 Equipment Trust Certificates, Series E, *et seq.* (the "Proposed Certificates").

2. Each series of the Proposed Certificates will be issued pursuant to a separate indenture (a "Proposed Indenture", and collectively, the "Proposed Indentures"), each to be qualified under the Act, among a banking or financial institution, acting either individually or as trustee (the "Proposed Lessor"), the Applicant, as lessee, and an indenture trustee (the "Proposed Indenture Trustee"). The Applicant desires to appoint CNB as the Proposed Indenture Trustee under each such Proposed Indenture.

3. The proceeds from the sale of the Proposed Certificates will be used to provide long-term financing for a portion of the equipment cost of up to seven Boeing 757-223 aircraft or McDonnell Douglas DC-9-82 aircraft (collectively, the "Proposed Aircraft"), each of which will be leased by the Proposed Lessor to the Applicant.

4. Each series of the Proposed Certificates will be secured by a security interest in one of the Proposed Aircraft and by the right of the Proposed Lessor to receive rentals payable in respect of such Aircraft by the Applicant under the applicable lease. No Aircraft will be covered by more than one Proposed Indenture or by any other indenture, and the Proposed Certificates to be issued pursuant to any one Proposed Indenture will be separate from the Proposed Certificates to be issued pursuant to any other Proposed Indenture.

5. Each Proposed Indenture will provide, pursuant to section 310(b) of the Act, for the resignation of the Proposed Indenture Trustee in the event that it does not eliminate a conflicting interest, and will provide that

---

[4] 15 U.S.C. 78f(b)(1) and 78s(g)(1) (1982).

[5] *See* note 1, *supra.*

[6] *Id.*

[7] 54 FR 30127.

[8] 15 U.S.C. 78s(b)(2) (1982).

[9] 17 CFR 200.30-3(a)(12 (1989).

trusteeship under another indenture of the Applicant constitutes a conflicting interest, provided, however, that the Applicant may apply to the Commission for a finding that no material conflict exists.

6. The Applicant has filed an application (File No. 22–19593) with the Commission for the appointment of CNB as indenture trustee (the "1989 Indenture Trustee") under four indentures, each to be qualified under the Act (the "1989 Indentures"), under which the Equipment Trust Certificates, Series A through D (the "1989 Certificates"), are to be issued.

7. The proceeds from the sale of the 1989 Certificates will be used to provide long-term financing for a portion of the equipment cost of up to four Boeing 757–223 aircraft or McDonnell Douglas DC–9–82 aircraft, each of which will be leased by an owner trustee to the Applicant. Each series of the 1989 Certificates will be secured by a security interest in one Boeing 757–223 aircraft or McDonnell DC–9–82 aircraft and by the right of the owner trustee to receive rentals payable in respect of such aircraft by the Applicant under the applicable lease.

8. Each aircraft to be covered by a 1989 Indenture will not be covered by any other indenture, and the 1989 Certificates issued under each 1989 Indenture are separate from certificates issued under any other indenture.

9. Each 1989 Indenture will provide, pursuant to section 310(b) of the Act, for the resignation of the Proposed Indenture Trustee in the event that it does not eliminate a conflicting interest, and will provide that trusteeship under another indenture of the Applicant constitutes a conflicting interest, provided, however, that the Applicant may apply to the Commission for a finding that no material conflict exists.

10. At the time of execution thereof, the Company will not be in default in any respect under any of the 1989 Indentures.

11. CNB currently acts as indenture trustee (the "Pass Through Trustee") under four qualified indentures under which the Equipment Note Pass Through Certificates, Series 1988–A, are outstanding (the "1988 Qualified Indentures") and as indenture trustee (the "Loan Trustee") under four separate leveraged lease indentures related to the 1988 Qualified Indentures (the "1988 Lease Indentures").

12. Each of the 1988 Lease Indentures relates to a separate leverage lease transaction in which an owner trustee leases one McDonnell Douglas DC–9–82 Aircraft to the Applicant. In 1988, each owner trustee, for the benefit of institutional investors acting as equity participants, issued four series of loan certificates (the "1988 Equipment Notes") under each 1988 Lease Indenture to four separate grantor trusts. These grantor trusts in turn issued four series of Pass Through Certificates (the "1988 Pass Through Certificates") under the four separate 1988 Qualified Indentures. The 1988 Equipment Notes issued with respect to each 1988 Lease Indenture are secured by a security interest in the aircraft to which such 1988 Lease Indenture relates and by the right of the owner trustee to receive rentals on such aircraft from the Applicant.

13. Each aircraft covered by a 1988 Lease Indenture is not covered by any other indenture, and the 1988 Equipment Notes issued under each 1988 Lease Indenture are separate from loan certificates issued under any other indenture.

14. The Pass Through Certificates issued under the 1988 Qualified Indentures represent undivided interests in the 1988 Equipment Notes held by the related Pass Through Trustee. The 1988 Equipment Notes are not covered by any other indenture, and the 1988 Pass Through Certificates issued under each 1988 Qualified Indenture are separate from loan certificates issued under any other indenture.

15. None of the 1988 Lease Indentures is subject to the Act and, accordingly, none contains the language regarding conflicts required by section 3.10(b) of the Act for qualified indentures.

16. Each 1988 Qualified Indenture provides, pursuant to section 310(b) of the Act, for the resignation of the Pass Through Trustee in the event that it does not eliminate a conflicting interest, and provides that trusteeship under another indenture of the Applicant constitutes a conflicting interest, provided, however, that the Applicant may apply to the Commission for a finding that no material conflict exists.

17. The Applicant is not in default in any respect under any of the 1988 Qualified Indentures or the 1988 Lease Indentures.

18. CNB also acts as Pass Through Trustee under five qualified indentures under which the Equipment Note Pass Through Certificates, Series 1987–A, are outstanding (the "1987 Qualified Indentures") and as Loan Trustee under six separate leveraged lease indentures related to the 1987 Qualified Indentures (the "1987 Lease Indentures").

19. Each of the 1987 Lease Indentures relates to a separate leveraged lease transaction in which an owner trustee leases one McDonnell Douglas DC–9–82 Aircraft to the Applicant. In 1987 each owner trustee, for the benefit of institutional investors acting as equity participants, issued seven series of loan certificates (the "1987 Equipment Notes") under each 1987 Lease Indenture to seven separate grantor trusts. These grantor trusts in turn issued seven series of Pass Through Certificates (the "1987 Qualified Indentures.") (One series of 1987 Equipment Notes matured on January 1, 1988, and another series of 1987 Pass Through Certificates issued by the two grantor trusts holding such Equipment Notes were paid off. As a result, the two 1987 Qualified Indentures under which such 1987 Pass Through Certificates were issued terminated, and thus only five 1987 Qualified Indentures remain.) The 1987 Equipment Notes issued with respect to each 1987 Lease Indenture are secured by a security interest in the aircraft to which such 1987 Lease Indenture relates and by the right of the owner trustee to receive rentals on such aircraft from the Applicant.

20. Each aircraft covered by a 1987 Lease Indenture is not covered by any other indenture, and the 1987 Equipment Notes issued under each 1987 Lease Indenture are separate from loan certificates issued under any other indenture.

21. The Pass Through Certificates issued under the 1987 Qualified Indentures represent undivided interests in the 1987 Equipment Notes held by the related Pass Through Trustee. The 1987 Equipment Notes are not covered by any other indenture, and the 1987 Pass Through certificates issued under each 1987 Qualified Indenture are separate from loan certificates issued under any other indenture.

22. None of the 1987 Lease Indentures is subject to the Act and, accordingly, none contains the language regarding conflicts required by section 310(b) of the Act for qualified indentures.

23. Each 1987 Qualified Indenture provides, pursuant to section 310(b) of the Act, for the resignation of the Pass Through Trustee in the event that it does not eliminate a conflicting interest, and provides that trusteeship under another indenture of the Applicant constitutes a conflicting interest, provided, however, that the Applicant may apply to the Commission for a finding that no material conflict exists.

24. The Applicant is not in default in any respect under any of the 1987 Qualified Indentures or the 1987 Lease Indentures.

25. CNB also acts as indenture trustee under an indenture, dated as of October 15, 1986 (the "Other Indenture"), between CNB and Wilmington Trust

Company ("WTC"), which relates to a leveraged lease transaction in which WTC, as owner trustee for the benefit of certain institutional investors acting as equity participants, issued in a private placement loan certificates to institutional investors acting as loan participants. Such loan certificates had an original principal amount of $32,829,735 and have a final maturity date of January 2, 2005.

26. The proceeds of the issuance of the loan certificates issued under the Other Indenture were used by the owner trustee to purchase one Boeing 767–223 aircraft that was then leased by such owner trustee to the Applicant. The Applicant is not a party to the Other Indenture (only WTC, as the owner trustee and as issuer of the loan certificates, and CNB are parties), but the Applicant's unconditional obligation to make rental payments under the lease relating to such Other Indenture is the only credit source of principal and interest payments on the loan certificates.

27. The loan certificates issued under the Other Indenture are secured by a security interest in the aforementioned Boeing 767–223 aircraft and the right of the owner trustee to recieve rentals on such aircraft from the Applicant. Such aircraft is not covered by any other indenture, and the loan certificates issued under the Other Indenture are separate from loan certificates issued under any other indenture.

28. The Other Indenture is not subject to the Act and, accordingly, does not contain the language regarding conflicts required by section 310 (b) of the Act of the qualified indentures.

29. The Applicant is not in default in any respect under the Other Indenture.

The Applicant waives notice of hearing, hearing and any and all rights to specify procedures under the Rules of Practice of the Commission with respect to the application.

For a more detailed account of the matters of fact and law asserted, all persons are referred to said application, which is a public document on file in the offices of the Commission at the Public Reference Section, File Number 22–20068, 450 Fifth Street, NW., Washington, DC. 20549.

Notice is further given that any interested person may, not later than October 3, 1989, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of law or fact raised by such application which he desires to controvert, or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Johathan G. Katz, Secretary, Securities and Exchange Commission, Washington, DC. 20549. At any time after said date, the Commission may issue an order granting the application, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest or for the protection of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–21542 Filed 9–13–89; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[License No. 03/03–0187]

BDP Capital, Ltd.; Issuance of a Small Business Investment Company License

On May 9, 1989, a notice was published in the **Federal Register** (54 FR 19996) stating that an application had been filed by BDP Associates, Ltd., Wilmington, Delaware, with the Small Business Administration (SBA), pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1989)), for a license to operate as a small business investment company. The Applicant has since changed its name to BDP Capital, Ltd.

Interested parties were given until the close of business June 8, 1989, to submit their written comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 03/03–0187 on August 28, 1989, to BDP Capital, Ltd. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Dated: September 11, 1989.

[FR Doc. 89–21648 Filed –13–89; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Yadkin County, NC

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project between I–77 and US 601 in Yadkin County, North Carolina.

FOR FURTHER INFORMATION CONTACT: Roy C. Shelton, District Engineer, Federal Highway Administration, 4505 Falls of Neuse Road, Raleigh, North Carolina 27611, Telephone (919) 790–2856.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the North Carolina Department of Transportation (NCDOT) will prepare an environmental impact statement (EIS) for the improvement of the US 421 Corridor between I–77 and US 601 in Yadkin County. The proposed action would be the construction of a multilane divided highway, potentially on a new location, with controlled access from I–77, to US 601, a distance of about 8 miles. The thoroughfare plan for Yadkin County includes US 421. Improvements to the corridor are considered necessary to increase safety traffic service between Winston-Salem and Boone.

Alternatives under consideration include: (1) The "nobuild", (2) improving existing facilities, (3) partial relocation, and (4) a controlled access highway on new location.

Solicitation of comments on the proposed action are being sent to appropriate Federal, State and local agencies. A complete public involvement program has been developed for the project to include: the distribution of newsletters to interested parties, along with public meetings and a public hearing to be held in the study area. Information on the time and place of the public hearing will be provided in the local news media. The draft EIS will be available for public and agency review and comment prior to the public hearing. No formal scoping meeting is planned at this time.

To assure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be

directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental oonsultation on Federal programs and activities apply to this program.)

Issued on: September 8, 1989.

Roy C. Shelton,

District Engineer, Raleigh, North Carolina.

[FR Doc. 89-21647 Filed 9-13-89; 8:45 am]

BILLING CODE 4910-22-M

TENNESSEE VALLEY AUTHORITY

Paperwork Reduction Act of 1980, as Amended by Pub. L. 99-591; Information Collection Under Review by the Office of Management and Budget (OMB)

AGENCY: Tennessee Valley Authority.

ACTION: Information Collection Under Review by the Office of Management and Budget (OMB).

SUMMARY: The Tennessee Valley Authority (TVA) has sent to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), as amended by Public Law 99-591.

Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer whose name, address, and telephone number appear below. Questions or comments should be directed to the Agency Clearance Officer and also to the Desk Officer for the Tennessee Valley Authority, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; Telephone: (202) 395-3084.

Agency Clearance Officer: Mark R. Winter, Tennessee Valley Authority, Edney Building 4W 13B, Chattanooga, TN 37402; (615) 751-2523

Type of Request: Regular submission

Title of Information Collection: Visitor Use Estimation Survey

Frequency of Use: On occasion

Type of Affected Public: Individuals or households

Small Businesses or Organizations Affected: No

Federal Budget Functional Category Code: 452

Estimated Number of Annual Responses: 5,000

Estimated Total Annual Burden Hours: 165

Estimated Average Burden Hours Per Response: .003.

Need For and Use of Information: The data collected in this survey will be combined with traffic counter calibration information for making program, maintenance, and development decisions at TVA's LAND BETWEEN THE LAKES®

Louis S. Grande,

Vice President, Information Services Senior Agency Official.

[FR Doc. 89-21603 Filed 9-13-89; 8:45 am]

BILLING CODE 8120-01-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: September 8, 1989.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0074

Form Number: 1040 and Related Schedules A, B, C, D, E, F, R, and SE

Type of Review: Resubmission

Title: U.S. Individual Income Tax Return

Description: This form is used by individuals to report their income tax and compute their correct tax liability. The data is used to verify that the items reported on the form are correct and are also for general statistical use

Respondents: Individuals or households

Estimated Number of Respondents: 70,753,160

Estimated Burden Hours Per Response/ Recordkeeping:

Form	Recordkeeping	Learning about the law or the form	Preparing the form	Copying, assemblying, and sending the form to IRS
1040	3 hrs. 7 mins	2 hrs. 32 mins	3 hrs. 10 mins	35 mins
Sched. A	2 hrs. 47 mins	26 mins	1 hr 1 min	20 mins.
Sched. B	33 mins	8 mins	16 mins	20 mins.
Sched. C	6 hrs 13 mins	1 hr 4 mins	1 hr. 56 mins	25 mins.
Sched. D	1 hr. 2 mins	1 hr	1 hr. 8 mins	35 mins.
Sched. D-1	13 mins	1 min	13 mins	35 mins.
Sched. E	2 hrs. 52 mins	1 hr. 7 mins	1 hr. 16 mins	35 mins.
Sched. F	9 hrs. 41 mins	1 hr. 59 mins	3 hrs. 52 mins	35 mins.
Sched. R	20 mins	15 mins	22 mins	35 mins.
Sched. SE (Short)	20 mins	11 mins	13 mins	14 mins.
Sched. SE (Long)	26 mins	22 mins	37 mins	35 mins.

Frequency of Response: Annually

Estimated Total Recordkeeping/ Reporting Burden: 1,182,181,705 hours

Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 89-21579 Filed 9-13-89; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: September 8, 1989

The Department of Treasury has submitted the following public information collection requirement(s) to

OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0155.
Form Number: 3468.
Type of Review: Revision.
Title: Computation of Investment Credit.
Description: Taxpayers are allowed a credit against their income tax for investment in certain property used in their trade or business. Form 3468 is used to compute this investment tax credit. The information collected is used by the IRS to verifty that the credit has been computed correctly.
Respondents: Farms, Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 360,000.
Estimated Burden Hours Per Response/Recordkeeping:
Recordkeeping—23 hours, 41 minutes.
Learning about the law or the form—8 hours, 19 minutes.
Preparing the form—12 hours, 48 minutes.
Copying, assembling, and sending the form to IRS—1 hour, 4 minutes.
Frequency of Response: On occasion.
Estimated Total Recordkeeping/ Reporting Burden: 13,705,200 hours.
OMB Number: 1545–0193.
Form Number: 4972.
Type of Review: Revision.
Title: Tax on Lump-Sum Distributions.
Description: Internal Revenue Code Section 402(e) allows taxpayers to compute a separate tax on a lump-sum distribution from a qualified retirement plan. Form 4972 is used to correctly figure that tax. The data is used to verify correctness of the separate tax. Form 4972 is also used to make the special 20% capital gain election attributable to Pre-74 participation from the lump-sum distribution.
Respondents: Individuals or households.
Estimated Number of Respondents: 790,000.
Estimated Burden Hours Per Response/Recordkeeping:
Recordkeeping—33 minutes.
Learning about the law or the form—25 minutes.
Preparing the form—1 hour, 44 minutes.
Copying, assembling, and sending the form to IRS—35 minutes.
Frequency of Responses: Annually.
Estimated Total Recordkeeping/ Reporting Burden: 2,591,200 hours.
OMB Number: 1545–0619.
Form Number: 6765.
Type of Review: Revision.
Title: Credit for Increasing Research Activities (or for claiming the orphan drug credit).
Description: Internal Revenue Code Section 41 allows a credit against income tax for an increase in research activities of a trade or business. Section 28 allows a credit for clinical testing expenses in connection with drugs for certain rare diseases. Form 6765 is used by businesses and individuals engaged in a trade or business to figure and report the credit. The data is used to verify that the credit claimed is correct.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 13,500.
Estimated Burden Hours Per Response/Recordkeeping:
Recordkeeping—7 hours, 53 minutes.
Learning about the law or the form—47 minutes.
Preparing and sending the form to IRS—58 minutes.
Frequency of Response: On occasion.
Estimated Total Recordkeeping/ Reporting Burden: 130,275 hours.
OMB Number: 1545–0976.
Form Number: 990–W.
Type of Review: Revision.
Title: Estimated Tax on Unrelated Business Taxable Income for Tax-Exempt Organizations.
Description: Form 990–W is used by tax-exempt trusts and tax-exempt corporations to figure estimated unrelated business income tax liability and the amount of each installment payment. Form 990–W is a worksheet only. It is not required to be filed.
Respondents: Businesses or other for-profit, Non-profit institutions.
Estimated Number of Respondents: 27,265.
Estimated Burden Hours Per Response/Recordkeeping:

Form	Recordkeeping	Learning about the law or the form	Preparing the form
990–W	4 hrs., 47 mins.	3 hrs., 46 mins.	4 hrs., 1 min.
Sched. A (Part I)	11 hrs., 43 mins.	18 mins.	30 mins.
Sched. A (Part II)	24 hrs., 23 mins.	18 mins.	36 mins.
Sched. A (Part III)	5 hrs., 16 mins.	0	5 mins.

Frequency of Response: Annually.
Estimated Total Recordkeeping/ Reporting Burden: 358,301 hours.
OMB Number: 1545–0984.
Form Number: 8586.
Type of Review: Revision.
Title: Low-Income Housing Credit.
Description: The Tax Reform Act of 1986 (Code section 42) permits owners of residential rental projects providing low-income housing to claim a credit against income tax for part of the cost of constructing or rehabilitating such low-income housing. Form 8586 is used by taxpayers to compute the credit and by IRS to verify that the correct credit has been claimed.
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 50,000.
Estimated Burden Hours Per Response/Recordkeeping:
Recordkeeping—5 hours, 16 minutes
Learning about the law or the form—1 hour, 50 minutes
Preparing the form—4 hours, 24 minutes
Frequency of Response: Annually.
Estimated Total Recordkeeping/ Reporting Burden: 574,500 hours.
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 89–21607 Filed 9–13–89; 8:45 am]
BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Date: September 8, 1989

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512–0222.
Form Number: ATF Form 5640.2
Type of Review: Extension.
Title: Offer in Compromise of Liability Incurred Under the Federal Alcohol Administration (FAA) Act.
Description: Persons who have committed violations of the FAA Act may submit an offer in compromise. The offer is a request by the party in violation to settle liabilities for the violation in lieu of civil or criminal action. AFT F 5640.2 identifies the violation(s) to be compromised, the person committing them, and the amount of the offer, plus a justification for acceptance of the offer.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 28.
Estimated Burden Hours Per Response: 2 hours.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 56 hours.
OMB Number: 1512–0353.
Form Number: ATF REC 5170/2.
Type of Review: Extension.
Title: Wholesaler Dealers Records of Receipt of Alcoholic Beverages, Disposition of Distilled Spirits, and Monthly Summary Report.
Description: Accounting tool, audit trail, part of the accounting process. Shows from whom purchased, to whom sold, amount, and provides (when required) a monthly report of sales activities and on-hand inventories.
Respondents: State or local governments, Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 50.
Estimated Burden Hours Per Response: 2 hours.
Frequency of Response: Monthly.
Estimated Total Reporting Burden: 1,200 hours.
Clearance Officer: Robert Masarsky, (202) 566–7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue NW., Washington, DC 20226.
OMB Reviewer: Milo Sunderhoff, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 89–21608 Filed 9–13–89; 8:45 am]
BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Date: September 8, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512–0387.
Form Number: ATF REC 7570/2 and 7570/3.
Type of Review: Extension.
Title: Records of Acquisition and Disposition, Importers, Dealers, Collectors of Firearms, and Importers, Dealers and Collectors of Ammunition (Pistol/Interchangeable Calibers).
Description: These records are used by ATF in criminal investigations and compliance inspections in fulfilling the Bureau's mission to enforce the Gun Control Law.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Recordkeepers: 172,250.
Estimated Burden Hours Per Recordkeeping: 3 hours.
Frequency of Response: Other.
Estimated Total Recordkeeping Burden: 516,750 hours.
Clearance Officer: Robert Masarsky (202) 566–7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.
OMB Reviewer: Milo Sunderhaul (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 89–21609 Filed 9–13–89; 8:45 am]
BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Date: September 8, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0089.
Form Number: 1040NR.
Type of Review: Revision.
Title: U.S. Nonresident Alien Income Tax Return.
Description: This form is used by nonresident alien individuals and foreign estates and trusts to report their income subject to tax and compute the correct tax liability. The information on the return is used to determine whether income, deductions, credits, payments, etc., are correctly figured. Affected public are nonresident alien individuals, estates, and trusts.
Respondents: Individuals or households, Farms, Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 180,000.
Estimated Burden Hours Per Response/Recordkeeping:
Recordkeeping—6 hours, 33 minutes
Learning about the law or the form—1 hour, 44 minutes
Preparing the form—3 hours, 49 minutes
Copying, assembling, and sending the form to IRS—1 hour, 17 minutes
Frequency of Response: Annually.
Estimated Total Recordkeeping/Reporting Burden: 2,403,000 hours.

OMB Number: 1545–0096.

Form Number: 1042 and 1042S.

Type of Review: Revision.

Title: Annual Withholding Tax Return for U.S. Source Income of Foreign Persons; Foreign Person's U.S. Source Income Subject to Withholding.

Description: Used by withholding agents to report tax withheld at source on payment of certain income paid to nonresident alien individuals, foreign partnerships, or foreign corporations. The Service use this information to verify that the correct amount of tax has been withheld and paid to the U.S.

Respondents: Individuals or households, Businesses or other for-profit.

Estimated Number of Respondents: 15,000.

Estimated Burden Hours Per Response/Recordkeeping:

	1042	1042S
Recordkeeping	18 hours, 25 minutes	5 hours, 16 minutes.
Learning about the law or the form	3 hours, 25 minutes	40 minutes.
Preparing the form	5 hours, 44 minutes	1 hour, 43 minutes.
Copying, assembling, and sending the form to IRS	32 minutes	16 minutes.

Frequency of Response: Annually.

Estimated Total Recordkeeping/ Reporting Burden: 11,807,950 hours.

OMB Number: 1545–1054.

Form Number: 8736.

Type of Review: Revision.

Title: Application for Automatic Extension of Time to File Returns for a Partnership, REMIC, or for Certain Trusts.

Description: Form 8736 is used by partnerships, REMICs, and by certain trusts to request an automatic 3-month extension of time to file Form 1065, Form 1041, or Form 1066. Form 8736 contains data needed by the IRS to determine whether or not a taxpayer qualifies for such an extension.

Respondents: Farms, Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 36,000.

Estimated Burden Hours Per Response/Recordkeeping:

Recordkeeping—3 hours, 7 minutes

Learning about the law or the form—24 minutes

Preparing, copying, assembling, and sending the form to IRS—28 minutes

Frequency of Response: Annually.

Estimated Total Recordkeeping/ Reporting Burden: 142,920 hours.

Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 89–21610 Filed 9–13–89; 8:45 am]

BILLING CODE 4810–25–M

UNITED STATES INFORMATION AGENCY

Reporting and Information Collection Requirements Under OMB Review

AGENCY: United States Information Agency.

ACTION: Notice of Reporting Requirements Submitted for OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed or established reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the Agency has made such a submission. USIA is requesting approval for a three year extension of the use of our form IAP–37, "Exchange Visitor Program Application." Respondents will be required to respond only one time.

DATE: On or before October 16, 1989.

Copies: Copies of the Request for Clearance (SF–83), supporting statement, transmittal letter and other documents submitted to OMB for approval may be obtained from the USIA Clearance Officer. Comments on the items listed should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USIA, and also to the USIA Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, Debbie Knox, United States Information Agency, M/ASP, 301 Fourth Street, SW., Washington, DC 20547. Telephone (202) 485–7503, and OMB review: Mr. Donald Arbuckle, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503. Telephone (202) 395–7340.

SUPPLEMENTARY INFORMATION: Title: "Exchange Visitor Program Application".

Form Number: IAP–37.

Abstract: Under the requirements of Public Law 87–256 and the Mutual Educational and Cultural Exchange Act of 1961 the U.S. Information Agency has been delegated the authority to designate Exchange Visitor Programs for U.S. Government agencies, public and private educational and cultural exchange. The purpose of the exchange visitor program is intended to promote interchanges of persons engaged in Education, Arts, Sciences and to promote mutual understanding between the people of the U.S. and other countries. Organizations wishing to sponsor exchange visitors from abroad must apply to U.S. Information Agency for a designation that will permit them to function as sponsors. The IAP–37 form is used for such application.

Proposed Frequency of Responses: No. of Respondents—250; Recordkeeping Hours—1; Total Annual Burden—253.

Dated: September 6, 1989.

Ledra Dildy,

Federal Register Liaison.

[FR Doc. 89–21632 Filed 9–13–89; 8:45 am]

BILLING CODE 8230–01–M

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "The Paintings

of Jakuchu" (see list [1]) imported from aboard for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the Asia Society in New York, New York, beginning on or about October 5, 1989 to on or about December 6, 1989, and at the Los Angeles County Museum of Art, Los Angeles, California, beginning on or about December 21, 1989 to on or about February 18, 1990, is in the national interest.

Public notice of this determination is ordered to be published in the Federal Register.

Alberto J. Mora,

General Counsel.

Dated: September 5, 1989.

[FR Doc. 89-21631 Filed 9-13-89; 8:45 am]

BILLING CODE 8230-01-M

DEPARTMENT OF VETERANS AFFAIRS

Summary of Legal Interpretation of the General Counsel—Precedent Opinion 12-89, Treatment of Alaskan Native and Tribal Income for Improved-Pension Purposes

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—treatment of Alaskan native and tribal income for improved-pension purposes.

EFFECTIVE DATE: April 14, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-6442.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel.

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be folowed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 12-89, Treatment of Alaskan Native and Tribal Income for Improved-Pension Purposes as requested by Chief Benefits Director (213B), is as follows:

HELD: To summarize, then:

(a) The controlling distinction between the payments dealt with in Op. G.C. 8-87 and those addressed in Op. G.C. 2-88 is that only in the latter opinion were the payments at issue made per capita from funds held in trust by the Secretary of the Interior.

(b) Distributions to Alaskan Natives pursuant to the Alaskan Native Claims Settlement Act are outside the scope of the Indian Tribal Judgment Funds Use or Distribution Act, Pub. L. No. 93-134, as amended, and the Per Capita Distributions Act, Pub. L. 98-64.

(c) Section 15 of Public Law No. 100-241 does not provide the specific authority necessary to exclude from income for improved-pension purposes taxable divided distributions received from Alaskan Native corporations. Rather, it applies to exclude Alaskan Native corporation divided distributions, whether taxable or nontaxable, from consideration in determining net worth for pension purposes.

(d) It is necessary to inquire as to the underlying basis for a distrubution under Public Law No. 93-134 in order to determine whether it falls within a specified exclusion from pension income under 38 U.S.C. 503(a) or is protected by only the more limited $2,000 exclusion provided by 25 U.S.C. 1407.

(e) In determining whether a distribution falls within the coverage of the 38 U.S.C. 503(a)(6) disposition-of-property exclusion, the determinative criterion must be whether the payment represents a conversion of assets from one form to another. If it does, the section 503(a)(6) exclusion applies.

(f) The $2,000 exemption provided by 25 U.S.C. 1407 applies on an annual, rather than a one-time only, basis in determination of eligibility for improved-pension benefits. This exemption is not to be applied per family unit, but is to be applied to the income and net worth of each individual family member who has received a qualifying distribution under the Indian Tribal Judgment Funds Use or Distributions Act.

Dated: August 15, 1989.

Donald L. Ivers,

Acting General Counsel.

[FR Doc. 89-19932 Filed 9-13-89; 8:45 am]

BILLING CODE 8320-01-M

Summary of Legal Interpretation of the General Counsel—Precedent Opinion 5-89, Entitlement to Special Monthly Compensation for Anatomical Loss of a Creative Organ Following Elective Sterilization

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—entitlement to special monthly compensation for anatomical loss of a creative organ following elective sterilization.

EFFECTIVE DATE: March 23, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-6442.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in

[1] A copy of this list may be obtained by contacting Lorie J. Nierenberg of the Office of the General Counsel of USIA. The telephone number is 202/485-8827, and the address is Room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel.

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 5–89, Entitlement to Special Monthly Compensation for Anatomical Loss of a Creative Organ Following Elective Sterilization, as requested by Chief Benefits Director (214D) is as follows:

A female veteran, while on active duty, underwent an elective sterilization. Two years later, while still on active duty, she underwent a hysterectomy. Following her honorable discharge, she was awarded service-connected compensation for the hysterectomy. The issue presented was whether she was eligible for special monthly compensation under 38 U.S.C. 314(k). Held: Because 38 U.S.C. 314(k) provides special monthly compensation for either anatomical loss or loss of use of a creative organ, the fact that a veteran has undergone elective, noncompensable sterilization does not bar entitlement to special monthly compensation for subsequent service-connected anatomical loss of a creative organ.

Dated: August 15, 1989.

Donald L. Ivers,

Acting General Counsel.

[FR Doc. 89–19928 Filed 9–13–89; 8:45 am]

BILLING CODE 8320–01–M

Summary of Legal Interpretation of the General Counsel—Precedent Opinion 9–89, Time Period for Filing Claim for Burial Benefits for Death From Service-Connected Disability

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—time period for filing claim for burial benefits for death from service-connected disability.

EFFECTIVE DATE: May 1, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–6442.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel.

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 9–89, Time Period for Filing Claim for Burial Benefits for Death from Service-Connected Disability, as requested by Chairman, Board of Veterans Appeals (01), is as follows:

HELD: Under 38 U.S.C. section 907, upon the request of a veteran's survivors, VA may pay the burial and funeral expenses of a veteran who dies of a service-connected disability in an amount generally not to exceed $1,500. The relevant statutes prescribe no time limit within which claims for benefits under 38 U.S.C. section 907 must be filed, and review of the legislative history of those statutes reveals no congressional intention to establish such a limit in the case of service-connected deaths. Section 904 of title 38, U.S.C., provides that applications for certain burial benefits for non-service-connected deaths must be filed within two years after the burial of the veteran. The Acting General Counsel concludes that the two-year limitation in section 904 does not apply to claims under section 907 and there currently is no limitation period applicable to applications for section 907 benefits.

Dated: August 15, 1989.

Donald L. Ivers,

Acting General Counsel.

[FR Doc. 89–19929 Filed 9–13–89; 8:45 am]

BILLING CODE 8320–01–M

Summary of Legal Interpretation of the General Counsel—Precedent Opinion 11–89, Eligibility for Burial in a National Cemetery

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue-eligibility for burial in a National Cemetery.

EFFECTIVE DATE: April 11, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–6442.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change

in controlling statute or regulation or a superseding written legal opinion of the General Counsel.

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 11–89, Eligibility for Burial in a National Cemetery, as requested by Director, Field Operations, National Cemetery System (40B), is as follows:

HELD: Pursuant to 38 U.S.C. 107 and 1002 and 38 CFR 1.620, Philippine nationals who served in the Philippine Commonwealth Army and in recognized guerilla units during World War II are ineligible for burial in national cemeteries, regardless of whether they later become American citizens. However, the Secretary of Veterans Affairs may designate such persons or classes of persons as eligible for burial in national cemeteries pursuant to 38 U.S.C. 1002(6) and 38 CFR 1.620(h).

Dated: August 15, 1989.

Donald L. Ivers,

Acting General Counsel.

[FR Doc. 89–19931 Filed 9–13–89; 8:45 am]

BILLING CODE 8320–01–M

Summary of Legal Interpretation of the General Counsel—Precedent Opinion 1–89, Eligibility for Educational Benefits Under Chapter 106, Title 10, United States Code

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—eligibility for educational benefits under Chapter 106, Title 10, United States Code.

EFFECTIVE DATE: March 8, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–6442.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel.

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 1–89, chapter 106 Eligibility, requested by Chief Benefits Director (225B) is as follows:

Determinations of basic eligibility for educational benefits under chapter 106, title 10, United States Code, are within the sole administrative jurisdiction and responsibility of the Department of Defense. If that Department considers a reservist serving on active duty eligible for chapter 106 benefits, VA must accept such determination and pay benefits accordingly.

No statutory bar exists against an individual's establishing eligibility for benefits under the chapter 106 program and the VA educational assistance program under chapter 32 of title 38, United States Code, based in whole or in part upon the same period of military service. However, section 1781(b), title 38, United States Code does bar concurrent receipt of benefits under those two programs.

Dated: August 15, 1989.

Donald L. Ivers,

Acting General Counsel.

[FR Doc. 89–19923 Filed 9–13–89; 8:45 am]

BILLING CODE 8320–01–M

Summary of Legal Interpretation of the General Counsel—Precedent Opinion 3–89, Constitutionality of Section 7(b)(3) of the Emergency Veterans' Job Training Act of 1983

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—constitutionality of section 7(b)(3) of the Emergency Veterans' Job Training Act of 1983, as amended.

EFFECTIVE DATE: March 8, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–6442.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel.

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 3–89, Constitutionality of section 7(b)(3) of the Emergency Veterans' Job Training Act of 1983, as requested by Chief Benefits Director (225B) is as follows:

Section 7(b)(3) of the Veterans' Job Training Act of 1983 (VJTA), as amended, bars payments under the Act for "employment which involves political or religious activities." The Office of Legal Counsel, Department of Justice, has rendered a legal opinion holding this provision of law to be constitutional. VA does not violate the "free exercise" clause of the first amendment to the Constitution by excluding training programs involving religious activities because it does not prohibit exercise of a religion; it is not in violation of the "establishment" clause of the first amendment by approving training by "religiously affiliated institutions" or "prevasively sectarian institutions" provided the training is for nonreligious activities. Regulations may be formulated distinguishing between approvable and nonapprovable training based upon a determination of the nexus between the primary function of the activity and the religious tenets and rituals of the institutions.

Dated: August 15, 1989.

Donald L. Ivers,

Acting General Counsel.

[FR Doc. 89-19924 Filed 9-13-89; 8:45 am]

BILLING CODE 8320-01-M

Summary of Legal Interpretation of the General Counsel—Precedent Opinion 4-89, Gifts and Inheritances of Property as Improved-Pension Income

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—gifts and inheritances of property as improved-pension income.

EFFECTIVE DATE: March 14, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-6442.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel.

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 4-89, Gifts and Interitances of Property as Improved-Pension Income as requested by the Chief Benefits Director (213B) is as follows:

A $2,400 savings bond received as a gift is includable in a claimant's income for improved-pension purposes in the amount of its cash value when received or when it first becomes redeemable. Gifts and inheritances are includable in income for improved-pension purposes unless they fall within one of the ten exceptions enumerated in § 3.272. The criteria for determining whether the beneficiary has received current income as the result of a gift or inheritance is not whether the payment was received as money or as other personal property, but whether it is available to the claimant without substantial sacrifice in its value to the claimant. Therefore, gifts and bequests of marketable bonds, stocks, and similar instruments would normally be considered income. Other items such as unmatured certificates of deposit, which are not generally marketable or which involve a significant penalty for early withdrawal, would normally not be countable as income, but would be includable in the veteran's net worth. Cash or market value provides the basis for determining value for income computation purposes. Property with no market value would not add to either the claimant's income or net worth.

Dated: August 15, 1989.

Donald L. Ivers,

Acting General Counsel.

[FR Doc. 89-19922 Filed 9-13-89; 8:45 am]

BILLING CODE 8320-01-M

Summary of Legal Interpretation of the General Counsel—Precedent Opinion 6-89, Improved Pension Income—Deduction of Expenses for Last Illness, Burial, and Just Debts

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—improved pension income—deduction of expenses for last illness, burial, and just debts.

EFFECTIVE DATE: March 8, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-6442.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel.

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 6-89, Improved Pension Income—Deduction of Expenses for Last Illness, Burial, and Just Debts, as requested by Chairman, Board of Veterans Appeals (011G), is as follows:

Where the surviving spouse of a veteran who died in December 1985 is awarded improved-pension payments from January 1986, and where the surviving spouse paid the expenses of the veteran's last illness and burial in February 1986, and paid the veterans' just debts in March 1986, the aforementioned expenses are deductible from income for improved-pension purposes for the 12-month period commencing February 1986 for expenses of the veteran's last illness and burial, and for the 12-month period commencing March 1986 for the payment of just debts. A new rate of improved pension for a prospective 12-month period would become effective at the beginning of each of the months in which the amounts were paid, rather than on the date of the original award.

Dated: August 15, 1989.

Donald L. Ivers,

Acting General Counsel.

[FR Doc. 89-19927 Filed 9-13-89; 8:45 am]

BILLING CODE 8320-01-M

Summary of Legal Interpretation of the General Counsel—Precedent Opinion 13-89; Criteria for Independent Dose Reconstruction

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—criteria for independent dose reconstruction.

EFFECTIVE DATE: June 6, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-6442.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel.

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 13-89, Criteria for Independent Dose Reconstruction, as requested by the Chief Benefits Director is as follows:

HELD: The Veterans' Dioxin and Radiation Exposure Compensation Standards Act, Pub. L. No. 98-542, 98 Stat. 2727 (1984) and its implementing regulation, 38 CFR 3.311b(a)(3) require when conflicting dose estimates have been submitted that a separate radiation dose estimate be prepared by an independent expert and be considered in the adjudication of the claim. While this requirement does not necessarily mean that new calculations must be performed, it does not appear to be sufficient to present the expert with dose estimates to choose between as an alternative to preparing a separate radiation dose estimate. Whether a dose estimate in a given case is in compliance with this requirement is, however, an evidentiary matter for determination by the appropriate adjudicatory body, in this case, the BVA.

Dated: August 15, 1989.

Donald L. Ivers

Acting General Counsel.

[FR Doc. 89-19920 Filed 9-13-89; 8:45 am]

BILLING CODE 8320-01-M

Summary of Legal Interpretation of the General Counsel—Precedent Opinion 8-89, VA Loan Guaranty Program Compliance With National Environmental Policy Act of 1969

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—VA loan guaranty progam compliance with NEPA (42 U.S.C. 4321-4361).

EFFECTIVE DATE: March 8, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-6442.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel.

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 8-89, VA Loan Guaranty Program Compliance with NEPA, as requested by Director, Loan Guaranty Service (26), is as follows:

The procedural requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4361, popularly referred to as NEPA) which mandate that Federal agencies prepare environmental impact statements for all "major Federal actions significantly affecting the quality of the human environment," do not require that such statements be prepared for each loan guaranty application. This is because the actions of the VA Loan Guaranty Program in examining each separate application for loan insurance does not fall within the gambit of Federal actions contemplated by NEPA.

Dated: August 15, 1989.

Donald L. Ivers,

Acting General Counsel.

[FR Doc. 89-19921 Filed 9-13-89; 8:45 am]

BILLING CODE 8320-01-M

Summary of Legal Interpretation of the General Counsel—Precedent Opinion 7-89, Revision of Neuropsychiatric Disorder Rating Codes

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—revision of neuropsychiatric disorder rating codes.

EFFECTIVE DATE: March 8, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-6442.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel.

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 7-89, Revision of Neuropsychiatric Disorder Rating Codes, for Chairman, Board of Veterans Appeals (01), is as follows:

Recent changes to the Schedule for Rating Disabilities, which standardized the adjectival descriptions of disability levels respecting mental disorders, were issued in consonance with the Administrator's broad authority, under 38 U.S.C. 355, to readjust schedular provisions. In conjunction with these changes, there is no requirement that existing ratings in neuropsychiatric cases remain unaffected by the adjustments in terminology.

Dated: August 15, 1989.

Donald L. Ivers,

Acting General Counsel.

[FR Doc. 89-19928 Filed 9-13-89; 8:45 am]

BILLING CODE 8320-01-M

Summary of Legal Interpretation of the General Counsel—Precedent Opinion 2-89, Commencement of Payment in Reopened Claims for Improved Pension

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—commencement of payment in reopened claims for improved pension.

EFFECTIVE DATE: March 8, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-6442.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel.

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 2-89, Commencement of Payment in Reopened Claims for Improved Pension, requested by Chief Benefits Director (213), is as follows:

When a running award of improved pension is terminated due to the receipt of lump-sum, nonrecurring income which caused the veteran's countable income to exceed the applicable annual income limitation, such income is countable for a 12-month period commencing on the effective date on which the nonrecurring income is countable. 38 CFR 3.273(c). Since under 38 CFR 3.660(a)(2), an award is terminated effective the end of the month in which the veteran's income changes, the 12-month period for counting nonrecurring income begins on the first day of the following month and continues until the end of the twelfth month thereafter. Thus, in the event of a reopened claim, the veteran could be deemed entitled to resumed pension benefits as early as the beginning of the thirteenth month. However, actual payment of pension benefits may not resume prior to the beginning of the fourteenth month after award termination due to excessive income. Section 3011 of Title 38, United States Code, and its implementing regulation, 38 CFR 3.31, provide in pertinent part that payment of monetary benefits may not be made for any period before the first day of the calendar month following the month in which the award became effective. Notwithstanding the foregoing, under the terms of 38 CFR 3.660 (b)(2), which provides for effective dates in terms of calendar years, entitlement to resumed pension benefits should be recomputed as of January 1 of the year following the year in which the pension award was terminated. To reconcile that regulation with 38 CFR 3.273(b)(2), which requires counting of nonrecurring income over a 12-month period, the January 1 determination should take into account a portion of the annualized lump-sum award as income for that year.

Dated: August 15, 1989.

Donald L. Ivers,

Acting General Counsel.

[FR Doc. 89-19925 Filed 9-13-89; 8:45 am]

BILLING CODE 8320-01-M

Summary of Legal Interpretation of the General Counsel—Precedent Opinion 10-89, Treatment of Provisional Income—Improved-Pension Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—treatment of provisional income—improved-pension program.

EFFECTIVE DATE: April 11, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-6442.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel.

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 10-89, Treatment of Provisional Income—Improved-Pension Program, as requested by the Chief Benefits Director (213B), is as follows:

HELD: It is our opinion that provisional payments, such as the Black Lung payments received by the veteran from Department of Labor, as well as payments received by reason of administrative error, may be treated as countable income for improved-pension purposes as received. If it is later found that there was no entitlement to the payments, and evidence of repayment is submitted, the amount repaid may form the basis for a retroactive adjustment of the veteran's improved-pension award, if evidence of repayment is received before expiration of the calendar year following the year in which the veteran received the payment.

Dated: August 15, 1989.

Donald L. Ivers,

Acting General Counsel.

[FR Doc. 89-19930 Filed 9-13-89; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 177
Thursday, September 14, 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

Notice of a Matter To be Added for Consideration at an Agency Meeting.

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the following matter will be added to the "discussion agenda" for consideration at the open meeting of the Board of Directors of the Federal Deposit Insurance Corporation scheduled to be held at 2:00 p.m. on Tuesday, September 12, 1989, in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, N.W., Washington, DC:

Memorandum and resolution re: Proposed amendments to the Corporation's rules and regulations, in the form of an interim rule, Part 357, entitled "Assessment of Fees Upon Entrace to or Exit from the Bank Insurance Fund or the Savings Association Insurance Fund," which interim rule prescribes the entrance fee that must be paid by insured depository institutions that participate in "conversion transactions" (transfers or switches between the two deposit insurance funds), pursuant to the provisions of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–3813.

Dated: September 11, 1989.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 89–21823 Filed 9–12–89; 12:49 pm]

BILLING CODE 6714–01–M

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, September 19, 1989, 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, September 21, 1989, 2:00 p.m.

PLACE: 999 E Street NW., Washington, DC (Ninth Floor)

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of dates for Future Meetings.
Correction and Approval of Minutes.
Status of Presidential Audits.
Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: (202) 376–3155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 89–21867 Filed 9–12–89; 12:48 am]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m.—September 19, 1989.

PLACE: Hearing Room One—1100 L Street, NW., Washington, DC 20573–0001.

STATUS: Closed.

MATTER TO BE CONSIDERED:

1. Trans-Pacific Trades Malpractices.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523–5725.

Joseph C. Polking,

Secretary.

[FR Doc. 89–21761 Filed 9–12–89; 9:53 am]

BILLING CODE 6730–01–M

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

TIME AND DATE: 9:00 a.m.—September 18, 1989.

PLACE: 5th Floor, Conference Room, 805 Fifteenth Steet, NW., Washington, DC 20005.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of last meeting.
2. Thrift Savings Plan activities report by the Director.
3. Review of the budgets for fiscal years 1990.

CONTACT PERSON FOR MORE INFORMATION: Tom Trabucco, Director, Office of External Affairs, (202) 523–5660.

Dated: September 11, 1989.

Francis X. Cavanaugh,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 89–21681 Filed 9–11–89; 4:15 pm]

BILLING CODE 6760–01–M

INTER-AMERICAN FOUNDATION BOARD MEETING

TIME AND DATE: September 25, 1989, 6:00–9:00 p.m.

PLACE: 1515 Wilson Boulevard, Fifth Floor, Rosslyn, Virginia 22209.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. The Chairman's Report.
2. The President's Report.
3. Approval of the Minutes of the April 18, 1989, Board Meeting.
4. Board Audit Committee Report.
5. Old Business.
6. New Business

CONTACT PERSON FOR MORE INFORMATION: Charles M. Berk, Secretary to the Board of Directors, (703) 841–3912.

Dated: September 7, 1989.

Charles M. Berk,

Sunshine Act Officer.

[FR Doc. 89–31682 Filed 9–11–89; 4:32 pm]

BILLING CODE 7025–01–M

Corrections

Federal Register
Vol. 54, No. 177
Thursday, September 14, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 2

[Docket No. 81268-9163]

RIN 0651-AA36

Amendment of Trademark Rules Governing Inter Partes Proceedings, and Miscellaneous Amendments to Other Trademark Rules

Correction

In rule document 89-19622 beginning on page 34886 in the issue of Tuesday, August 22, 1989, make the following corrections:

1. On page 34886, the heading to the document should read as set forth above.

§ 2.113 [Corrected]

2. On page 34898, in the first column, in § 2.113, in the first line, "this" should read "the".

§ 2.119 [Corrected]

3. On the same page, in the second column, in § 2.119(d), in the ninth line, "residing" should read "resident".

§ 2.120189[Corrected]

4. On page 34899, in the second column, in § 2.120(j)(8), in the second line, "dispositions" should read "depositions".

§ 2.122 [Corrected]

5. On the same page, in the 3rd column, in § 2.122(e), in the 12th line,"or" should read "of".

§ 2.123 [Corrected]

6. On page 34900, in the first column, in § 2.123, designated paragraph "(c)" should read "(e)".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-930-09-4214-10; WYW 116382]

Proposed Withdrawal and Opportunity for Public Meeting; Wyoming

Correction

In notice document 89-18576 appearing on page 32432 in the issue of Monday, August 7, 1989, make the following corrections:

1. The date at the top of the page should read "August 7, 1989".

2. In the second column, the first line should read "Sec. 20, SW¼SW¼S W¼;".

3. In the same column, the second line should read "Sec. 23, NE¼, E½E½N W¼, E½NE¼".

4. In the same column, the 21st line should read "NE¼, S½SW¼NW¼, SE¼".

5. In the same column, the 43rd line should read "Sec. 12, SW¼SW¼;"

6. In the same column, the 44th line should read "Sec. 13, W½NE¼NW¼, W½NW¼, SE¼".

BILLING CODE 1505-01-D

federal register

Thursday
September 14, 1989

Part II

Environmental Protection Agency

40 CFR Part 61

National Emission Standards for Hazardous Air Pollutants; Benzene; Rule and Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[AD-FRL-3620-4]

RIN 2060-AC41

National Emission Standards for Hazardous Air Pollutants; Benzene Emissions From Maleic Anhydride Plants, Ethylbenzene/Styrene Plants, Benzene Storage Vessels, Benzene Equipment Leaks, and Coke By-Product Recovery Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On December 8, 1987, the DC Circuit Court granted the EPA's motion for a voluntary remand of the benzene equipment leaks standards and the withdrawal of proposed standards for maleic anhydride and ethylbenzene/styrene (EB/S) process vents and benzene storage vessels in light of the same court's recent decision on the vinyl chloride standards (*Natural Resources Defense Council, Inc.* v. *EPA*, 824 F.2d at 1146 [1987]) (hereafter referred to as *Vinyl Chloride*). On July 28, 1988 (53 FR 28496), EPA proposed four policy approaches that could be used in setting national emission standards for hazardous air pollutants (NESHAP) under section 112 of the Clean Air Act (CAA), and that would be consistent with the court's decision in *Vinyl Chloride*. The proposal included the application of each of the policy approaches to the four benzene source categories in the remand, plus an additional category, coke by-product recovery plants.

This **Federal Register** notice announces the EPA's final decision on the policy approach for setting NESHAP that is consistent with the requirements of *Vinyl Chloride*. This notice also promulgates final rules under section 112 for benzene emissions from coke by-product recovery plants (40 CFR part 61 subpart L) and benzene storage vessels (40 CFR part 61 subpart Y); and it presents the EPA's final decisions to require no additional control of benzene equipment leaks beyond the requirements of 40 CFR 61 Subpart J, and not to regulate benzene emissions from EB/S and maleic anhydride process vents. This notice also responds to comments on the proposed policy approaches and the standards proposed under each approach.

EFFECTIVE DATE: September 14, 1989. Under section 307(b)(1) of the CAA, judicial review of NESHAP is available *only* by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of these rules. Under section 307(b)(2) of the CAA, 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. The incorporation by reference of certain publications in these standards is approved by the Director of the Office of the Federal Register as of September 14, 1989.

ADDRESSES: *Background Information Document.* A background information document (BID) summarizing and responding to legal comments and technical comments on the benzene source categories and risk assessment may be obtained from the U.S. EPA Library (MD–35), Research Triangle Park, North Carolina 27711, telephone (919) 541–2777. Please refer to "Benzene Emissions from Coke By-Product Recovery Plants, Benzene Storage Vessels, Equipment Leaks, and Ethylbenzene/Styrene Process Vents—Background Information and Responses to Technical Comments for 1989 Final Decisions," (Publication No. EPA–450/3–89–31).

Dockets. Docket No. OAQPS 79–3 (Part I) contains information considered in determining health effects, listing, and regulating benzene and general public comments on the proposed policy approaches. Docket No. A–79–16 contains supporting information used in the development of the standards for coke by-product recovery plants, Docket No. A–79–27 contains supporting information used in the development of the standards for benzene equipment leaks, Docket No. A–80–14 contains supporting information used in the development of the standards for benzene storage vessels, and Docket Nos. OAQPS 79–3 (Part II) and A–79–49 contain supporting information on maleic anhydride process vents and EB/S process vents, respectively. These dockets are available for public inspection and copying between 8:00 a.m. and 3:30 p.m., Monday through Friday, at the EPA's Air Docket, Room M–1500, First Floor, Waterside Mall, 401 M Street, SW., Washington, DC. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For information specific to coke by-product recovery plants or benzene storage vessels, contact Ms. Gail Lacy at (919) 541–5261, Standards Development Branch, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711. For information specific to benzene equipment leaks, EB/S process vents, or maleic anhydride process vents, contact Dr. Janet Meyer, at the above address, telephone number (919) 541–5254. For information concerning the general policy contained in this notice, contact Mr. Fred Dimmick, at the above address, telephone number (919) 541–5625. For information concerning the health effects of benzene and the risk assessment, contact Mr. Robert Kellam at (919) 541–5647, Pollutant Assessment Branch, Emission Standards Division (MD–13), at the above address.

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

I. Summary of Decisions
- Overview
- Background
- Selection of Approach
- Maleic Anhydride Process Vents
- Ethylbenzene/Styrene Process Vents
- Benzene Storage Vessels
- Coke By-Product Recovery Plants
- Benzene Equipment Leaks

II. Background
- Regulatory Background
- Public Participation
- Legal Framework Under *Vinyl Chloride*

III. Application of Policy to Benzene Source Categories
- Introduction
- Ethylbenzene/Styrene Process Vents
- Benzene Storage Vessels
- Coke By-Product Recovery Plants
- Benzene Equipment Leaks

IV. Significant Comments and Responses and Changes
- Legal Comments and Responses
- Policy-Related Comments and Responses
- Risk Assessment Comments and Responses
- Technical Comments, Responses, and Changes

V. Detailed Summary of Final Standards and Impacts
- Coke By-Product Recovery Plants
- Benzene Storage Vessels

VI. Administrative
- Paperwork Reduction Act
- Regulatory Flexibility Act
- Docket
- Miscellaneous

VII. List of Subjects in 40 CFR Part 61

I. Summary of Decisions

Overview

This section provides a description of the EPA's approach for the protection of public health under section 112. In protecting public health with an ample margin of safety under section 112, EPA strives to provide maximum feasible protection against risks to health from hazardous air pollutants by (1) protecting the greatest number of persons possible to an individual lifetime risk level no higher than

approximately 1 in 1 million and (2) limiting to no higher than approximately 1 in 10 thousand the estimated risk that a person living near a plant would have if he or she were exposed to the maximum pollutant concentrations for 70 years. Implementation of these goals is by means of a two-step standard-setting approach, with an analytical first step to determine an "acceptable risk" that considers all health information, including risk estimation uncertainty, and includes a presumptive limit on maximum individual lifetime risk (MIR) of approximately 1 in 10 thousand. A second step follows in which the actual standard is set at a level that provides "an ample margin of safety" in consideration of all health information, including the number of persons at risk levels higher than approximately 1 in 1 million, as well as other relevant factors including costs and economic impacts, technological feasibility, and other factors relevant to each particular decision. Applying this approach to the five benzene source categories in today's notice results in controls that protect over 99 percent of the persons within 50 kilometers (km) of these sources at risk levels no higher than approximately 1 in 1 million.

A principle that accompanies these numerical goals is that while the Agency can establish them as fixed numbers, the state of the art of risk assessment does not enable numerical risk estimates to be made with comparable confidence. Therefore, judgment must be used in deciding how numerical risk estimates are considered with respect to these goals. As discussed below, uncertainties arising from such factors as the lack of knowledge about the biology of cancer causation and gaps in data must be weighed along with other public health considerations. Many of the factors are not the same for different pollutants, or for different source categories.

Background

On July 28, 1988, EPA proposed decisions on standards under Section 112 for five source categories of benzene. A principal aspect of the proposal, and the basis for the proposed decisions on the source categories, were four proposed approaches for decisions under Section 112 as mandated by the DC Circuit's decision in *NRDC* v. *EPA*, 824 F.2d at 1146 (1987) (the "*Vinyl Chloride*" decision). The *Vinyl Chloride* decision required the Administrator to exercise his judgment under Section 112 in two steps: first, a determination of a "safe" or "acceptable" level of risk considering only health factors, followed by a second step to set a standard that provides an "ample margin of safety", in which costs, feasibility, and other relevant factors in addition to health may be considered.

The four proposed approaches were designed to provide for consideration of a variety of health risk measures and information in the first step analysis under the *Vinyl Chloride* decision—the determination of "acceptable risk." Included in the alternative approaches were three that consider only a single health risk measure in the first step: (1) Approach B, which considers only total cancer incidence with 1 case per year (case/year) as the limit for acceptability; (2) Approach C, which considers only the maximum individual risk ("MIR") with a limit of 1 in 10 thousand for acceptability; and (3) Approach D, which considers only the maximum individual risk with 1 in 1 million as the limit. The fourth approach, Approach A, was a case-by-case approach that considers all health risk measures, the uncertainties associated with them, and other health information.

In the second step, setting an "ample margin of safety", each of the four approaches would consider all health risk and other information, uncertainties associated with the health estimates, as well as costs, feasibility, and other factors which may be relevant in particular cases. The proposal solicited comment on each of the approaches as well as other approaches for implementing the *Vinyl Chloride* decision (53 FR 28511–28532). The Agency received many public comments on the approaches from citizen's groups, companies and industry trade groups, State and local governments, and individuals. Most of the comments supported either Approach A or D, with little comment in support of Approach B or C.

Selection of Approach

Based on the comments and the record developed in the rulemaking, EPA has selected an approach, based on Approaches A and C but also incorporating consideration of incidence from Approach B and consideration of health protection for the general population on the order of 1 in 1 million from Approach D. Thus, in the first step of the *Vinyl Chloride* inquiry, EPA will consider the extent of the estimated risk were an individual exposed to the maximum level of a pollutant for a lifetime ("MIR"). The EPA will generally presume that if the risk to that individual is no higher than approximately 1 in 10 thousand, that risk level is considered acceptable and EPA then considers the other health and risk factors to complete an overall judgment on acceptability. The presumptive level provides a benchmark for judging the acceptability of maximum individual risk ("MIR"), but does not constitute a rigid line for making that determination.

The Agency recognizes that consideration of maximum individual risk ("MIR")—the estimated risk of contracting cancer following a lifetime exposure at the maximum, modeled long-term ambient concentration of a pollutant—must take into account the strengths and weaknesses of this measure of risk. It is an estimate of the upperbound of risk based on conservative assumptions, such as continuous exposure for 24 hours per day for 70 years. As such, it does not necessarily reflect the true risk, but displays a conservative risk level which is an upperbound that is unlikely to be exceeded. The Administrator believes that an MIR of approximately 1 in 10 thousand should ordinarily be the upper end of the range of acceptability. As risks increase above this benchmark, they become presumptively less acceptable under section 112, and would be weighed with the other health risk measures and information in making an overall judgment on acceptability. Or, the Agency may find, in a particular case, that a risk that includes MIR less than the presumptively acceptable level is unacceptable in the light of other health risk factors.

In establishing a presumption for MIR, rather than a rigid line for acceptability, the Agency intends to weigh it with a series of other health measures and factors. These include the overall incidence of cancer or other serious health effects within the exposed population, the numbers of persons exposed within each individual lifetime risk range and associated incidence within, typically, a 50 km exposure radius around facilities, the science policy assumptions and estimation uncertainties associated with the risk measures, weight of the scientific evidence for human health effects, other quantified or unquantified health effects, effects due to co-location of facilities, and co-emission of pollutants.

The EPA also considers incidence (the numbers of persons estimated to suffer cancer or other serious health effects as a result of exposure to a pollutant) to be an important measure of the health risk to the exposed population. Incidence measures the extent of health risk to the exposed population as a whole, by providing an estimate of the occurrence of cancer or other serious health effects in the exposed population. The EPA believes that even if the MIR is low, the overall risk may be unacceptable if

significant numbers of persons are exposed to a hazardous air pollutant, resulting in a significant estimated incidence. Consideration of this factor would not be reduced to a specific limit or range, such as the 1 case/year limit included in proposed Approach B, but estimated incidence would be weighed along with other health risk information in judging acceptability.

The limitations of MIR and incidence are put into perspective by considering how these risks are distributed within the exposed population. This information includes both individual risk, including the number of persons exposed within each risk range, as well as the incidence associated with the persons exposed within each risk range. In this manner, the distribution provides an array of information on individual risk and incidence for the exposed population.

Particular attention will also be accorded to the weight of evidence presented in the risk assessment of potential human carcinogenicity or other health effects of a pollutant. While the same numerical risk may be estimated for an exposure to a pollutant judged to be a known human carcinogen, and to a pollutant considered a possible human carcinogen based on limited animal test data, the same weight cannot be accorded to both estimates. In considering the potential public health effects of the two pollutants, the Agency's judgment on acceptability, including the MIR, will be influenced by the greater weight of evidence for the known human carcinogen.

In the *Vinyl Chloride* decision, the Administrator is directed to determine a "safe" or "acceptable" risk level, based on a judgment of "what risks are acceptable in the world in which we live." 824 F.2d at 1165. To aid in this inquiry, the Agency compiled and presented a "Survey of Societal Risk" in its July 1988 proposal (53 FR 28512–28513). As described there, the survey developed information to place risk estimates in perspective, and to provide background and context for the Administrator's judgment on the acceptability of risks "in the world in which we live." Individual risk levels in the survey ranged from 10^{-1} to 10^{-7} (that is, the lifetime risk of premature death ranged from 1 in 10 to 1 in 10 million), and incidence levels ranged from less than 1 case/year to estimates as high as 5,000 to 20,000 cases/year. The EPA concluded from the survey that no specific factor in isolation could be identified as defining acceptability under all circumstances, and that the acceptability of a risk depends on consideration of a variety of factors and conditions. However, the presumptive level established for MIR of approximately 1 in 10 thousand is within the range for individual risk in the survey, and provides health protection at a level lower than many other risks common "in the world in which we live." And, this presumptive level also comports with many previous health risk decisions by EPA premised on controlling maximum individual risks to approximately 1 in 10 thousand and below.

In today's decision, EPA has selected an approach based on the judgment that the first step judgment on acceptability cannot be reduced to any single factor. The EPA believes that the level of the MIR, the distribution of risks in the exposed population, incidence, the science policy assumptions and uncertainties associated with the risk measures, and the weight of evidence that a pollutant is harmful to health are all important factors to be considered in the acceptability judgment. The EPA concludes that the approach selected best incorporates all of this vital health information, and enables it to weigh them appropriately in making a judgment. In contrast, the single measure Approaches B, C, and D, while providing simple decisionmaking criteria, provide an incomplete set of health information for decisions under section 112. The Administrator believes that the acceptability of risk under section 112 is best judged on the basis of a broad set of health risk measures and information. As applied in practice, the EPA's approach is more protective of public health than any single factor approach. In the case of the benzene sources regulated here, more than 99 percent of the population living within 50 km would be exposed to risks no greater than approximately 1 in 1 million; and, the total number of cases of death or disease estimated to result would be kept low.

Under the two-step process specified in the *Vinyl Chloride* decision, the second step determines an "ample margin of safety," the level at which the standard is set. This is the important step of the standard-setting process at which the actual level of public health protection is established. The first step consideration of acceptability is only a starting point for the analysis, in which a floor for the ultimate standard is set. The standard set at the second step is the legally enforceable limit that must be met by a regulated facility.

Even though the risks judged "acceptable" by EPA in the first step of the *Vinyl Chloride* inquiry are already low, the second step of the inquiry, determining an "ample margin of safety," again includes consideration of all of the health factors, and whether to reduce the risks even further. In the second step, EPA strives to provide protection to the greatest number of persons possible to an individual lifetime risk level no higher than approximately 1 in 1 million. In the ample margin decision, the Agency again considers all of the health risk and other health information considered in the first step. Beyond that information, additional factors relating to the appropriate level of control will also be considered, including costs and economic impacts of controls, technological feasibility, uncertainties, and any other relevant factors. Considering all of these factors, the Agency will establish the standard at a level that provides an ample margin of safety to protect the public health, as required by section 112. Application of this approach to the five source categories under consideration in this rulemaking is summarized in the following discussions.

Maleic Anhydride Process Vents

Summary of Decision: Benzene is no longer used in the manufacture of maleic anhydride because all plants in the industry have converted their process equipment to the more economical n-butane feed process. Thus, all benzene exposure from this industry has been eliminated, and no Federal regulation is needed. Maleic anhydride plants are, therefore, not discussed in the remaining sections of this notice.

Ethylbenzene/Styrene Process Vents

Summary of Decision: The existing level of control is judged to provide an ample margin of safety. Under existing State requirements, overall current emissions have been reduced 98 percent or more from uncontrolled levels. The present level of emissions are estimated to present an MIR of 2 in 100 thousand and a total nationwide incidence of about 1 case every 300 years (0.003 case/year). Levels of benzene reported to produce noncancer health effects are at least three orders of magnitude above the exposures comparable to the MIR.

Most people exposed to benzene from these sources are exposed to very low risk levels. Specifically, the risk estimates show: (1) About 600 people are exposed to risk levels of about 1 in 100 thousand reflecting 1 cancer case every 5,000 years (0.0002 case/year) and (2) at least 90 percent of the population modeled to 20 km (about 400,000 people) is exposed to risk levels of less than 1 in

1 million, reflecting about 1 cancer case every 300 years (0.003 case/year). It is anticipated that if modeling were conducted to a 50 km radius, the percentage of the exposed population at risks of less than 1 in 1 million would be at least 99. Further reductions would provide only negligible additional risk and emission reductions (less than 1 percent additional control) and would cost approximately $0.2 million per year (1982 dollars), which would be about the same in 1988 dollars.

Benzene Storage Vessels

Summary of Decision: In providing an ample margin of safety for this source category, the final standards require effective controls on storage vessels not already controlled. The final standards would reduce nationwide benzene emissions by an estimated additional 20 to 60 percent beyond the baseline level, which already includes emission reductions for most storage vessels. The MIR after application of the standards is estimated to be 3 in 100 thousand. This reflects a reduction from an MIR range of between 4 in 100 thousand and 4 in 10 thousand without the standards. The estimated cancer incidence would be reduced from the range without the standards of 1 case every 10 to 20 years (0.1 to 0.05 case/year) to 1 case every 25 years (0.04 case/ year). Levels of benzene reported to produce noncancer health effects are at least three orders of magnitude above the exposure level after an ample margin of safety is provided by EPA.

Most people exposed to benzene from this source category would be exposed to very low levels. The standards are estimated to result in an emission level where: (1) No people are exposed to a risk level greater than 1 in 10 thousand, (2) about 100,000 people would be exposed to a risk level between 3 in 100 thousand and 1 in 1 million, and (3) a majority of the modeled population (70 million people, or greater than 99 percent) is exposed to a risk level of less than 1 in 1 million. While EPA was unable to estimate the cancer incidences associated with various risk levels for this source category, the cancer incidences for the higher risk levels would occur very infrequently and for the lower risk levels would occur about once every 25 years (0.04 case/year). To reduce these exposures further, the next most effective level of control would cost an additional estimated $1.2 million per year (1982 dollars) or roughly $1.3 million in 1988 dollars, but it was not chosen because it would not reduce the MIR and would reduce the cancer incidence by only 1 case every 100 years (0.01 case/year).

Summary of the Standards: The final standards require control of all new and existing vessels with capacities greater than or equal to 38 cubic meters (m^3) (10,000 gallons) used to store benzene. The standards do not apply to storage vessels used for storing benzene at coke by-product recovery facilities because they are considered under the coke by-product recovery plant standards. The standards require use of certain kinds of equipment and work practices for each type of benzene storage vessel. The standards require the use of internal floating roofs (IFR's) with continuous primary seals on fixed roof vessels, and improvements to fittings (e.g., gaskets). For external floating roof (EFR) vessels, secondary seals are required. The standards also require periodic inspections of the vessel roofs, seals, and fittings. Detailed summaries of the regulation and changes since proposal are contained in sections IV and V of this notice.

Coke By-Product Recovery Plants

Summary of Decision: In providing an ample margin of safety for this source category, the final standards reduce benzene emissions by about 97 percent for affected facilities nationwide. The MIR after application of the standards is estimated to be 2 in 10 thousand and the cancer incidence is about 1 cancer incidence every 20 years (0.05 case/ year). This reflects significant risk reduction from the MIR of 7 in 1 thousand and the cancer incidence of 1 cancer incidence every 6 months (about 2 case/year) that are estimated to occur without the standards. Given estimating uncertainties in this case, the MIR level after the standards is comparable to the EPA's benchmark of approximately 1 in 10 thousand. As discussed in Section III of this preamble, EPA views this level as an overstatement of the actual MIR because the emission estimates associated with this level are likely to be overstated. Levels of benzene reported to produce noncancer health effects are at least three orders of magnitude above the exposure level expected after an ample margin of safety is provided by EPA.

Most people exposed to benzene from this source category would be exposed to very low levels. The standards reduce emissions to a level where: (1) Approximately 100 people would be exposed to a risk level between the estimated MIR and about 1 in 10 thousand reflecting about 1 cancer incidence every 5,000 years (0.0002 case/year), (2) about 300,000 people would be exposed to a risk level between 1 in 10 thousand and 1 in 1 million reflecting about 1 cancer incidence every 100 years (0.01 case/ year), and (3) a majority of the modeled population (70 million people, or greater than 99 percent) would be exposed to a risk level of less than 1 in 1 million, reflecting about 1 cancer incidence every 25 years (0.04 case/year). To reduce these exposures to the level associated with the next most effective level of control would cost an additional estimated $6 million per year (1984 dollars), which would be roughly $6.6 million in 1988 dollars. Furthermore, it would involve the use of a control technology that may not be technically feasible, and would only provide a small overall risk reduction of about 1 percent, reflecting an estimated cancer incidence of 1 in every 33 years (0.03 case/year). Additionally, there would be no change in the MIR of about 2 in 10 thousand.

Summary of Standards: The final standards require that process vessels and tar storage tanks in furnace and foundry coke by-product recovery plants be enclosed and the emissions ducted to an enclosed point in the by-product recovery process where they will be recovered or destroyed. This requirement is based on the use of a gas blanketing system. The same requirements also apply to storage tanks for benzene, benzene-toluene-xylene (BTX) mixtures, and light oil in furnace coke by-product recovery plants. To ensure proper operation and maintenance of the system, the standards require semiannual visual inspections and monitoring to detect and repair leaks as well as annual maintenance inspections. The final standards also require that light-oil sumps be completely enclosed; this requirement is based on the use of a permanent or removable cover equipped with a gasket. Semiannual visual inspections and monitoring for leak detection and repair are also required for this source.

The final standards establish a zero emissions limit applicable to naphthalene processing, final coolers, and the associated final-cooler cooling towers at both furnace and foundry plants. The limit is based on the use of a wash-oil final cooler, although other types of systems that achieve the emissions limit can also be used.

The final standards also contain provisions for the control of equipment in benzene service, including pumps, valves, exhausters, pressure-relief devices, sampling connections, and open-ended lines. The leak detection and repair requirements are the same as the requirements in 40 CFR 61 subpart V, and additionally include quarterly leak detection and repair requirements

for exhausters. A detailed summary of the regulation can be found in section V of this notice.

Benzene Equipment Leaks

Summary of Decision: The existing standards for this source category (Subpart J of part 61) are judged to provide an ample margin of safety, especially considering the overstatement of emissions. When these standards were issued in 1984, EPA estimated it would reduce emissions by about 70 percent from the level that would occur without the standards. Using these emission estimates (which overstate emissions as discussed in the next paragraph), the MIR was estimated to be 6 in 10 thousand and the incidence was estimated to be 1 case every 5 years (0.2 case/year).

Based on information received in the past year, EPA considers the present level of emissions associated with the existing standards to be substantially lower than previously estimated. Thus the available risk estimates are substantially overstated. The EPA has reached this conclusion after reviewing information demonstrating compliance with the existing standards and new information about emissions from equipment leaks. However, because the changes in the control of equipment leaks, especially leaks of air toxics, and the changes in the analytical tools needed for determining emissions from these sources have occurred very recently, EPA has not been able to develop better estimates of benzene emissions from equipment leaks. If EPA were to roughly estimate emissions based on this information, the resulting MIR would be comparable to the benchmark of approximately 1 in 10,000. (This is discussed further in sections III and IV of this preamble). Levels of benzene reported to produce noncancer health effects are at least three orders of magnitude above current levels of exposure.

Most people exposed to benzene emissions from this source category are exposed to very low risk levels. Even at the estimated emission levels, the existing standards result in: (1) About 1 million people at a level between 1 in 10,000 and 1 in 1 million with an incidence of 1 case every 25 years (0.04 case/year) and (2) the vast majority of the modeled population (200 million people or greater than 99 percent) is exposed at risks of less than 1 in 1 million with an incidence of 1 case every 5 years (0.2 case/year). If the actual emission rates were known, the exposures would be lower than these estimates. To reduce these exposures further to the next most effective level of emission control would require the use of control technologies that may not be technically feasible at an estimated cost of $52.4 million per year (1979 dollars), which would be roughly $75 million in 1988 dollars.

II. Background

Regulatory Background

In 1977, the Administrator announced his decision to list benzene as a hazardous air pollutant under section 112 of the CAA (42 FR 29332, June 8, 1977). Benzene was determined to be a hazardous air pollutant because of its carcinogenic properties, evidenced by elevated leukemia incidence in populations occupationally exposed. Detailed information about the hazard identification, dose/response assessment, exposure assessment and risk characterization for benzene were presented in the preamble to the policy approaches and standards proposed in July 1988 (53 FR 28496), and will not be repeated in today's notice.

The listing of benzene as a hazardous air pollutant was followed by proposal of standards for benzene emissions from maleic anhydride process vents, EB/S process vents, benzene storage vessels, and benzene equipment leaks in 1980 and 1981 (45 FR 26660, April 18, 1980; 45 FR 83448, December 18, 1980; 45 FR 83952, December 19, 1980; and 46 FR 1165, January 5, 1981). On June 6, 1984, after receipt of comments from industry and members of the public, EPA published a final rule setting emission standards for benzene equipment leaks (49 FR 23498) and published proposed standards for benzene emissions from coke by-product recovery plants (49 FR 23522). On that date, EPA also withdrew its proposed standards for maleic anhydride process vents, EB/S process vents, and benzene storage vessels (49 FR 23558). The withdrawal was based on the conclusion that both the benzene health risks to the public from these three source categories, and the potential reductions in health risks achievable with available control techniques were too small to warrant Federal regulatory action under section 112 of the CAA.

On August 3, 1984, the Natural Resources Defense Council (NRDC) filed a petition for review in the United States Court of Appeals for the District of Columbia Circuit, seeking review of the EPA's three withdrawals of proposed benzene emission standards, and the EPA's final standards for benzene equipment leaks (*Natural Resources Defense Council, Inc.* v. *Thomas,* No. 84–1387). On October 17, 1984, NRDC petitioned EPA under section 307(d)(7)(B) of the CAA to reconsider its decisions to withdraw standards for maleic anhydride process vents, EB/S process vents, and benzene storage vessels, and to reconsider the promulgated standards for benzene equipment leaks. The EPA denied this petition on August 23, 1985 (50 FR 34144).

On July 28, 1987, the court handed down an *en banc* decision in a case concerning the national emission standards under Section 112 for vinyl chloride (Docket No. OAQPS 79–3, Part I, Item X–I–4). The court concluded in *Vinyl Chloride* that EPA had acted improperly in withdrawing a proposed revision to the standards for vinyl chloride by considering costs and technological feasibility without first determining a "safe" or "acceptable" emission level. In light of the *Vinyl Chloride* opinion, EPA requested a voluntary remand to reconsider its June 6, 1984, benzene decisions. In an order dated December 8, 1987, the court granted the EPA's motion and established a schedule under which EPA was to propose its action on reconsideration within 180 days of the order and take final action within 360 days of the order. This order was subsequently modified to extend the time for proposal by 45 days and then to establish August 31, 1989, as the deadline for final action. The EPA also decided to reconsider the proposed standards for benzene emissions from coke by-product recovery plants in light of the *Vinyl Chloride* decision and to publish a supplemental proposal. All of these actions were proposed on July 28, 1988 (53 FR 28496).

Public Participation

A public hearing was held in Washington, DC, on September 1, 1988, and was attended by about 90 people. Oral testimony was presented by 12 organizations and individuals. The public comment period closed on October 3, 1988, with over 200 comments received among the four dockets. The public comment period was reopened from December 15, 1988, to January 30, 1989, based on the EPA's review of the comments and the number of requests for an extension of the comment period. Additional comments were received, raising the combined number of comments to more than 275.

Legal Framework Under Vinyl Chloride

The EPA considers the *Vinyl Chloride* decision to further define the legal framework for setting NESHAP under Section 112 of the CAA. The court set out a two-step process for EPA to follow in making these judgments: first, determine a "safe" or "acceptable risk" level, and then set standards at the level—which may be equal to or lower, but not higher than, the "safe" or "acceptable" level—that protects public health with an ample margin of safety. It

should be noted that the *Vinyl Chloride* court acknowledged that EPA could employ a single step analysis under certain circumstances provided cost and feasibility were excluded from consideration. *Vinyl Chloride*, 824 F.2d at 1165, n.11.

In *Vinyl Chloride*, the court acknowledged that judgments by EPA concerning scientific uncertainty are a relevant part of the process for establishing NESHAP. As the court noted, Congress, in directing EPA to set NESHAP, recognized that uncertainties over the health effects of the pollutants complicate the task. *Vinyl Chloride*, 824 F.2d at 1152. These same uncertainties, according to the court, mean that the Administrator's "decision in this area 'will depend to a greater extent upon policy judgments' to which we must accord considerable deference." *Id.*, 824 F.2d at 1162 (citations omitted).

"Safe" or "Acceptable" Level: The first step is for the Administrator to determine what level of risk to health caused by emissions of a hazardous air pollutant is "safe" or "acceptable." (The court used these terms interchangeably.) The court in *Vinyl Chloride* explicitly declined to determine what risk level is "acceptable" or to set out the method for determining the "acceptable risk" level. Instead, the court stated that these determinations are within the Administrator's discretion.

The court did, however, provide some guidance on the "safe" or "acceptable risk" determination. To make this judgment, "the Administrator must determine what inferences should be drawn from available scientific data and decide what risks are acceptable in the world in which we live." *Id.*, at 1165. However, the court emphasized that "safe" does not require elimination of all risk. To support these propositions, the court cited *Industrial Union Dept., AFL–CIO* v. *American Petroleum Inst.*, 448 U.S. 607, 642 (1980) and its statement that "[t]here are many activities that we engage in every day—such as driving a car or even breathing city air—that entail some risk of accident or material health impairment; nevertheless, few people would consider those activities 'unsafe'." *Vinyl Chloride*, 824 F.2d at 1165. As a final matter, the court said that the Administrator cannot consider costs or technological feasibility in this step.

Ample Margin of Safety: Once an "acceptable risk" level is determined, the second step under *Vinyl Chloride* is to determine whether the emission levels accompanying that determination should be reduced further in providing an "ample margin of safety." Noting that the purpose of the ample margin of safety requirement is to protect against incompletely understood dangers, uncertainties, and variabilities, the court stated that EPA "may * * * decide to set the level below that previously determined to be safe." The court reiterated that because the assessment of risk is uncertain, "the Administrator must use his discretion to meet the statutory mandate." The court added that it is at this stage of the standards-setting process that EPA may consider costs and technological feasibility and other relevant factors: "Because consideration of these factors at this stage is clearly intended to 'protect the public health,' it is fully consistent with the Administrator's mandate under section 112." *Vinyl Chloride*, 824 F.2d at 1165.

Uniqueness of Decision: The effect of the *Vinyl Chloride* decision is to require a decisionmaking process for public health protection decisions unique to section 112, and unlike any other regulatory decision faced by EPA. This is the result of the court's prescription of two separate steps for decisionmaking, the first in which only health factors can be considered in setting an acceptable risk level, and the second in which additional factors including cost, technological feasibility, and other relevant factors may be considered in providing an ample margin of safety. This scheme is unlike any other under the CAA itself, or any of the other statutes administered by EPA because the acceptable risk that EPA adopts in the first step cannot be exceeded by the standards EPA adopts in the second step. Thus, the EPA's approach to regulating hazardous air pollutants under section 112 is not applicable to regulatory decisions under other statutes or other sections of the CAA. Regulatory decisions under other statutes or other sections of the CAA will continue to be made using individual deliberative processes pursuant to those distinct statutory mandates.

In contrast to section 112, other EPA statutes have very different structures and legal requirements for decisionmaking on public health standards. For example, while the Safe Drinking Water Act provides for two separate decisions, the first is a purely health-based goal toward which to work, but not necessarily meet; the second is an enforceable standard that is based on cost and feasibility considerations. Under both the Toxic Substances Control Act (TSCA) and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), the balancing of health concerns and benefits of continued chemical use, and control costs are explicitly provided for in decisionmaking. The Resource Conservation and Recovery Act (RCRA) and the Comprehensive Environmental Response, Compensation, and Liability Act both require statutory decisionmaking very different from the bifurcated process mandated by the court for Section 112.

Prior to issuance of *Vinyl Chloride* decision by the DC Circuit Court, the EPA's recent judgments under section 112 were made in integrated approaches that considered a range of health and risk factors, as well as cost and feasibility in certain cases. However, the Vinyl *Chloride* decision has required a change in the EPA's approach to section 112, since the previously employed integrated approaches did not partition consideration of health factors into a first step separate from consideration of the other relevant factors. Thus, the *Vinyl Chloride* decision requires EPA to consider whether a risk is acceptable *without* at the same time considering benefits of the activity causing risk, feasibility of control, or other factors that EPA (or anyone) would normally consider in determining whether a risk was "acceptable."

III. Application of Policy to Benzene Source Categories.

Introduction

This section of the preamble explains the application of the EPA's policy for the regulation of the benzene source categories discussed in the July 28, 1988, proposal (53 FR 28496). For each source category, the following are provided: (1) Background information particularly noting any changes to the EPA's risk assessment since the July 1988 proposal, (2) the decision on the acceptable risk noting the health-related factors and uncertainties associated with the EPA's decision, and (3) the decision on the ample margin of safety noting health-related impacts, technological feasibility, and cost information associated with this decision. For those sources for which EPA made decisions that result in additional regulatory requirements, the requirements are explained in Section V of this notice.

Ethylbenzene/Styrene Process Vents

Background: This source category covers process vents of plants manufacturing ethylbenzene, styrene, or both. (Benzene emissions from equipment leaks and storage vessels at EB/S plants have been considered separately and are not included in this source category). As of 1985, there were 13 plants in this source category.

Information received during the public comment period indicates that emissions have declined since 1985 and emissions are now estimated to be 135 megagrams per year (Mg/yr) or less.

Decision on Acceptable Risk: The baseline MIR of 2×10^{-5} is below the presumptive benchmark of approximately 1×10^{-4} (which is 1 in 10 thousand expressed in scientific notation). In estimating these risk levels, EPA has not found that co-location of EB/S plants significantly influences the magnitude of the MIR or other risk levels. The nationwide incidence of cancer from exposure to emissions from these facilities is estimated to be about 1 case every 330 years (0.003 case/year) or lower. The majority (more than 90 percent) of the population within 20 km of these sources is exposed to risk levels lower than 1×10^{-6}. For exposures to risk levels greater than 1×10^{-6}, the incidence is estimated to be 1 case every 10,000 years (0.0001 case/year). Benzene concentrations reported to produce noncancer health effects are at least three orders of magnitude above the exposures predicted from these sources. After considering all these factors, EPA judged the emission level associated with an MIR of 2×10^{-5} is acceptable.

Decision on Ample Margin of Safety: The EPA considered selecting a control level more stringent than the level associated with the acceptable risks. This option would require control of the few remaining uncontrolled intermittent emission sources using 98-percent efficient combustion devices (e.g., boilers and flares). In comparing this control option and the existing level of control, EPA found that they provide essentially the same level of safety. Both control levels reflect a significant reduction in risks and emissions from the uncontrolled level. Control of these sources would further reduce benzene emissions by approximately 70 to 90 Mg/yr at most and would reduce the estimated MIR from 2×10^{-5} to 1×10^{-5}. The annual incidence would be reduced by about 1 case every 500 years (0.002 case/year).

The number of people exposed at risks greater than 1×10^{-6} is essentially the same between these two control levels. For the total population exposed to these sources, the incidence would change from 1 case every 330 years (0.003 case/year) to 1 case every 1,000 years (0.001 case/year). Essentially all (95 percent) of this additional reduction in incidence occurs in the population exposed to risks lower than 1×10^{-6}. The proportion of the population at risk levels below 1×10^{-6} is not changed by this emission reduction. In addition, benzene concentrations reported to produce noncancer health effects are at least three orders of magnitude above the exposures predicted for these sources.

As noted above, this control option will reduce benzene emissions by 70 to 90 Mg/yr, which represents less than an additional 1 percent reduction over the uncontrolled level. The cost of this additional emission reduction (and consequent risk reduction) would be about $200,000/yr (1982 dollars). While this additional cost is small, it is disproportionately large in comparison to the small additional emission and risk reduction achieved.

After considering all of these factors, EPA judged that the existing level of controls provides an ample margin of safety. In addition, EPA decided not to set standards to mandate the existing level of controls. Existing controls in the EB/S industry are in the form of product recovery devices or the routing of emissions to the process unit's boilers or other boilers onsite to conserve energy (less fuel would be required due to the energy content of the waste stream). Thus, there is no incentive for removal of existing controls. Additionally, there is no incentive for new sources to waste product or energy, and major new sources would be subject to other EPA requirements (e.g., new source review [NSR], prevention of significant deterioration [PSD]). Thus, less effective controls are not expected in the future. For these reasons, EPA has concluded that Federal standards mandating these controls are not warranted.

Benzene Storage Vessels

Background: This source category covers vessels used to store benzene. These vessels are typically located at petroleum refineries, chemical plants, and bulk storage terminals. As of 1984, 126 facilities with benzene storage vessels had been identified. As noted in the July 28, 1988, **Federal Register** notice, nationwide baseline (i.e., no NESHAP) emissions from benzene storage vessels are estimated to be about 620 to 1,290 Mg/yr. The range of emissions reflects uncertainty about the presence of shingled seals versus continuous seals on existing vessels with IFR's; the lower end of this range reflects the assumption that all storage vessels have continuous seals, while the upper end is based on the assumption that some vessels (17 percent of the existing IFR vessels) are equipped with shingled seals, which emit more benzene than continuous seals. The baseline incidence associated with these emission estimates is estimated to be 1 case every 10 to 20 years (0.1 to 0.05 case/year). The baseline MIR ranges from 4×10^{-5} to 4×10^{-4}.

Decision on Acceptable Risk: The baseline MIR (4×10^{-5} to 4×10^{-4}), while ranging above the presumptive risk of approximately 1×10^{-4}, is judged to be within the acceptable range after consideration of the following factors.

First, the upper end of the range (4×10^{-4}) is very likely an overestimate of the MIR because it assumes that all storage vessels have shingled seals at the plants that would also have the highest MIR's if all vessels in the industry had continuous seals. Based on information received from industry in 1978, EPA estimated that 12 percent of the nationwide benzene storage capacity was in vessels with shingled seals. This was estimated to be only about 17 percent of the existing IFR vessels that store benzene. The EPA believes that shingled seals have not been installed on new vessels for the past several years as general industry practice. Accordingly, the number of vessels equipped with shingled seals is decreasing over time; consequently the associated risk is also decreasing as existing vessels are replaced by new vessels. Therefore, the assumption that all vessels in the worst-case plant have shingled seals for the upper end of the MIR range is a unique conservative assumption for this source category. In addition, the emission estimate for storage vessels equipped with shingled seals is overstated for the following reason. The only test series of IFR vessels with shingled seals had testing irregularities, resulting in inaccurately high emission estimates. These test irregularities are described in detail in the EPA document "Benzene Emissions from Benzene Storage Tanks—Background Information for Proposal to Withdraw Proposed Standards" (EPA–450/3–84–004, March 1984). Because there is no way to determine the proportion of emissions attributable to the use of shingled seals versus the test methodology, the emission estimate for shingled-seal vessels continues to reflect all the uncertainty from that test series (49 FR 23563, June 6, 1984). While EPA is unable to quantify these uncertainties, EPA qualitatively considered the effect of these uncertainties (as well as other uncertainties in its risk assessment) in its judgment of acceptability.

Second, even if the MIR were not overestimated, EPA estimated that only 10 people (out of the total modeled population of 70 million) are at risks greater than or equal to 1×10^{-4}, and virtually no cancer incidence is associated with this risk level. In estimating these risk levels, EPA has not

found that co-location of plants significantly influences the magnitude of the MIR or other risk levels. Where two or more of the model plants used for the analysis might occur at one site (e.g., both a producer and a consumer of benzene), the risks were calculated from their total emissions. In addition, EPA estimated that the majority of the people (about 99 percent) exposed to benzene from this source category would be exposed to a risk level of less than 1×10^{-6}, reflecting 1 cancer incidence every 12 years (0.08 case/year), and that 900,000 people would be exposed at a risk level between 1×10^{-4} and 1×10^{-6}, reflecting 1 cancer incidence every 50 years (0.02 case/year). The baseline incidence is estimated to be 1 incidence every 10 to 20 years (0.1 to 0.05 cancer case/year). This range reflects the range of emission estimates (620 to 1,290 Mg/yr). Virtually all of the incidence is associated with the population at a risk of less than 1×10^{-5}. Thus, even though one end of the range of the EPA's MIR estimate for this source category is above 1×10^{-4}, it is important to consider that almost all of the exposure to benzene from storage vessels is associated with risks well below the benchmark of approximately 1×10^{-4}.

The EPA also considered the noncancer health effects associated with benzene exposures at levels comparable to the baseline MIR range. Noncancer health effects have been associated with exposure to benzene, but the levels reported to produce such effects are two to three orders of magnitude above exposures comparable to the MIR range of 4×10^{-5} to 4×10^{-4}, especially with the likely overstatement of the top end of the range.

After considering all these factors, EPA judged that the baseline emission level is acceptable.

Decision on Ample Margin of Safety: The EPA considered selecting a level of emissions more stringent than the level associated with acceptable risk in providing an ample margin of safety for this source category. This would require all vessels to have emission reduction equipment that many vessels already have. Specifically, it would require the use of an IFR with continuous primary seals on each existing fixed roof vessel, and more effective continuous primary seals on any new vessel with an IFR. It would also require improvements to fittings (e.g., gaskets) on the roofs of all IFR vessels. On each vessel with an EFR, this option would require secondary seals. These are similar controls to those that are required for volatile organic liquid (VOL) storage vessels (including benzene vessels) in 40 CFR 60 Subpart Kb, which affects vessels constructed or rebuilt after July 23, 1984. This level of control was labeled Option 2 in the July 28, 1988, proposal (53 FR 28496).

Control Option 2 would reduce the estimated MIR to 3×10^{-5} from the baseline range of 4×10^{-5} to 4×10^{-4}. Because no facility could have vessels with shingled seals, which represent the upper end of the baseline range, all vessels would be required to have continuous seals under the control option and the risks are not expressed as a range. Thus, no one would be potentially exposed to a risk of greater than or equal to 1×10^{-4}. The number of people estimated to be exposed to a risk level between 1×10^{-4} and 1×10^{-6} would be reduced from 900,000 at baseline to 100,000 with this control option. The majority of the modeled exposed population (greater than 99 percent) would be exposed to a risk level less than 1×10^{-6} with Option 2. While EPA was unable to estimate the cancer incidences associated with various risk levels after control to this option for this source category, the cancer incidences for the higher risk levels would occur infrequently, and for the lower levels would occur about once every 25 years (0.04 case/year). Overall, the total nationwide incidence would be reduced from a range of 1 incidence every 10 to 20 years (0.1 to 0.05 case/year) to 1 incidence every 25 years (0.04 case/year). In addition, levels of benzene reported to produce noncancer health effects are at least three orders of magnitude above the levels expected under Option 2.

Control Option 2 would reduce benzene emissions by a range between 20 to 60 percent (110 to 780 Mg/yr) in comparison to the emissions without standards. To achieve this emission reduction (and consequent risk reduction) would cost $0.1 million/yr (1982 dollars). This cost is considered to be relatively small.

The EPA also considered a more stringent control level, which would require the controls in Option 2 and additionally require secondary seals for IFR vessels (Option 1 in the July 28, 1988, proposal notice, 53 FR 28496). This additional control would not result in any additional reduction in the MIR beyond that achieved by Option 2. The number of people estimated to be exposed to a risk level greater than 1×10^{-6} is estimated to be reduced from 100,000 (Option 2) to 80,000 (Option 1). In both cases, the vast majority of the exposed population (greater than 99 percent) is at a risk of less than 1×10^{-6}. Overall, the total nationwide incidence would only be reduced from 1 incidence every 25 years (0.04 case/year) for Option 2 to 1 incidence every 33 years (0.03 case/year) for Option 1. This additional incidence reduction is associated mainly with the population exposed to risk levels below 1×10^{-6}. Levels of exposure reported to produce noncancer health effects are at least three orders of magnitude above the levels of exposure expected for Option 1, just as for Option 2. The additional cost of Option 1 over Option 2 would be $1.2 million/yr (1982 dollars).

Based on the factors discussed above, EPA decided that the level of control reflected by Option 2 provides an ample margin of safety. Although the emissions associated with the baseline risks are considered to be acceptable, they can be reduced further, achieving additional risk reductions, at a reasonable cost using the control technology included in Option 2. Selecting Option 2 also ensures that any existing shingled seals are replaced with continuous seals, thus addressing one of the uncertainties associated with the EPA's risk assessment. In addition, EPA concluded that additional controls beyond Option 2 are not warranted. The costs of additional controls beyond Option 2 are disproportionately high considering the small reductions in risk and incidence which are achievable.

Coke By-Product Recovery Plants

Background: The risk analysis was revised after the July 1988 proposal based on comments that the industry's operating status should be updated. There are now 36 coke by-product recovery plants. The nationwide baseline benzene emissions are estimated to be 17,000 Mg/yr. The revised baseline estimates of health risk indicate an MIR of 7×10^{-3} and an annual cancer incidence of 1 case every 6 months (2 cases/year). More information regarding the updated estimates can be found in Section IV of this preamble and in the BID.

Decision on Acceptable Risk: The baseline risk of 7×10^{-3} is unacceptable for benzene, a known human carcinogen. In considering the decision on acceptable risk for this source category, EPA focused on control to a level that would result in an estimated MIR of 2×10^{-4}. The EPA considers this MIR to be in the acceptable range after considering several factors.

First, the long-term emissions and, therefore, the MIR are likely to be overstated because EPA assumed that coke batteries operate at full capacity for 70 years. In fact, presently not all plants are continuously operating at full

capacity (including some of the plants with the highest risks). In addition, the decline in the domestic coke industry makes it likely that the EPA's estimate overstates the long-term emissions. There is considerable uncertainty in predicting the utilization of coke batteries. Therefore, EPA made the assumption of full capacity for 70 years, recognizing the effect of this assumption (as well as other assumptions) on its risk assessment. Thus, EPA believes the MIR is not likely to be much different than the benchmark of approximately 1×10^{-4} even though EPA is unable to quantify these uncertainties and, therefore, adjust the MIR for this source category. However, EPA considered this likely overestimation qualitatively in its judgment of acceptability. Furthermore, over time, the residual emissions from one group of sources in this category (equipment leaks) may decrease as operators use better equipment (e.g., improved valve packing) in addition to the required work practice program.

Second, EPA estimated that 100 people (out of the total modeled population of 70 million) potentially would be exposed to risks of 1×10^{-4} or greater, with 1 cancer incidence every 5,000 years among this group of 100 people (0.0002 case/year). In estimating these risk levels, EPA has not found that co-location of coke by-product recovery plants significantly influences the magnitude of the MIR or other risk levels. In addition, EPA estimated that the vast majority of the modeled population (greater than 99 percent) exposed to benzene from this source category would be exposed to a risk level of less than 1×10^{-6} reflecting 1 cancer incidence every 25 years (0.04 case/year), and that 300,000 people would be exposed at a risk level between 1×10^{-4} and 1×10^{-6} reflecting 1 cancer incidence every 100 years (0.01 case/year). Of the total cancer incidence (1 cancer incidence every 20 years, i.e., 0.05 case/year), 80 percent is associated with the large population at risks of less than 1×10^{-6}. Thus, even though EPA estimates an MIR of about 2×10^{-4} for this option, it is important to consider that almost all the exposure to benzene from this source category is associated with risks well below the benchmark of approximately 1×10^{-4}.

The EPA also considered the noncancer health effects associated with benzene exposures at levels comparable to an MIR level of 2×10^{-4}. Noncancer health effects have been associated with exposure to benzene, but the probability is unlikely of the effects occurring at exposures comparable to an MIR level of 2×10^{-4}. Levels of benzene reported to produce such effects are three orders of magnitude higher than the concentrations comparable to an MIR of 2×10^{-4}.

After considering all these factors, EPA judged the emission level associated with an MIR of 2×10^{-4} to be acceptable.

Decision on Ample Margin of Safety: The EPA considered selecting a level of emissions more stringent than the level associated with acceptable risks in providing an ample margin of safety for this source category. This option (Option 1) would require additional control over the acceptable risk level (Option 2) of storage vessels at foundry coke by-product recovery plants and would also require use of dual mechanical seals on pumps and sealed bellows valves (i.e., assumed to be 100 percent control) at both furnace and foundry coke by-product recovery plants. The control technologies and their estimated impacts are presented for each emission point in Table 1 for Options 1 and 2.

TABLE 1. CONTROLS INCLUDED IN EACH OPTION[a]

Emission points	Control technology efficiency (%)	Option 1		Option 2	
		Furnace	Foundry	Furnace	Foundry
Final cooler, cooling tower; napthalene processing/handling	Wash-oil final cooler (100)	X	X	X	X
Tar decanter, tar intercepting sump, and flushing-liquor circulation tank	Gas blanketing (98 [b])	X	X	X	X
Tar storage and tar-dewatering tanks	Gas blanketing (98)	X	X	X	X
Light-oil condenser, light-oil decanter, wash-oil decanter, and wash-oil circulation tanks.	Gas blanketing (98)	X	X	X	X
Excess ammonia-liquor storage tank	Gas blanketing (98)	X	X	X	
Light-oil and BTX storage tanks	Gas blanketing (98)	X	X	X	
Benzene storage tanks	N_2 gas blanketing (98)	X	X	X	
Light-oil sump	Cover (98)	X	X	X	X
Pumps	Monthly inspections (83)			X	X
	Dual mechanical seals (100)	X	X		
Valves	Monthly inspections (73)			X	X
	Sealed-bellows valves (100)	X	X		
Exhausters	Quarterly inspections (55)			X	X
	Degassing reservoir vents (100)	X	X		
Pressure-relief devices	Rupture disc system (100)	X	X	X	X
Sampling connection systems	Closed-purge sampling (100)	X	X	X	X
Open-ended lines	Cap or plug (100)	X	X	X	X

[a] The control options analyzed to determine an ample margin of safety are the same as those analyzed for the July 1988 proposal (53 FR 28496), except that control options less stringent than Option 2, the level determined to be in the acceptable range, are not shown on the table. The impacts associated with these control options have been revised since the July 1988 proposal to reflect updated information on the industry operating status. These revisions are explained in greater detail in Section 6 of the BID.

[b] 95-percent efficiency for tar decanter.

It should be noted that EPA has not concluded that leakless valves/sealed bellows valves will always effectively eliminate emissions or that they are available for all sizes and types of equipment in benzene service. Nevertheless, EPA evaluated Option 1 to determine if it should be selected to reflect an ample margin of safety even though there would be technological feasibility issues in implementing this option.

In comparing Options 1 and 2, EPA found that they provide essentially the same level of safety. Each reflects significant risk reduction in comparison to the baseline risks. Although the estimated number of people exposed to a risk level greater than or equal to 1×10^{-4} would be reduced from 100 to 50 under Option 1, EPA estimates that Option 1 would not reduce the MIR below the Option 2 level of 2×10^{-4}. The number of people exposed to a risk level between 1×10^{-4} and 1×10^{-6} would be reduced from 300,000 to 200,000 under Option 1. Under both options, the vast

majority of the exposed population (greater than 99 percent) would be at risk levels of less than 1×10^{-6}. For the population exposed to a risk level between 1×10^{-4} and 1×10^{-6}, the incidence would change from 1 case every 100 years (0.01 case/year) under Option 2 to 1 case every 140 years (0.007 case/year) under Option 1; for the population exposed to risks below 1×10^{-6}, the incidence would change only from 1 case every 25 years (0.04 case/year) under Option 2 to 1 case every 33 years (0.03 case/year) under Option 1. Overall, the total nationwide incidence would be reduced from 1 case every 20 years (0.05 case/year) to 1 case every 33 years (0.03 case/year) or only by an additional 0.02 case/year. Most (about 80 percent) of this additional reduction in incidence in Option 1 compared to Option 2 occurs in the population exposed to risks in the 1×10^{-6} range or lower. In addition, levels reported to produce noncancer health effects are about three orders of magnitude above levels expected under either option.

Option 1 reduces benzene emissions by about 98 percent, whereas Option 2 reduces benzene emissions by about 97 percent in comparison to the emissions that would occur without the standards. This reflects only an additional 1 percent reduction for Option 1. Also, the relative difference between these options may be even smaller than estimated. This is due to the uncertainty that sealed bellows valves would actually achieve the assumed 100 percent reduction in Option 1 and the potential for higher emission reduction than estimated for the equipment leak detection and repair program under Option 2. To achieve this emission reduction (and consequent risk reduction), Option 1 would increase the annualized cost by about $6 million/yr (1984 dollars). While this additional cost is relatively small overall, it is disproportionately large in comparison to the small additional emission and health risk reductions associated with Option 1 in comparison to Option 2.

In conclusion, EPA decided that Option 2 provides an ample margin of safety. The EPA judged the risk reductions for Options 1 and 2 to be essentially the same and the greater control cost of Option 1 to be high in relation to the small additional emission and risk reduction achieved. In doing so, EPA considered the likely overstatement of long-term emissions and risks and the question of technical feasibility.

Benzene Equipment Leaks

Background: This source category covers emissions of benzene from pieces of equipment handling process streams that contain greater than 10 percent benzene, by weight. These equipment pieces include pumps, pipeline valves, open-ended valves, flanges, compressors, pressure-relief valves, sampling connections, process drains, and product accumulator vessels. In 1984, there were an estimated 131 facilities in this source category.

When Subpart J of Part 61, the benzene equipment leaks NESHAP, was promulgated in 1984, EPA estimated that this regulation would reduce emissions from about 7,900 Mg/yr to 2,500 Mg/yr (a 69 percent reduction). As noted in the July 28, 1988, **Federal Register** notice, EPA viewed the estimate of 2,500 Mg/yr for current emissions as being an upperbound estimate, and recognized that actual emissions may be substantially lower. The EPA reached this conclusion after reviewing compliance report information from facilities subject to the existing standards and other information for facilities handling toxic compounds. Information obtained since proposal has further substantiated this conclusion. The basis for this conclusion is summarized below and is discussed in more detail in section IV and in the BID.

During the consideration of the public comments, EPA examined compliance reports from 1987 and 1988 for a randomly-selected sample of 25 facilities subject to the benzene NESHAP. This review showed many facilities had no leaking valves or pumps (0.0 percent) and no facilities had more than 1.5 percent leaking valves. The average leak rate for valves was 0.27 percent. This performance is better than an average expected leak rate of about 3 to 5 percent. In addition to the compliance reports, EPA also reviewed a limited amount of comprehensive data for a few process units with equipment in benzene service. These data show emission rates a factor of 20 to 30 below levels predicted by the earlier EPA studies. However, these more recent results do not provide a basis for developing new emission factors that would be generally applicable to all facilities. To rederive the emission estimates will require additional information and analysis of current industry practices. As this information has been received only recently, EPA has not been able to conduct the necessary studies and analyses in time to revise the emission estimates for benzene equipment leaks. The EPA has initiated a negotiated rulemaking to develop a new regulatory approach that will result in quantifiable emission levels, give credit for good original plant design, and motivate innovation (54 FR 17944, April 25, 1989). This effort is expected to require at least 6 months to complete. Consequently, the emission and risk estimates remain essentially as presented in the July 28, 1988, **Federal Register** notice.

Decision on Acceptable Risk: Based on 1984 emission estimates, the MIR is estimated to be 6×10^{-4}. However, as discussed previously under "Background" (and as discussed in detail in section IV, in response to comments), EPA considers the emission estimates to be overstated by roughly a factor of 5 to 20, or more. If actual emissions could be quantified and modeled in the exposure analysis, the risk estimates would decrease proportionately to the emissions, and would be comparable to the presumptive risk benchmark. An additional factor in this overstatement of emissions is that the analysis was developed assuming facilities continued to operate at the estimated emission rate for 70 years. However, EPA expects that, over time, emissions may continue to decrease due to improved control of air toxics through use of better design, operation, and maintenance of facilities. Given all these factors, EPA concludes that the MIR for this category is more likely to be less than the benchmark of approximately 1×10^{-4}, and will use this in its judgment on acceptability.

The estimated annual cancer incidence (based on the overstated emission estimates) is 1 case every 5 years (0.2 case/year) in a total modeled population of 200 million. The estimated incidence among the 2,000 people predicted to be at lifetime risks greater than 1×10^{-4} is only 1 case every 200 years (0.005 case/year). In estimating these risk levels, EPA has not found that co-location of facilities significantly influences the magnitude of the MIR. In addition, EPA estimated the majority of the population (greater than 99 percent) exposed to benzene from this source category would be exposed to risk levels below 1×10^{-6}. The incidence predicted for the population exposed to risks smaller than 1×10^{-6} is 1 case every 5 years (0.2 case/year), and the incidence for the population exposed to risks greater than 1×10^{-6} is 1 case every 20 years (0.05 case/year).

The EPA also considered the noncancer health effects associated with benzene exposures at current levels of exposure from this source category. Benzene concentrations reported to produce noncancer health effects are two to three orders of magnitude above the exposures predicted for these sources.

After considering all of these factors, especially the substantial overstatement of emissions, EPA judged that the present, controlled level of emissions and risks are acceptable.

Decision on Ample Margin of Safety: The EPA considered selecting a level of emissions more stringent than the level associated with the existing standards. The additional control of Option 1 reflects the use of dual mechanical seals for pumps, and sealed bellows valves. For the purpose of this analysis, this equipment is considered to be leakless (i.e., 100 percent control). However, it is not known if leakless valves/sealed bellows valves will effectively eliminate emissions or if they are available for all sizes and types of equipment in benzene service. Thus, it should be noted that EPA has not concluded that leakless valves/sealed bellows valves will effectively eliminate leaks. Information is needed on the magnitude of emissions released when a sealed bellows valve fails, failure rates of these valves, and appropriate procedures for monitoring valves for failures before any conclusions are made. In addition, a better understanding of the factors affecting equipment leaks and development of new regulatory approaches is needed before significant further reductions in exposures will be assured. Nevertheless, EPA considered Option 1 to determine if it should be selected to provide an ample margin of safety even though there would be technological feasibility issues in implementing this option.

Under Option 1, the estimated MIR would be reduced by roughly a factor of three, and the nationwide incidence would be reduced from 1 case every 5 years (0.2 case/year) under the current NESHAP baseline to 1 case every 10 years (0.1 case/year). As discussed under the "Decision on Acceptable Risk," EPA views the estimate of the MIR for this source category as significantly overstated. The number of people exposed to a risk level between 1×10^{-4} and 1×10^{-6} would be reduced from about 1 million to 300,000 under Option 1. For the people exposed to these risk levels, the incidence would change from 1 case every 200 years (0.005 case/year) to 1 case every 1,000 years (0.001 case/year) and from 1 case every 25 years (0.04 case/year) to 1 case every 100 years (0.01 case/year), respectively. The number exposed to a risk level less than 1×10^{-6} would be the same under Option 1 and the existing standards, with more than 99.5 percent of the total population of 200 million exposed to these risk levels. Most (about 90 percent) of the additional reduction in incidence in Option 1 compared to the existing standards would occur in the population exposed to risks in the 1×10^{-6} range or lower. In addition, benzene concentrations reported to produce noncancer health effects are at least two to three orders of magnitude above the concentrations expected under Option 1 or the existing standards.

Option 1 is estimated to reduce benzene emissions by about 50 percent from the level of the standards. The relative difference between the two control levels may be substantially smaller than this estimate. This is due to the uncertainty that sealed bellows valves would actually achieve the assumed 100 percent reduction in Option 1 and the greater than predicted reductions observed with the current standards' leak detection and repair program. Because of the large uncertainty in the emission levels under the current standards, the likely additional emission reduction cannot be estimated. Implementation of the requirements of Option 1 would increase the annualized control cost by $52.4 million/yr (1979 dollars). (Docket No. A–79–27, Item V–A–1). The majority of the estimated cost is from the cost of sealed bellows valves.

Although Option 1 shows some additional emission and risk reduction may be achievable, the control cost is disproportionately large when compared to the small reductions in risk which could be achieved. If the actual emission reduction were known and used, the option would likely be even less effective. Recognizing the uncertain bias in the emission estimates, the large proportion of the incidence associated with lifetime risks less than 1×10^{-6}, the questions regarding technical feasibility, and the costs of additional controls, EPA judged the emission levels associated with the existing NESHAP to protect public health with an ample margin of safety. Therefore, additional control beyond the existing NESHAP is not warranted and will not be required.

IV. Significant Comments, Responses, and Changes

Legal Comments and Responses

Interpretation of Vinyl Chloride Decision

Comment: Several commenters discussed the fact that the D.C. Circuit Court of Appeals' *Vinyl Chloride* decision recognizes that EPA may deem some level of cancer risk as acceptable, in light of the fact that many carcinogenic substances are assumed not to have a threshold value below which they pose no risk. The issue raised by these commenters is what level of risk from benzene emissions could be characterized as "acceptable" under the Court of Appeals' ruling, and how acceptable risk relates to the concept of *de minimis* risk particularly as raised in previous court decisions, such as *Alabama Power Co.* v. *Costle*, 636 F.2d at 323 (D.C. Cir. 1979) and *Public Citizen* v. *Young*, 831 F.2d at 1108 (D.C Cir. 1987).

In the context of the *Vinyl Chloride* decision, the issue is whether the "acceptable" risk is equated with *de minimis* risk, and is thereby defined as "trivial" or "of no value," or whether some higher level of risk is considered acceptable under the court's ruling.

One commenter argued that the *Alabama Power* and *Public Citizen* cases support the contention that acceptable risk and *de minimis* risk are synonymous, and that, consequently, only "trivial" risk "of no value" can be interpreted as "acceptable risk" under the *Vinyl Chloride* decision. The commenter asserted that risks cannot be dismissed as "trivial" unless EPA demonstrates a public consensus that the risk levels are unworthy of preventive response. Chemically-induced cancer risks of 6×10^{-3}, 1×10^{-3}, or 1×10^{-4} are not in this category, according to the commenter, and EPA may not be able to show such consensus even for risks of 1×10^{-6}. One commenter also cited *Public Citizen* and *Vinyl Chloride* as support for the position that only a *de minimis* level of risk (e.g., 1×10^{-6} or lower) can be considered acceptable. The commenter noted that this position is consistent with the CAA focus on public health and providing an ample margin of safety.

Four commenters disagreed with the previous commenter. These commenters argued that a safe level is not the equivalent of a *de minimis* risk level and distinguished between *de minimis* risks, which are too trivial to warrant regulation, and a broad zone of higher risks that may still satisfy the court's definition of "acceptable risk." The commenters pointed to the fact that the court used the latter term intentionally in the *Vinyl Chloride* decision, and was aware of the differing legal meaning of *de minimis*. The commenters also cited the *Alabama Power* and *Public Citizen* cases, stating that those decisions held *de minimis* risk to be applicable except for those instances where Congress had already been "extraordinarily rigid" in establishing regulatory requirements.

One commenter also pointed out that the court in the *Vinyl Chloride* decision specifically stated that "acceptable risk"

does not necessarily mean risk free. Instead, the commenter stated, the court defined something as "unsafe" when it exposes humans to a "significant risk of harm." The commenter argued that the fact that a risk is not *de minimis* does not mean that it poses a "significant risk of harm." The commenter also pointed to the examples of "acceptable risk" cited by the court, such as driving a car, which have a higher than *de minimis* risk. Using this example as a guide, the commenter stated that there is no basis for setting "acceptable risk" at a level of 1×10^{-6} since risks significantly above this level may be judged "acceptable" under the *Vinyl Chloride* decision.

Two commenters stated that the "acceptable risk" finding derives directly from the text and legislative history of Section 112 of the CAA, while the *de minimis* concept is a nonstatutory doctrine identified as a risk test by the court in the *Alabama Power* and *Public Citizen* cases. Thus, the "acceptable" and *de minimis* risk tests serve much different functions in public health regulation. One commenter also cited a more recent decision, *Building and Construction Trades Department, AFL–CIO* v. *Brock*, 838 F.2d 1258 (D.C. Cir. 1988), in which the court held that the Occupational Safety and Health Administration (OSHA) need not consider stricter control measures in the absence of evidence showing that such measures "will provide more than a *de minimis* benefit for worker health." One commenter also cited *Union of Concerned Scientists* v. *U.S. Nuclear Regulatory Commission*, 824 F.2d 108 (D.C. Cir. 1987), in which the court determined the Nuclear Regulatory Commission (NRC) "need ensure only an acceptable or adequate level of protection of public health and safety" and "not demand that nuclear power plants present no risk of harm."

Response: As the commenters acknowledge, the *Vinyl Chloride* decision recognizes that EPA may find some level of cancer risk to be "acceptable." In its explanation of the term, the court cited the preamble to the **Federal Register** notice announcing the final *Vinyl Chloride* regulations:

> Scientific uncertainty, due to the unavailability of dose/response data and the 20-year latency period between initial exposure to vinyl chloride and the occurrence of disease, makes it impossible to establish any definite threshold below which there are no adverse effects to human health. [citation omitted] 824 F.2d 1146 (D.C. Cir. 1987).

The court explained that:

> the Congressional mandate to provide "an ample margin of safety" to "protect the public health" requires the Administrator to make an initial determination of what is "safe." This determination must be based exclusively upon the Administrator's determination of the risk to health at a particular emission level * * * the Administrator's decision does not require a finding that "safe" means "risk free." 824 F.2d at 1164.

Where the commenters differ is over what level of risk from benzene emissions can be considered an "acceptable risk" within the meaning of the *Vinyl Chloride* decision. Some argue that in order to be "acceptable," the risk must be no more than *de minimis* within the meaning of *Alabama Power* and *Public Citizen* while others dispute this position.

The EPA does not interpret "acceptable risk" for purposes of Section 112, as synonymous with or limited to *de minimis* risk as described in *Alabama Power* and *Public Citizen*. The *Vinyl Chloride* decision, while going into great detail in discussing the concepts of both "acceptable risk," and "ample margin of safety," never mentioned the concept of *de minimis* risk. What the court did say was that Congress exhibited no intent to require EPA to prohibit emissions of all nonthreshold pollutants, and citing the Supreme Court decision in *Industrial Union Dept., AFL–CIO* v. *American Petroleum Institute*, 448 U.S. 607 (1980) stated that "safe does not mean risk free." 824 F.2d at 1153.

The court declined to restrict the Administrator to any particular method of determining what constitutes an acceptable risk, but explained simply that:

> the Administrator must determine what inferences should be drawn from available scientific data and decide what risks are acceptable in the world in which we live. 824 F.2d at 1166.

By way of example, the court referred to language in the Supreme Court's *Industrial Union* decision, to the effect that driving a car or breathing city air are risk-laden activities that society does not consider "unsafe." 824 F.2d at 1165. Thus, the determination of what is an "acceptable risk" is discretionary with the Administrator, and involves evaluation of existing scientific data and uncertainties concerning that data.

The EPA disagrees with the commenters' contention that *Public Citizen* demonstrates that "acceptable risk" is limited to *de minimis* risk. *Public Citizen* involved a Food and Drug Administration (FDA) statute prohibiting use of any food coloring additive "found * * * to induce cancer in man or animal." 831 F.2d at 1109. The FDA in that case argued that a *de minimis* exception, allowing use of the challenged additives when the cancer risks involved are trivial, could properly be interpreted into the statute. The court however, while acknowledging that the cancer risks were indeed trivial, held that the statute imposed an absolute ban once a finding of carcinogenicity had been made, and therefore no *de minimis* exception could be employed.

The situation in *Public Citizen* involving a "no-risk" statute is markedly different from the facts of the *Vinyl Chloride* case. In the *Vinyl Chloride* case the court interpreted that statute as not equating "safe" with "risk free." [citations omitted] 824 F.2d at 1153. Indeed, as explained above, the *Vinyl Chloride* court specifically used examples of activities having acceptable levels of risk "in the world in which we live" [citations omitted] 824 F.2d at 1165, but which exceed the *de minimis* concept described in *Alabama Power*. Thus, unless the *Vinyl Chloride* decision is read to broaden the *de minimis* concept from triviality to a level which is acceptable in the world in which we live, the dicta in *Public Citizen* is an apparent misconstruction of the *en banc Vinyl Chloride* opinion. Furthermore, *Public Citizen* did not deal with a statute requiring a determination of a "safe" level, and therefore cannot reasonably be compared to section 112 of the CAA, and the court's analysis of risk in the *Vinyl Chloride* opinion.

Finally, the *Vinyl Chloride* court's citation of *Alabama Power* does not constitute adoption of the *de minimis* concept. As stated above, the *Vinyl Chloride* decision makes no mention of the *de minimis* concept, and cites *Alabama Power* following a discussion of risks found acceptable by the Supreme Court in *Industrial Union* which clearly exceed *de minimis*. Therefore, at most, *Alabama Power* was apparently cited as *an example* of a risk level, which would, of course, be considered "acceptable." Obviously, the enumeration of other, higher, risks precludes the interpretation that the court was equating the *de minimis* concept and "safe" or "acceptable risk" in *Vinyl Chloride*. In conclusion, EPA does not believe that the terms *de minimis* and "acceptable risk" are synonymous. Further, EPA believes that it is not required by *Vinyl Chloride* to reduce risk to a *de minimis* level.

Comment: Several commenters addressed the *Vinyl Chloride* court's finding on acceptable risk versus zero risk. Five commenters felt that "acceptable" risk which the court equated with being "safe" is not zero risk. One commenter stated the court understood that while the scientific

approach can reduce uncertainty, life cannot be risk free.

Another commenter contended that the court erred in the *Vinyl Chloride* case in determining that "safe" does not require the elimination of all risk. He argued that the court's citation of *Industrial Union Dept., AFL–CIO* v. *American Petroleum Institute,* 448 U.S. 607, 642 (1980), as precedent for this determination was inappropriate.

Response: The D.C. Circuit Court in *Vinyl Chloride* held that the Administrator is required, under section 112, to make an initial determination of what is "safe." 824 F.2d at 1164. The court went on to state specifically that the "Administrator's decision does not require a finding that "safe" means "risk free" *Id.,* and further stated that the Administrator must decide "what risks are acceptable in the world in which we live." 824 F.2d at 1165. Thus, the *Vinyl Chloride* court made it clear that "safety" or "acceptable risk" is not to be equated with zero risk.

The *Vinyl Chloride* court cites the Supreme Court decision in *Industrial Union Dept., AFL–CIO* v. *American Petroleum Institute,* 448 U.S. 607 (1980) as support for the proposition that zero risk is not mandated, stating that *Industrial Union* holds that "something is 'unsafe' only when it threatens humans with a 'significant risk of harm'." 824 F.2d at 1153. *Industrial Union* is clearly an appropriate precedent here.

Regulatory Approaches

Comment: The EPA's proposed approaches were based on a two-step decision process, and some commenters also interpreted the *Vinyl Chloride* decision as requiring a two-step process. Two commenters disagreed, stating that the *Vinyl Chloride* decision does not mandate a two-step procedure for making section 112 decisions, but made clear that an integrated, single-step procedure could be used as long as the decision satisfied both the "acceptable risk" and the "ample margin of safety" criteria. Thus, for example, if existing emissions pose risks that are well below the acceptable risk, the Administrator could determine that both the acceptable risk criterion and the reasonable degree of protection criterion are satisfied in one step.

One commenter believed that as long as protection of public health is given primary consideration and only secondary consideration is given to costs and technological feasibility, a one-step approach agrees with the court's criteria as well as a two-step approach does.

Response: The court in *Vinyl Chloride* specifically addressed the one- or two-step process question, stating as follows:

> In response to the facts presented in this case we have analyzed this issue by using a two-step process. We do not mean to indicate that the Administrator is bound to employ this two-step process in setting every emission standard under Section 112. If the Administrator finds that some statistical methodology removes sufficiently the scientific uncertainty present in this case, then the Administrator could conceivably find that a certain statistically determined level of emissions will provide an ample margin of safety. If the Administrator uses this methodology, he cannot consider cost and technological feasibility: these factors are no longer relevant because the Administrator has found another method to provide an "ample margin" of safety. 824 F.2d at 1165 n. 11.

Thus, *Vinyl Chloride* does not mandate a two-step process in all cases. However, if a one-step process were utilized, the Administrator could not consider cost or feasibility.

Comment: One commenter stated that a "decision by the Administrator to force further reductions in risk on the grounds that such reductions are needed to provide an ample margin of safety * * * would be inconsistent with *Vinyl Chloride* if that decision were not based on a reasonable showing of the need to compensate for uncertainty." The commenter urged EPA to conduct, "where information is adequate, a quantitative assessment of the possibility that actual risk exceeds estimated risk, and the extent to which actual risk may be unacceptably high."

Response: This commenter suggested that if there were no possibility of uncertainty, then further reductions to allow for an ample margin of safety would be inconsistent with the *Vinyl Chloride* decision. However, the *Vinyl Chloride* decision, in discussing what is meant by "an ample margin of safety" referred to the Senate's discussion of Section 109. 824 F.2d at 1152. In their report, sponsors of the Senate bill explained that "the purpose of the 'margin of safety' standards is to afford 'a *reasonable* degree of protection * * * against hazards which research has not yet identified.' " S. Rep. No. 1196, 91st Cong., 2d Sess. 10 (1970), and added that the term is also interpreted to be a "safety factor * * * meant to compensate for uncertainties and variabilities." 824 F.2d at 1152.

The court also recognized that hazardous air pollutants are generally "no threshold" pollutants, meaning that it is a commonly accepted scientific view that there is no threshold below which we are currently able to determine that a dose of the pollutant carries no risk of adverse health effects. 824 F.2d at 1148. The court added that:

> Congress * * * recognized in Section 112 that the determination of what is "safe" will always be marked by scientific uncertainty and thus exhorted the Administrator to set emission standards that will provide an "ample margin" of safety. This language permits the Administrator to take into account scientific uncertainty and to use expert discretion to determine what action should be taken in light of that uncertainty.

While it is hypothetically possible for there to be no uncertainty, the *Vinyl Chloride* court recognized that today, and probably for the foreseeable future, there will be a degree of uncertainty. Thus, EPA is not acting inconsistently with *Vinyl Chloride* in determining that further reductions may be appropriate below the "safe" level (after consideration of the factors relevant to the ample margin decision) in order to account for uncertainty and provide for an "ample margin of safety."

Comment: One commenter wrote that the *Vinyl Chloride* opinion states that "the Administrator 'may, and perhaps must' include additional control measures where technologically feasible, in order to reduce public exposure by a cancer-causing chemical 'to the lowest feasible level'." The commenter therefore believed the correct interpretation of Section 112 of the CAA according to *Vinyl Chloride* is that "EPA *must* provide such additional protection as is feasible at the second-step 'ample margin of safety' determination."

Response: In the July 28, 1988, notice proposing emission standards for benzene, EPA raised the question of whether "to require all technically feasible controls for which costs are reasonable no matter how small the risk reduction" (53 FR 28541).

The *Vinyl Chloride* case provided that technological feasibility *can* be considered under section 112, so long as it is not considered in the "acceptable risk" determination, but only in the "ample margin of safety" determination. ("Since we cannot discern clear Congressional intent to preclude consideration of cost and technological feasibility in setting emission standards under section 112, we necessarily find that the Administrator may consider these factors." 824 F.2d at 1163.) The court explained that "it is not the court's intention to bind the Administrator to any specific method of determining what is 'safe' or what constitutes an 'ample margin'." 824 F.2d at 1166. Thus, the court provided that technological feasibility may be considered under

section 112, at the "ample margin of safety" step in the analysis, and that it is within the discretion of the Administrator to determine what weight it is to be given, along with other relevant considerations such as the cost of additional controls. Because the court has specifically sanctioned the consideration of costs as well as feasibility of controls, it is clear that *Vinyl Chloride* does not require imposition of the maximum feasible controls without regard to cost or effectiveness. "Section 112(b)(1)'s command to 'provide an ample margin of safety to protect the public health' is self-contained, and the absence of enumerated criteria may well evince a Congressional intent for the Administrator to supply reasonable ones." 824 F.2d at 1159.

Comment: One commenter stated that the *Vinyl Chloride* court was unequivocal in its conclusion that considerations of cost and feasibility of controls are irrelevant to the question of what level of emission is safe. The commenter stated that *Vinyl Chloride* mandated only a very limited role for consideration of cost and feasibility, and that the acceptable risk decision should not be manipulated to allow consideration of cost and feasibility in the second step.

Another commenter, on the other hand, stated that the court made clear that costs and feasibility are not banished from section 112 decisionmaking. Another commenter argued that given the *Vinyl Chloride* decision reading on the "ample margin of safety" step, EPA can continue to consider technological feasibility, financial factors, and social impacts.

Response: The *Vinyl Chloride* court reviewed the specific language of section 112 with respect to the question of whether cost and technological feasibility may be considered, and found that as they could not discern "clear Congressional intent to preclude consideration of cost and technological feasibility in setting emission standards under section 112, we necessarily find that the Administrator may consider these factors." 824 F.2d at 1163. Thus, the Administrator is not barred from considering these factors at some point in his analyses.

However, the court went on to provide that the Administrator must make an initial determination of what is "safe," and that at this stage "cannot under any circumstances consider cost and technological feasibility." 824 F.2d at 1165. Once a determination has been made to what is "safe," the Administrator is free to consider costs and technological feasibility in setting standards which provide an "ample margin of safety." Indeed, the *Vinyl Chloride* court suggested that the Administrator is free to consider not only cost and feasibility, but any other reasonable criteria in determining what constitutes an ample margin of safety. 824 F.2d at 1159.

Comment: Several commenters felt that the legislative history of the CAA supports the point that NESHAP should not be based solely on the MIR; instead, the CAA is concerned about impacts on the general population, "not small risks to a few individuals," in order to protect public health.

Other commenters stated that reliance exclusively on the maximum exposed individual to determine acceptable risk is legally unacceptable because it is tantamount to a zero risk, zero emissions policy rejected in *Vinyl Chloride* and in the legislative history of the CAA. Approach D particularly, with its 1×10^{-6} MIR risk criterion, is the practical equivalent of the zero risk philosophy rejected in the *Vinyl Chloride* decision.

Arguing the opposite side, two commenters stated that the CAA requires EPA to base "acceptable risk" decisions exclusively on the cancer risk to the most exposed individuals. The commenters stated that the legislative history of the CAA describes public health as the health of individuals, including particularly susceptible individuals, regardless of where they reside.

Response: The *Vinyl Chloride* decision provides that the Administrator must make a finding of what is "safe," based on available scientific information. What is found to be safe need not be "risk free" but rather must conform to what society finds to be an acceptable level of risk in the world in which we live. 824 F.2d at 1165. Such finding must be based "solely upon the risk to health." 824 F.2d at 1166. The *Vinyl Chloride* case does not specify what particular health risks are relevant, or how they should be measured. Indeed, the court specified that administrative discretion is to be employed and that "it is not the court's intention to bind the Administrator to any specific method of determining what is 'safe'." 824 F.2d at 1166.

The policy chosen by the Administrator permits consideration of multiple measures of health risk. Not only can the MIR figure be considered, but also incidence, the presence of noncancer health effects, and the uncertainties of the risk estimates. In this way, the effect on the most exposed individuals can be reviewed as well as the impact on the general public These factors can then be weighed in each individual case. This approach complies with the *Vinyl Chloride* mandate that the Administrator ascertain an acceptable level of risk to the public by employing his expertise to assess available data. It also complies with the Congressional intent behind the CAA, which did not exclude the use of any particular measure of public health risk from the EPA's consideration with respect to section 112 regulations, and thereby implicitly permits consideration of any and all measures of health risk which the Administrator, in his judgment, believes are appropriate to determining what will "protect the public health."

Policy-Related Comments and Responses

The comments on the four approaches proposed by EPA for making the acceptable risk decision and for providing an ample margin of safety were generally polarized: Approach A was favored largely by industry; Approach D was favored by many private citizens, State regulatory agencies, and public interest groups; Approach B received essentially no support; and, while Approach C was criticized by many industries, private citizens, State regulatory agencies and public interest groups, it received some support from other commenters within these groups. In addition, alternative approaches were suggested by several commenters with some favoring a higher acceptable risk level and others a zero emissions approach.

The EPA considered all of these comments in selecting the final policy for setting standards under section 112. This was done in light of the *Vinyl Chloride* decision; the final policy is described above in this **Federal Register** notice. The EPA responses to these comments are presented below; they are based on how the comments relate to the final policy and do not address positions and concerns about the four proposed approaches or suggested alternative approaches that are no longer relevant.

In considering the comments on the proposed approachas and alternative suggestions for a policy under section 112, EPA viewed the comments in the context that some positions and concerns expressed by the commenters were diametrically opposed to one another. Thus, EPA realized that no response could completely resolve these positions and concerns. Accordingly, after thoroughly viewing and considering these comments, EPA

selected a final policy for setting standards under section 112.

The following sections are split into discussions by the four alternative approaches presented in the July 1988 Federal Register notice and by ancillary issues that were relevant to selecting the final policy for setting NESHAP. The main positions and concerns presented by commenters are followed by an EPA response to the comments in the context of the final policy.

Approach A Comments: Many commenters favored Approach A on the basis that it would be flexible, it would not be overly simplistic nor based on a single risk measure, it would take into account all relevant health information and uncertainties in risk estimation, and it would be a more balanced and rational approach than the other approaches. One commenter added that only Approach A meets the requirements of the EPA's guidelines for cancer risk assessment and the guidance of the Science Advisory Board for full disclosure of risk uncertainties and quantitative range of risks Some commenters agreed with the EPA's proposal under Approach A to give less weight to individual risks of 1×10^{-5} or less, saying that risks below 1×10^{-4} are conjectural and the methods used to estimate them are unreliable.

On the other hand, many commenters rejected Approach A because they did not find it stringent enough. One commenter stated that although Approach A has merit in theory because it seems to consider all available health information, the EPA's benzene proposal shows that it would result in pollutant levels far in excess of what should be allowed under section 112. Several commenters found Approach A unacceptable because it does not establish a consistent and equitable policy, thereby allowing different acceptable risk decisions for different pollutants and source categories.

One commenter argued against Approach A, saying that uncertainty information should be considered in the ample margin of safety step, not in the acceptable risk step, because: (1) Considering areas of uncertainty in the acceptable risk step would result in no consistent standards of acceptable risk, since considerations in each case will be different and (2) without a standardized method to allow different non-numerically expressed uncertainties to influence what is acceptable, EPA decisions might appear to be biased or arbitrary.

Response: The EPA agrees with many of these comments. The final policy, like proposed Approach A, is flexible, provides an equitable response to regulation of air toxics under Section 112, and takes into account all the relevant health information and uncertainty in the risk assessment. The final policy is not overly simplistic (that is, based on a single risk measure) and is clearly consistent with the EPA's guidelines for cancer risk assessment for full disclosure of risk uncertainties and quantitative range of risks. The EPA appreciates the position taken by commenters who supported the EPA's concern that risk estimates less than 1×10^{-5} should be given less weight than risk estimates greater than 1×10^{-4}. The EPA believes, though, that it should reduce risks to less than 1×10^{-6} for as many exposed people as possible. The EPA also agrees with commenters that proposed Approach A may not be stringent enough and, therefore, even though the final policy is similar to proposed Approach A, the application of the final policy results in lower levels of emissions.

The EPA does not agree with commenters who said that several aspects of Approach A (e.g., its flexibility and consideration of uncertainty) would lead to an inconsistent policy allowing different acceptable risk decisions for different pollutants and source categories. The EPA believes that the uncertainties within different risk assessments can appropriately result in different acceptable risk decisions. For example, while EPA strongly believes that emission rates for equipment leaks of benzene are overstated, there is no specific way to account for this belief other than to qualitatively consider it in the acceptable risk decision: EPA sees this as an appropriate use of its expert judgment. In addition, EPA does not agree with commenters who said that the uncertainty of a risk assessment should only be considered in the ample margin of safety decision. Risk assessments are only as good as the weakest information and modeling tools used in the assessments, and the value of the results of these assessments must be considered every time they are used: to ignore the uncertainty of these assessments is scientifically unsound and could result in similarly unsound decisions that may be viewed as inconsistent.

Approach B Comments: No commenters favored Approach B. The commenters who opposed this approach generally fell into two groups: industries, who generally felt that Approach B was too conservative and narrow; and State governments, private citizens, and public interest groups, who felt that Approach B was not stringent enough. Many of the reasons given for opposition were also stated as applying to other approaches which the commenters rejected for the same reasons.

Many commenters rejected Approach B (also C and D) because it is based on a single measure of acceptable risk (incidence in Approach B) and does not allow EPA to consider the full range of available health information. One commenter said that Approach B is in conflict with the EPA's guidelines for cancer risk assessment because one of the guidelines stated purposes is to "encourage research and analysis that will lead to new risk assessment methods and data." Some commenters opposed Approach B because the incidence is often greatly dependent on the definition of the source category. Most of these commenters felt that Approach B did not consider the maximum exposed individual and did not protect smaller populations from high risk when total incidence is low.

Response: The EPA agrees with most of these comments. The final policy, unlike proposed Approach B, provides an equitable response to regulation of air toxics under section 112 by providing for the consideration of the MIR, yet takes into account all the other relevant health information and uncertainty in the risk assessment, including incidence. The final policy is not overly simplistic (that is, based on a single risk measure) and is clearly consistent with the EPA's guidelines for cancer risk assessment for full disclosure of risk uncertainties and quantitative range of risks. The EPA appreciates the concern of commenters that incidence is often greatly dependent on the definition of the source category.

Approach C Comments: Approach C was supported by several commenters. Two commenters cited a review of 132 Federal regulatory decisions that one of them had published in a journal. The review showed that for large populations, every chemical with an individual lifetime cancer risk above 1×10^{-4} had historically been regulated. In contrast, many commenters rejected Approach C. Some commenters found Approach C too conservative, inflexible, and limiting of the information which could be considered in the acceptable risk decision. Many other commenters rejected Approach C because they did not find it stringent enough. One commenter felt that if Approach C is selected EPA should account for exposures to background concentrations and multiple sources of a pollutant to make sure that no one is at a risk greater than 1×10^{-4}.

Response: The EPA agrees with some of the commenters about Approach C

but disagrees with other commenters. The EPA agrees that in many cases chemicals have been regulated that pose an individual lifetime risk of greater than 1×10^{-4} and, therefore, disagrees with commenters who viewed Approach C as too conservative and also with commenters who found this approach not stringent enough. At the same time, EPA agrees with commenters that Approach C was inflexible and did not consider all the relevant health information and uncertainty in the risk assessment. Accordingly, as indicated in the discussion of the final policy, EPA believes that MIR levels greater than approximately 1×10^{-4} are presumptively unacceptable but that the risk estimates must be considered in light of all the relevant health information and the uncertainty in the risk assessment. As part of this perspective, EPA agrees that exposures to background concentrations and multiple sources of a pollutant may be considered to the extent that it is practical and reasonable to do so.

Approach D Comments: A large group of State agencies, public interest groups, and private citizens supported this approach. Their primary reason for support was because this was the most stringent approach, but other reasons included consistency with existing State air toxics programs and Federal regulations and accounting for underestimation of risk. A few commenters favored Approach D in order to protect public health in a multiple carcinogen environment. One commenter favored an approach more conservative than Approach C because the public views ambient exposures to air pollutants as more frightening and less acceptable than other risks encountered in daily life. Some commenters supported Approach D because it was consistent with State and other Federal regulations (e.g., FDA regulations).

The commenters who rejected Approach D did so for a variety of reasons. Some found Approach D too conservative, inflexible, and limiting in the information which could be considered in the acceptable risk decision. One commenter rejected Approach D because the 1×10^{-6} MIR level is below that which could be determined in the population; thus, violations could never be proven. Several commenters disagreed with those who argue that a 1×10^{-6} acceptable risk level is justified due to concern about exposure to multiple chemicals; these commenters said that section 112 regulatory decisions should not be based on concerns about chemical exposures that have little relevance to the pollutant and source category being regulated. One commenter rebutted commenters who stated that Approach D is consistent with the FDA's use of a 1×10^{-6} benchmark under the Delaney clause when "fairly uniform and consistent exposures (food) in large groups of the population" are being regulated. The FDA uses different risk measures than MIR, and develops average risks based on consumption patterns and average (not worst-case) concentrations in food. One commenter disagreed with comments submitted by several State agencies indicating a preference for the use of an MIR of 1×10^{-6} in setting NESHAP. Although these commenters felt this level would be consistent with their State air toxics programs, this commenter stated that the use of the 1×10^{-6} level in these programs differs from that in NESHAP regulations because the State programs are currently implemented as policies or guidelines and allow waivers or flexibility if technology cannot reduce risks to below 1×10^{-6}. One commenter disagreed that there is a public consensus that only 1×10^{-6} MIR is acceptable, because many citizens do not understand the assumptions and meaning of MIR.

Many commenters felt either that even the risk level of 1×10^{-6} given in Approach D was unacceptable or not protective enough of public health, or that "acceptable" risk is zero risk.

Response: The EPA agrees with commenters that felt that Approach D was too conservative, inflexible, and limiting of the information which could be considered in the acceptable risk decision. The EPA also agrees with commenters who stated that consistency with State and Federal regulations must be viewed in light of the purpose and actual implementation of those regulations and, specifically, agrees that comparing NESHAP requirements with State programs (many of which are guidelines and contain waivers or flexibility if technology cannot achieve the programs' stated goals) is inappropriate. Also, EPA finds the comment that there is a public consensus that only an MIR of 1×10^{-6} or less is acceptable to be difficult to support given the wide range of positions expressed in this rulemaking. However, one of the goals of the policy for standards-setting under *Vinyl Chloride* is to protect a large majority of the exposed population to risks no higher than about 1×10^{-6}.

While EPA agrees that multiple exposures to chemicals are important to understand and consider in the EPA's overall implementation of its public health mandates, EPA disagrees that these exposures should be routinely evaluated and considered in selecting standards under section 112. In taking this position, EPA is agreeing with commenters who said using these exposures explicitly in selecting standards would be very difficult and possibly impractical. The EPA also disagrees with commenters who said that even the risk level of 1×10^{-6} given in Approach D was unacceptable or not protective enough of public health, or that "acceptable" risk is zero risk.

Alternative Acceptable Risk Approaches: Several commenters proposed variations on, or alternatives to, the EPA's four proposed approaches for determining acceptable risk. Several of these were modifications to the case-by-case approach (A). Another group argued for more stringent criteria than Approach D, with an ultimate goal of zero risk. A third group provided various other alternative acceptable risk levels.

Comment: As a modification, one commenter developed a variety of risk estimates for benzene ranging from "most plausible" to "plausible upperbound" and "plausible lowerbound" estimates for annual incidence and MIR, and attached probabilities that each estimate represents the true risk. A modified version of Approach A would make use of this range of risk estimates. Several commenters supported a suggested modified version of Approach A, which used a three-step process for arriving at decisions with the first step using a "most plausible" MIR. One commenter proposed a modified Approach A that established a preferred annual incidence rather than a preferred MIR as a guideline for acceptable risk. One commenter supported a modified Approach D (acceptable risk defined as MIR of 1×10^{-6}) that would also require the application of maximum available control technology to all sources regardless of their MIR. Some commenters stated that only zero risk is acceptable, while others suggested progressive risk reduction to achieve an ultimate goal of zero risk. A phased risk-reduction approach with a goal of zero emissions was proposed by one commenter and several other commenters including other environmental groups and private citizens.

Response: The EPA has not chosen to use a variety of risk estimates for benzene ranging from "most plausible" to "plausible upperbound" and "plausible lowerbound" estimates for

annual incidence and MIR with their associated probabilities for each estimate to represent the "true" risks to consider in making the acceptable risk decision. First, EPA considers its MIR estimates as "plausible, yet conservative" and therefore does not agree that an estimate based on the perspectives of these commenters is appropriate. If EPA were to accept the commenters' suggestions, the EPA's MIR estimate would no longer represent the maximum potential risk posed to individuals located adjacent to sources of benzene. Second, even though EPA agrees that considering the uncertainty of its risk assessments is appropriate, EPA does not agree that developing explicit probabilities for risk estimates is a practical technique to use in making acceptable risk decisions, especially considering the data inadequacies associated with many risk assessments. Third, the aggregate population risk or incidence estimates calculated by EPA for benzene are "plausible" estimates given the EPA's estimating techniques. Accordingly, as discussed in more detail in the "Risk Assessment Comments and Responses" section of this preamble, EPA has not changed the basic estimating techniques used in its risk assessments even after considering these comments.

The EPA also disagrees that Approach A should be modified with a preferred incidence level in place of the preferred MIR. The MIR estimate is used to ensure appropriate protection to all individuals. A preferred incidence level would not provide this protection. Incidence estimates are aggregated population risks and would result in protecting the total population from hazardous air pollutants but would not ensure any particular level of protection for individuals. While EPA agrees that incidence should play a part in the acceptable risk decision, EPA does not believe that incidence estimates should be the principal factor considered.

The EPA does not agree with the commenters that combine technological feasibility or phased technology approaches in the acceptable risk decision. This decision is to be based on health consideration only and, therefore, the approaches suggested by these commenters are not appropriate.

Comment: Four commenters advocated higher levels of acceptable risk than those proposed in any of the EPA's approaches. These commenters suggested: (1) An acceptable risk level of an MIR of 1×10^{-3}; (2) a level no lower than other unavoidable risks such as the risk imposed by natural background radiation (3×10^{-3}); (3) a level associated with activities already accepted by society, which the commenters claimed would be higher than any of the four proposed approaches; and (4) a risk level reflective of the use of private automobile transportation (lifetime risk approaching 1×10^{-2}) referred to in the *Vinyl Chloride* decision and also by the Supreme Court as an acceptable risk "in the world in which we live."

Response: The EPA does not agree with the commenters who advocated higher levels of risks than any considered in the July 1988 Federal Register notice. While some commenters interpreted the *Vinyl Chloride* decision to mandate these high risk levels, EPA believes that the *Vinyl Chloride* decision requires EPA to consider societal risks and make an expert judgment. The EPA completed such considerations, made an expert judgment and, consequently, selected a presumptive MIR level of approximately 1×10^{-4}. For the sources considered in this notice, EPA believes that associated risks in the range of 1×10^{-2} and 1×10^{-3} are too high, and unacceptable.

Comment: One State agency supported the establishment of an acceptable MIR range and suggested 1×10^{-7} to 1×10^{-4}. If risks are below the low end of the range, no action to even examine controls would be necessary. The high end of the range would be a ceiling that could not be exceeded regardless of circumstances. (The commenter specifically said that risks on the order of 1×10^{-2} MIR should never be considered acceptable.) The commenter stated that within the 1×10^{-7} to 1×10^{-4} range, other factors such as uncertainties, incidence, and feasibility and affordability of emission reduction strategies should then be considered to determine whether a lower risk within the defined range is appropriate.

Response: This comment is similar to the final policy for determining the acceptability of the risks associated with hazardous air pollutants and then selecting an ample margin of safety. The EPA believes its approach is generally consistent with this comment although EPA would like to add that it is important to consider the uncertainty and other factors in making the acceptable risk decision. In addition, in some cases, risk estimates higher than approximately 1×10^{-4} can also be acceptable after the relevant factors have been considered.

Risk Comparisons in the Acceptable Risk Decision: Several commenters expressed positions on whether comparison of hazardous air pollutant risks with other risks encountered by society should be considered in making the acceptable risk decision. Some commenters thought comparisons were appropriate while others did not.

Comment: Several commenters thought that as part of the acceptable risk decision, EPA should compare benzene risks with other risks that are encountered in ordinary life and accepted by society. They generally used comparative risks as an argument in favor of Approach A and as evidence that risks of 1×10^{-4}, or even higher, could be considered acceptable. The commenters said such comparisons are consistent with the *Vinyl Chloride* decision's reference to consider the acceptability of risk in "the world in which we live." Many commenters listed several activities encountered in daily life which entail lifetime risks in the 1×10^{-3} to 1×10^{-4} range as evidence that this level of risk could be considered acceptable.

Other commenters said comparison of hazardous air pollutant risks with other common risks is not an appropriate factor to consider in the acceptable risk decision. Three of these commenters said that the comparison is inappropriate because benzene and other toxic air pollutants are man-made and benzene emissions and risks are controllable, whereas many other risks encountered in everyday life are uncontrollable or accidental. Others said the comparison is not valid because risks such as driving a car are voluntary, whereas pollutant exposures are involuntary. One commenter also said comparisons are not accurate because benzene risks do not consider all health impacts, and are more uncertain than other societal risks that can be accurately measured. Similarly, another commenter stated that people are willing to accept higher levels of risk when actual risk can be calculated with certainty. When risks are uncertain, such as with benzene and other environmental hazards, only a low level of risk is tolerated because actual risks may be higher than estimated risks.

Response: The *Vinyl Chloride* decision provides for such comparisons and for EPA to make an expert judgment on the acceptability of the risks for sources of hazardous air pollutants. However, EPA believes that it is prudent to view such comparisons cautiously and to reflect the uncertainty in such comparisons in the EPA's decisions on the acceptability of the risks for sources of hazardous air pollutants. Factors, such as whether the risks are voluntary, controllable, manmade, and uncertain, lead EPA to be cautious in making such comparisons. After considering these

risks, EPA has determined that MIR's greater than approximately 1×10^{-4} are presumptively unacceptable and can only be rebutted by careful examination of the other relevant factors, including uncertainty.

However, in this regard, it is important to point out that MIR estimates are based on a different and, more conservative, concept than average risk expressions such as the risks associated with motor vehicles, or the risk of being killed by lightning. Average risks generally apply to the total population and do not reflect the distribution of risks across the population. For example, the average lifetime risk of death due to motor vehicle accidents is about 5×10^{-3}. A city with a population of 2 million might, therefore, expect about 150 traffic-related deaths every year even though some members of this population are at greater risk. On average, this 150 deaths every year does not express the incidence rate for those members of the population. In contrast, if the MIR at a typical industrial facility located in a city of 2 million population is 5×10^{-3}, the annual estimated incidence would only be about 1 death in 20 years (0.005 case/year). Thus, while EPA believes that MIR risks greater than approximately 1×10^{-4} are presumptively not acceptable, EPA maintains that commenters who apply the MIR to entire populations are improperly characterizing population risks as well as the MIR.

Comment: Three commenters said that if levels of exposure are within the bounds of variation in ambient background levels, the activity should not be regulated. Another commenter cautioned that background concentrations considered for comparison of acceptable risk should be natural benzene levels in clean air, not levels in already polluted urban air. One commenter stated that EPA must consider other sources of risk from benzene exposure and determine whether the acceptable risk level is to represent total risks from all exposures to a substance or just incremental risks to ambient risks.

Response: The EPA believes that comparison of estimated MIR levels to natural background risk levels is appropriate to help characterize the overall magnitude of the risk that remains after making the acceptable risk decision. However, EPA also agrees that comparison of acceptable risk should not be associated with levels in polluted urban air. With respect to considering other sources of risk from benzene exposure and determining the acceptable risk level for all exposures to benzene, EPA considers this inappropriate because only the risks associated with the emissions under consideration are relevant to the regulation being established and, consequently, the decision being made.

Ample Margin of Safety Decision: Several commenters expressed opinions on what factors should be considered in the decision on what level of regulation provides an "ample margin of safety" as required by Section 112 of the CAA and the *Vinyl Chloride* decision. Some commenters argued for strong consideration of health effects and uncertainties, while others emphasized consideration of economic impacts or a balancing of multiple factors. Requiring "best" control technologies as part of the ample margin of safety step was also recommended by some.

Comment: Four commenters suggested that in the ample margin of safety decision, EPA should give greater consideration to health effects, noncancer effects, alternate exposure pathways, co-emitted pollutant risks, nonquantified health effects, interactions among pollutants, and uncertainties not taken into account in the EPA's risk estimates. One commenter, supported by several others, said that an ample margin of safety means no less than elimination of all avoidable risks.

Some commenters identified additional economic factors that they thought should be considered and that would lead to more stringent regulatory decisions. One commenter asked that EPA consider the economic impact on the families of cancer victims. Another commenter stressed the high cost of emotional suffering, not only for leukemia victims, but also for their family and friends. In a similar vein, two commenters pointed out that there are many costs to society associated with the deaths and illnesses associated with pollution, such as emotional costs to families, medical costs of treatment and institutionalization, and weakening of the gene pool.

Several commenters suggested that the following factors be considered in the ample margin of safety decision: (1) The scientific and statistical uncertainties in the risk estimates including the likely impact of uncertainties on the estimate of most plausible risk, (2) the availability of technologically feasible controls, (3) the likelihood of plant closures and consequential effects of unemployment, (4) the cost effectiveness of additional controls, and (5) the likelihood that emissions will increase or decrease in the future.

Two commenters suggested that, as a means of weighing the various factors in determining an ample margin of safety, EPA should establish a value for cost per life saved. They claimed this approach would allow consistent decisionmaking, fairness, and wise use of resources. One commenter stated that existing sources and new sources could be treated differently in the ample margin of safety step, allowing a higher risk level for old plants that will close soon.

Response: The EPA agrees with many of these comments in principle. However, EPA believes the relative weight of the many factors that can be considered in selecting an ample margin of safety can only be determined for each specific source category. This occurs mainly because technological and economic factors (along with the health-related factors) vary from source category to source category. The EPA agrees, in principle, with the commenter that stated that existing sources and new sources could be treated differently in the ample margin of safety step to allow a higher risk level for old plants that will close soon. However, while EPA will endeavor to fully consider all the relevant factors in the selection of final standards under Section 112, it is not possible to cite a specific decision process upon which such selections will be made.

In summary, it is important to note the overall impacts of the final standards which were selected to provide an ample margin of safety for the source categories under consideration in this rulemaking. The EPA believes the benzene emissions from these source categories do not exceed the acceptable risk benchmark of approximately 1×10^{-4} after weighing all the appropriate health-related factors for and against this presumptive benchmark. In addition, these standards reduce the total national cancer incidence due to the sources considered in this notice to 1 case every 3 years (0.3 case/year); the vast majority of this incidence is associated with the population exposed to risks less than 1×10^{-6}. To achieve this ample margin of safety, owners or operators of the sources affected by the standards promulgated today will spend, nationwide, about $16 million/yr (1984 dollars).

Comment: Several commenters responded to the EPA's question of whether maximum feasible control should always be required. Several commenters advocated technology-

based approaches to setting NESHAP or ensuring an "ample margin of safety," while others said cost/benefit analyses should be used to determine whether control technologies should be applied. Several commenters suggested requirements for application of all feasible control technologies, although their definitions of feasibility differed. In contrast, several other commenters said it is not appropriate to require maximum controls in all cases, and suggested cost/benefit analyses to determine when additional control should be required to provide an ample margin of safety. The commenters stated that the "ample margin of safety" step does not require imposition of all technologically feasible controls short of plant closure, and suggested that an analysis of incremental risk reduction benefits versus incremental costs of additional controls be performed to determine if additional control is warranted.

Response: After considering these comments, EPA concluded that all the relevant health, technological and economic information should be considered in making the ample margin of safety decision. Accordingly, EPA rejects the position that the maximum feasible control technologies should be applied in all cases and accepts the position that an analysis of incremental risk reduction benefits versus incremental costs of additional controls be performed to help determine if additional control is warranted. However, EPA would like to clarify this conclusion by noting that it does not intend to use "bright-line" cost-effectiveness ratios to make the ample margin of safety decision but rather will consider such information with all the other relevant information available for this decision.

Treatment of Uncertainty: The response to the EPA's solicitation of comment regarding the treatment of uncertainty varied from approval of the EPA's position to suggestions that uncertainty should force stricter standards, or conversely, prohibit restrictive standards. One group of commenters stated that EPA had shown a good appreciation of the uncertainty associated with the scientific evaluation of health data and the exposure data used in estimating risk. Commenters also provided recommendations on which step of the decision process was the appropriate place for the consideration of uncertainty.

Comment: Some commenters favored consideration of uncertainties in the acceptable risk step of the decision process, while others felt it is more appropriate to consider uncertainties in the ample margin of safety step. One commenter, supported by several others, stated that it would not be appropriate to evaluate the "safe" level and the "margin of safety" without taking the uncertainties into account. Another commenter said it would make no sense to determine what is a "safe" level without considering the strengths or weaknesses of the evidence implicating the pollutant in question. Others stated that questions of uncertainty and conservatism cannot be separated or deferred from the determination of acceptable risk. Other commenters felt consideration of uncertainty should be deferred until the ample margin of safety step. Most of these commenters believed that the MIR should be the sole criterion for making the acceptable risk decision, and that uncertainties and other factors are best considered in the ample margin of safety step. Another commenter agreed that uncertainties should be accounted for in the ample margin of safety step and added that these uncertainties should not be addressed by incorporating unscientific, over-conservative assumptions into the risk assessments.

Response: The EPA believes that it is essential to consider the quality of the information it uses to make decisions when the decisions are being made. Thus, EPA agrees with commenters that stated that it would be inappropriate to evaluate the "safe" level and the "margin of safety" without taking the uncertainties (both scientific and technological) into account. Because EPA has concluded that many factors should be considered in making the acceptable risk decision, EPA disagrees with commenters who believed that, because the MIR should be the sole criterion for making the acceptable risk decision, uncertainties and other factors are best considered in the ample margin of safety step.

Comment: Several commenters proposed that uncertainty should be quantified to the extent possible to aid NESHAP decisionmaking. Another commenter recommended the use of sensitivity analyses to illustrate the effect of the assumptions used on the resultant magnitude of the risk estimate. Some commenters recommended a conservative risk estimation approach to protect against uncertainties. Some also stated that when there are uncertainties, the EPA should act with extraordinary prudence and caution, and that uncertain health effects not considered in the risk assessment should be viewed as serious and unacceptable consequences of exposure to a pollutant.

Response: As discussed in the EPA's responses to comments on its risk assessment for benzene source categories, EPA cannot reliably quantify the uncertainty of its risk assessments to the degree envisioned by some commenters. The EPA is not convinced that data are available to enable rigorous statistical analyses designed to quantify accurately the uncertainty of the estimates associated with its risk assessments. In addition, EPA did not find that these commenters made a convincing case for how such analyses would help in making decisions. However, as a matter of policy, EPA considers it important to understand the uncertainty of its risk assessments and attempts to quantify this uncertainty in a reasonably practical manner. In many cases, the uncertainty of particular risk assessments will be characterized qualitatively but may be characterized quantitatively if it is practical and appropriate to do so.

Risk Assessment Comments and Responses

Introduction: The EPA received many comments that were concerned with the characterization of the potential adverse health effects associated with human exposure to benzene. Most of these comments addressed the numerous assumptions and uncertainties associated with the benzene risk assessment. The EPA recognizes that there is a wide range of views on the risk assessment methodologies and assumptions that were used in this analysis. For this reason, EPA was particularly interested in receiving public comments on the benzene risk assessment. Considerable effort was made in reviewing and responding to each comment that was submitted.

The EPA believes that the estimates of risk for the benzene source categories are based on the most current scientific knowledge and on sound scientific judgment. In some instances, inferences were required due to uncertainties in areas where there is no scientific consensus. The EPA incorporated these judgmental positions (science policies) into the benzene risk assessment based on an evaluation of the currently available information and on the regulatory mission of EPA to protect public health. The risk assessment conducted by EPA is consistent with the principles and procedures described in the 1986 Guidelines for Carcinogen Risk Assessment (51 FR 33992) and Guidelines for Exposure Assessment (51 FR 34042). These guidelines were developed by scientists in EPA, and were extensively reviewed by the public

and by expert scientists in industry, academia, environmental groups, and other governmental agencies.

Each of the four parts of the risk assessment for benzene, including hazard identification, dose/response assessment, exposure assessment, and risk characterization, are described in detail in the July 28, 1988, **Federal Register** notice (53 FR 28496) announcing the proposed rule for benzene sources To put the comments and responses into their proper context, a brief review of the components of the benzene risk assessment is provided below.

Benzene was broadly recognized as a potential human carcinogen in the early 1970's with the publication of several epidemiological studies of benzene-exposed workers (Docket No. OAQPS 79-3, Part 1, Item X-J-2). Although health effects other than leukemia (such as aplastic anemia and multiple myeloma) have been attributed to benzene, the serious nature of this disease and the uncertainties regarding the existence of any risk-free levels of exposure combined to make it of central importance in the hazard assessment.

Since risks associated with low ambient exposure levels cannot be measured directly either by animal experiments or epidemiological studies. EPA relies upon mathematical modeling techniques to extrapolate from high to low dose. For benzene, this estimate is derived from the dose/response relationship observed in the occupational studies and represents the estimated upperbound on the increased risk of contracting leukemia for an individual exposed for a lifetime (70 years) to a specific concentration of benzene (e.g., 1 part per million [ppm]) in the air. The EPA has elected to use the linear nonthreshold assumption for the benzene dose/response assessment, which results in a plausible estimate of the leukemia unit risk to the exposed population. If the true dose/response relationship at low doses is sublinear (i.e., is such that the response at low doses is less than predicted by the linear model), then the unit risk estimate (URE) would err on the high end and in favor of the protection of public health. The limited data from which the extrapolation is made are consistent with the use of the linear model.

In the absence of adequate monitored ambient air levels of pollutants near industrial sources, EPA uses mathematical models to predict the dispersion of emissions and subsequent potential for human exposure. Estimates of the concentrations of benzene to which the population may be exposed and the magnitude of public exposure were developed using the EPA's Human Exposure Model (HEM). The HEM accepts as inputs the locations and emission characteristics of the subject source categories of benzene. This information is combined with census and meteorological data contained in the model to estimate the magnitude and distribution of population exposure.

There are uncertainties inherent in the derivation of the cancer URE for benzene and in the estimation of exposure by the HEM. These uncertainties may lead to either an overestimation or underestimation of the potential leukemia risk to the exposed population. Although there are uncertainties associated with the methods and assumptions used in the benzene risk assessment, EPA considers the analysis to represent a reasonable and appropriate approach to the estimation of potential health risks. A complete description of these uncertainties is found in the July 28, 1988, **Federal Register** notice (53 FR 28496) and in the response to comments found below.

The exposure estimates obtained from the HEM are combined with the estimate of carcinogenic potency for benzene (i.e., URE) to calculate the probability of the increased risk of cancer in the exposed population. Two measures of excess leukemia risks are calculated: the aggregate population risk, and the maximum individual lifetime risk (MIR). Because of the assumptions and uncertainties in the dose/response assessment and exposure assessment, these risks cannot be construed as absolute measures of the true risk burden to the benzene-exposed population. The quantitative risk assessment is best viewed as a relative estimate of the likelihood of cancer associated with benzene emissions from an industrial source category, for comparison with estimates from alternative emission scenarios or other benzene source categories. The estimated annual cancer incidence and MIR resulting from ambient exposure to predicted ambient concentrations of benzene emitted from the industrial source categories are summarized in section III of this **Federal Register** notice.

The EPA received comments in three broad areas of the risk assessment for benzene source categories: (1) Qualitative and quantitative aspects of the benzene health assessment; (2) the exposure analysis used to estimate the MIR, risk distributions, and cancer incidences associated with exposure to benzene; and (3) uncertainties in the risk assessment. A general review of these comments and the EPA's responses is found in the following three sections. A more detailed discussion of specific comments and responses can be found in the BID.

Benzene Health Assessment

Comments: Comments on the EPA's health risk assessment for benzene can be grouped into three main areas: (a) health effects endpoints considered in the risk assessment, (b) the selection of epidemiological studies, and (c) the mathematical dose/response models used to derive the cancer URE. Each of these comment areas is briefly described and addressed below.

Comment: Several commenters discussed which health effects endpoints should be included in the risk analysis. Some of these commenters felt that only risks from acute myeloid leukemia (AML) should be considered, since in their view a clear association between exposure to benzene and other cancer types has not been established. In contrast, one commenter pointed out that there is substantial evidence from case reports and epidemiologic studies that benzene causes all major cell types of leukemia as well as lymphomas and other diseases.

Response: The EPA believes that there is insufficient evidence to discount the association of benzene with leukemia types other than AML. In addition to leukemia, several studies (described in 53 FR 28496) have noted increases in other cancers, most notably lymphosarcoma and multiple myeloma. There is substantial evidence from case reports and epidemiological studies that benzene causes all major cell types of leukemia as well as lymphomas and other diseases. This is consistent with the observation that other leukemogens (e.g., radiation, oncogenic viruses, alkylating agents, and anti-neoplastic drugs) cause cancers in different cell types. The EPA therefore does not agree with the commenters who argued that AML is the only type of leukemia caused by benzene.

Comment: Other commenters felt that the risks to human health are understated because cancers other than leukemia, as well as noncancer health effects such as immunotoxicity, are not explicitly considered in the EPA's risk assessment.

Response: Although human exposure to benzene in the workplace has been associated with leukemia, aplastic anemia, multiple myeloma, lymphomas, pancytopenia, chromosomal breakages and depression of bone marrow, EPA believes that the leukemia incidence in epidemiology studies provides the most comprehensive and up-to-date basis for dose/response estimation purposes. In benzene-exposed animals, toxic effects

such as histopathological changes in the testes and bone marrow have been observed. Toxicity of the hematopoietic system as well as cytogenetic effects in humans have been causally related to benzene exposure; however, the magnitude and duration of exposure required to elicit these effects are not developed at this time.

The estimated ambient levels of benzene associated with emissions from stationary industrial sources after controls are applied (in the low parts per billion range) are generally at least three orders of magnitude lower than levels associated with noncancer health effects in animals (in the ppm range). The carcinogenic effect, however, unlike noncancer health endpoints, is presumed to be nonthreshold in nature. Consequently, in the interest of protecting public health, EPA has identified carcinogenicity, specifically leukemia, as the health endpoint of greatest concern in this risk assessment.

Comment: Several commenters criticized the data sets used by EPA to derive the URE. One commenter argued that the quantitative risk assessment on the benzene-induced risk of leukemia should be based solely on the occupational cohort studied by Rinsky (1987) since it is the best among all available epidemiologic studies.

Response: The EPA maintains that data from studies other than the Rinsky study should also be used for the purpose of risk calculation, since no single study is necessarily better than any other. Although the Rinsky study possesses many of the attributes of a good epidemiologic study, it still suffers from a lack of definitive information concerning the levels of benzene exposure to which the rubber hydrochloride (pliofilm) workers were subjected in the 1940's. Furthermore, in response to a petition on October 17, 1984, from the NRDC, EPA evaluated the most current scientific literature on benzene carcinogenicity and revised the URE accordingly. A discussion of this reassessment can be found in the July 28, 1988, Federal Register (53 FR 28496) announcing the EPA's proposed rule for benzene sources.

Comment: One commenter stated that the Crump and Allen exposure estimates of 1984 are more representative of the benzene levels to which workers in the Rinsky cohort were exposed prior to 1946. The commenter argued that these estimates should be used by EPA, rather than using the estimates in both this study and the study by Rinsky.

Response: The EPA believes the use of only the Crump and Allen exposure estimates does not reduce the uncertainty associated with the assumed benzene exposure levels prior to 1946, which was a period for which no industrial hygiene data were available. The argument that the Crump and Allen exposure estimates are superior to the Rinsky estimates is based on an observation that the Crump and Allen exposure estimates have a high correlation with rising peripheral blood counts (higher blood counts are associated with lower exposure levels), while no correlation is found for the Rinsky estimates. The EPA believes that this finding of a high correlation is "artifactual." Blood counts rose in both exposed and unexposed employees over time, which may have been due to changes in diagnostic methods, techniques, or interpretations. Given the uncertainty associated with the Crump and Allen exposure estimates, EPA feels that both the Rinsky and the Crump and Allen exposure estimates should be considered in the risk assessment.

Comment: Several commenters had suggestions for improvement of the dose/response assessment portion of the risk analysis. Some commenters criticized the linearized extrapolation model used by EPA for carcinogen risk assessment, and asserted that the existing data suggest a nonlinear and threshold dose/response relationship. These commenters urged EPA to update its dose/response model by using new scientific advances in toxicology, pharmacokinetics, and biologically-based dose/response models. Other commenters supported the use of the linear, nonthreshold model.

Response: The EPA does not agree with the comment that the demonstration of a nonlinear dose/response relationship in the observed data is a sufficient basis to argue that the shape of the dose/response curve is nonlinear at untested low dose levels. The EPA's view is that linear low dose extrapolation is preferred, unless low dose data and/or mechanism of action or metabolism data show otherwise. The EPA also believes that it is premature to assume a threshold effect for benzene due to the lack of understanding about the mechanism of carcinogenic action. The EPA has elected to use the low dose linear nonthreshold assumption for the benzene dose/response assessment because as a matter of science policy, EPA prefers to use assumptions which will provide risk estimates which are not likely to be exceeded given the lack of understanding about the mechanism of carcinogenic action. This choice of models results in an upperbound (because of the linear assumption) estimate of leukemia risk to the exposed population.

Comment: A new risk extrapolation model was offered by one commenter, who described the model as a significant improvement over the existing EPA risk assessment because more biological information (e.g., the use of latency period actually estimated from the data) is incorporated and a better exposure estimation procedure (i.e., the use of individual exposure information rather than categorical data) is used.

Response: The EPA does not agree that this new assessment procedure is, *a priori*, an improvement over the EPA procedure because EPA believes the way that cellular dynamics and latency are incorporated in the new model is both mathematically and biologically inappropriate. While EPA believes that the linear nonthreshold dose/response assessment for benzene is the most appropriate approach at this time, EPA encourages the development of new approaches that involve the incorporation of biological information, as appropriate, into the risk assessment procedure.

Exposure Assessment Comments: Comments on the EPA's assessment of human exposure to benzene emissions address three principal areas: (a) The analytical assumptions underlying the assessment, (b) the choice of atmospheric dispersion models, and (c) the matching of predicted concentrations with exposed populations.

Comment: A number of commenters took issue with the EPA's assumption that people living in the vicinity of benzene sources were exposed continuously, for a 70-year lifetime, to predicted long-term ambient benzene levels. Commenters maintained that the average lifetime of an industrial facility is considerably less than 70 years, that few individuals would be expected to live in the same location for their entire lives, and that the EPA's assumption did not provide for the fact that people spend a much greater proportion of their time indoors rather than outdoors. Commenters suggested alternative assumptions ranging from 15 to 35 years based on plant life and duration of residency estimates, and 4 to 22 hours of exposure per day based on the time individuals spend outdoors.

Response: The EPA recognizes that the assumption of 70 years of continuous exposure constitutes a simplification of actual conditions and represents, in part, a policy judgment by EPA, but feels that this assumption is preferable to the alternatives suggested. Although emissions of benzene from industrial sources would reasonably be expected

to change over time, such changes cannot be predicted with any certainty. In lieu of closing, plants may elect to replace or even expand their operations and subsequently increase their emissions. The 70-year exposure duration represents a steady-state emissions assumption that is consistent with the way in which the measure of carcinogenic strength (i.e., URE) is expressed (i.e., as the probability of contracting cancer based upon a lifetime [70 year] exposure to a unit concentration). Constraining the analysis to an "average" plant lifetime carries the implication that no one could be exposed for a period longer than the average. Since, by definition, some plants would be expected to emit longer than the average, this assumption would tend to underestimate the possible MIR.

The EPA agrees that the U.S. population is highly mobile and spends a proportionally greater amount of time indoors than outdoors. However, adjusting the exposure assumptions to constrain the possibility of exposure to benzene emissions implies that exposure during the periods inside or away from the residence are zero. In addition, a less-than-lifetime assumption would also have a proportional impact on the estimated MIR, suggesting that no individual could be exposed for 70 years. On balance, EPA believes that the present assumption of continuous exposure is consistent with the steady-state nature of the analysis and with the stated purpose of making plausible, if conservative, estimates the potential health risks. It is the EPA's opinion that this assumption, while representing in part a policy judgment by EPA, continues to be preferable to the alternatives suggested, both in view of the shortcomings of such alternatives and in the absence of compelling evidence to the contrary.

Comment: Commenters also challenged the EPA's failure to quantitatively consider the additivity of exposure to multiple benzene sources and the potential for indirect (nonair) exposure from the deposition or bioaccumulation of historical emissions.

Response: The EPA agrees that individuals residing in the vicinity of multiple benzene sources would be exposed to higher levels of benzene than is represented by the individual point source modeling approach used. The increase, however, would be expected to be very small and would not affect the estimate of population risk since each source would be modeled individually and the population risks aggregated across the category. The EPA has concluded from sensitivity analyses that the impact on the MIR estimates would be very small, since concentration falls off quickly with distance from the source, and would, in most cases, fall within the rounding error of the estimates.

Although the purpose of section 112 is the regulation of air emissions of hazardous pollutants, EPA is aware of the potential for some substances to accumulate in other media or the food chain and result in indirect exposure. Available data, however, do not indicate that air emissions of benzene are accumulated by plants, animals, or soil or that significant indirect exposure is occurring. The EPA recognizes that concurrent exposure to other pollutants could adversely impact public health; however, no data are available concerning possible synergistic or antagonistic interactions with benzene.

Comment: Some commenters maintained that the EPA's choice of dispersion models and selection of modeling parameters and input data caused the benzene risks to be overestimated. Specifically, commenters recommended the use of an area source model such as the Industrial Source Complex Long-Term (ISC–LT) over the HEM for estimating MIR from benzene fugitive emission sources. Other suggestions included consideration of benzene's atmospheric instability and the use of site-specific meteorological data and more years of data (70) as compared to the averages of 1 to 5 years of data from the nearest Stability Array (STAR) station.

Other commenters criticized the assumption of flat terrain characteristic of the HEM model and maintained that this would result in underestimation of the health risks.

Response: The EPA agrees that the use of more sophisticated dispersion models, where justified, would result in more accurate concentration estimates. The EPA does not agree, however, that the substitution of a model such as the ISC–LT would result in substantial changes in the estimated risks or that the changes would be only in a downward direction. In addition, as the commenters noted, the use of more sophisticated predictive models is often precluded by the input data requirements, particularly where a large number of emitting sources, or emission points within the sources, are being assessed. The EPA does not generally utilize more sophisticated dispersion models unless the input data are of sufficient quality to ensure that the models' outputs are of better quality than those available from the screening model in the HEM. For the benzene sources addressed in this notice, EPA believes that the use of the HEM screening model was an appropriate choice.

The EPA agrees that the use of site-specific meteorology, where available in the appropriate amount and format, is superior to the selection of data from the nearest STAR station. In the EPA's experience, however, such data sets are very limited and only rarely available. The EPA disagrees that the use of 70 years of meteorological data to obtain average long-term estimates of risk constitutes an improvement over the 1 to 5 years currently used. Even in those few cases in which such a historical record exists, these data could be no more and perhaps less representative than the more recent years.

The EPA does consider the stability of compounds in the assessment of exposure. Data indicate, however, that benzene is relatively stable in the atmosphere and would not degrade to the extent that there would be an appreciable impact on the exposure and risk estimates.

The effect of terrain on the estimation of exposure may vary from site to site. For any one site, the flat terrain assumption may tend to over-or underestimate exposure. In general, the effect of complex terrain is less for emissions released relatively close to the ground than for elevated process vent emissions that have the potential to impact on hillsides or be affected by building downwash. The EPA agrees that for sources located in complex terrain where the surrounding topography is at a higher elevation, exposure may be underestimated; however, the effect may vary by plant and may be relatively small given the low release heights of most of the modeled benzene sources.

Comment: Several commenters advocated the use of monitoring data to verify the concentrations predicted by the EPA's dispersion modeling.

Response: While direct measurement of exposure would appear to be preferable to modeling, it is not feasible as a routine procedure in NESHAP development. Factors affecting the feasibility include cost, time, background concentrations of pollutants, and availability of sufficiently sensitive analytical methods. In particular, it is neither economically nor technically feasible to determine or verify benzene exposure in the vicinity of emitting facilities. It would require siting large numbers of monitors near each plant to establish concentrations to which all persons living near the sources are exposed.

Exposure will vary with distance and direction from the plant and the monitoring results could be potentially confounded by background levels or contribution from other benzene sources. In addition, monitoring data do not offer a means of predicting future ambient concentrations resulting from promulgation of a standard. Atmospheric dispersion models can be used to estimate the directional variations in exposure and to predict exposure under various emissions control scenarios.

In summary, EPA believes that routine, extensive collection of monitoring data to verify or substitute for dispersion modeling of emissions does not represent a feasible approach to assessing exposure to benzene. Where monitoring data are available, however, EPA does consider such information in its deliberative process.

Comment: Several comments on the benzene exposure analysis, particularly the matching of exposure with population, pertained to the level of analysis ard the need for more and better data. Commenters expressed concern that the EPA's frequent assumption of plant fencelines being a uniform 200 meters from the plant center tended to overestimate maximum risk. Suggestions included the use of more source specific information including actual locations of residences and plant boundaries, and more recent census data. Other commenters favored the use of the maximum offsite concentration for risk estimation, independent of the proximity of residences

Response: The EPA has used the 200-meter fenceline assumption routinely to facilitate comparison of the MIR among sources and source categories. Changes in this assumption have very little impact upon estimates of population risk (annual incidence) but can significantly affect the MIR since this measure of risk is normally predicted close to the plant. Individual plant boundary information, however, is not readily available and is often difficult to obtain. Sensitivity analyses indicate that while the 200-meter assumption may result in an overestimate of the MIR in some cases, there are also cases where the risk may be underestimated.

The choice of less sophisticated analyses and need for simplifying assumptions most often results from the lack of source-specific data. The collection of such data, which would facilitate more detailed assessments, is usually prohibitively expensive. The EPA believes that, in such circumstances, assumptions such as the 200-meter fenceline are a reasonable and appropriate surrogate.

The use of maximum offsite concentration is an alternative but also requires determination of actual or estimated plant boundaries and does not address the issue of habitability. To require that one or more residences exist at the point of modeled maximum concentration, however, places undue emphasis on the capability of the model to predict that a specific concentration will occur at a specific location. The EPA regards the models as accurate to the extent that the predicted maximum concentration can be expected to occur in the vicinity of the plant. The EPA concludes that while a rough check of the habitability of the area may be advisable, insistence on the verification of residences at the specific concentration point is not technically defensible.

Comment: One commenter suggested that the matching of exposure with population in the benzene assessment would be improved by incorporating daily human activity patterns similar to the modeling approach taken in the development of the EPA's National Ambient Air Quality Standards (NAAQS).

Response: The EPA has consistently taken the position that the models used to estimate exposure and risk should be commensurate with the quality and amount of data available. The NAAQS Exposure Model (NEM) has been used by EPA exclusively for criteria air pollutants. Extensive national monitoring networks are established for these criteria air pollutants that facilitate the identification and evaluation of micro-environments representative of daily activities. Comparable data are not available for benzene and the gathering of such data for the much larger universe of toxic pollutants would be infeasible.

In addition, the health effects associated with exposure to the criteria pollutants are different from those attributable to benzene. In the criteria program there is a greater emphasis on the potential for effects from shorter term exposure and a greater need to evaluate the potential for such exposures. Cancer, in contrast, is generally viewed as a chronic disease in which cumulative dose is the principal factor in risk estimation.

While EPA agrees that the incorporation of human activity data would represent an analytical improvement, this increase in sophistication is not commensurate with the presently available data, the nature of the effects evaluated, and the underlying uncertainties in estimating cancer risks from exposure to benzene.

Uncertainty in Risk Estimates

Comment: A number of commenters argued that the scientific and statistical uncertainties of the risk estimates should be identified and quantified to the extent possible. Several of these commenters recommended the use of specific procedures such as Monte Carlo simulation to develop a best estimate of the MIR, rather than what they viewed as the EPA's "worst-case" estimate.

Response: The EPA has long recognized and attempted to communicate the fact that quantitative risk estimates contain inherent uncertainties. Uncertainties arise in all stages of the analysis due to the fact that the relevant data and understanding of the processes are not complete nor perfectly accurate and precise. Where data gaps exist, qualitative and quantitative assumptions are made based on our present understanding of the biological mechanisms of cancer causation, estimates of air dispersion, engineering estimates, and other factors. Because of the nature as well as the number of assumptions made, EPA has in previous rulemakings only attempted to quantify part of the uncertainties or to describe the uncertainties qualitatively. (When only part of the uncertainty for quantitative risk estimates has been presented, EPA has found this to be somewhat misleading because this part of the uncertainty can be construed as representing the total uncertainty. On the other hand, compounding of the individual uncertainties can obscure the importance of particular uncertainties.)

The comments arguing for quantification of the uncertainty caused EPA to take a fresh look at the uncertainties in risk estimates. The objective of this review was to determine whether there are ways to portray the sensitivity of the risk estimates to changes in assumptions or ways to quantify the uncertainty. In doing so, the risk calculation procedures were reviewed and key parameters that significantly affected the estimates were identified. The feasibility of quantifying the uncertainties was assessed considering the availability of information on the range and distribution of values for the key parameters. In the absence of such data, any simulation of the combined uncertainties would be misleading in that it would create an impression of more knowledge and understanding than is presently feasible.

The conclusion drawn from the assessment was that for most steps in the risk assessment there is insufficient information on the expected range and

statistical distribution of possible values. For other steps there are no data to define the uncertainty. Examples of the information needed for quantification of uncertainty for benzene, but *unavailable*, are:

(1) The variability in individual susceptibility to cancer within the U.S. population;

(2) Data to define the response at low dose levels and the uncertainty of those measures (rather than extrapolation from high dose levels);

(3) The distribution of actual emission rates and the uncertainty of those; and

(4) The error introduced by not using site-specific meteorological data and the variability of that error. (Dispersion modeling was done using meteorological data from the nearest recording weather station.)

For the benzene risk assessments, the information needed for simulation of the combined uncertainty is simply not available. Moreover, some of these data gaps cannot be filled at the present state of understanding of biological effects or with reasonable expenditures of time and resources.

There are a number of parameters that can substantially increase or decrease the estimated risk. It was concluded that on balance overall the risk estimates are plausible and do not represent the worst case. This conclusion was drawn recognizing that the assumption of a 70-year, 24-hour per day exposure adds a degree of conservatism. This assumption is considered plausible since a small proportion of the U.S. population (0.04 percent, or 100,000 people) does spend a lifetime in a single geographic area. A more detailed discussion of the analysis of the feasibility of quantifying the uncertainty for the benzene risk assessments is presented in the BID.

Technical Comments, Responses, and Changes

Coke By-Product Recovery Plants: Several comments were received from industry that are specific to the regulatory analysis for coke by-product recovery plants. A synopsis of the major comments and the EPA's responses on the emission estimates and control techniques is given here. More detailed comments and responses on these topics and on the cost estimates are in the BID.

Comment: Several commenters supplied specific information regarding permanent plant or battery closures and changes in plant processes. They requested that the data base and analyses be updated to reflect these changes.

Response: The EPA agreed to update the analysis to remove plants and coke oven batteries that have been permanently closed or demolished. In addition EPA deleted batteries that are on cold-idle and would require substantial construction or a pad-up rebuild before restarting. Batteries that are on cold-idle but may reopen or would be able to operate in their current condition were retained in the analysis, as were batteries on hot-idle. Changes in plant processes were also incorporated. The EPA also included other information that was readily available and easily incorporated into the analysis, such as more accurate geographical coordinates for some of the plants. This information was recently gathered by EPA for the NESHAP being developed for coke oven emissions. More detailed information on the revisions to the data base can be found in the BID.

Comment: Several of the commenters from the industry believe that the emission factors for particular emission points are too high. They suggested that emissions from process vessels and storage tanks for which gas blanketing was proposed should be estimated using the equations in the EPA document, "Compilation of Air Pollutant Emission Factors, AP–42" for tanks storing volatile organic liquids. These tanks include tar decanters, tar storage tanks, flushing-liquor circulation tanks, and wash-oil circulation tanks and decanters.

Response: The purpose of the AP–42 equations is to estimate working and breathing losses for fixed roof tanks storing volatile organic liquids. According to AP–42, fixed roof tanks are commonly equipped with a pressure/vacuum valve that allows them to operate at a slight internal pressure or vacuum to prevent the release of vapors during very small changes in temperature, pressure, or liquid level. The introduction to the emission equations in section 4.3.2 of AP–42 (September 1985) for fixed roof tanks states that they apply only to vessels that are substantially liquid and vapor-tight and that operate at approximately atmospheric pressure. Assuming that the vessels meet the AP–42 criteria, application of the equations may be appropriate for some vessels at a particular coke by-product recovery plant. However, many of the vessels of the type noted by the commenters cannot be considered liquid and vapor-tight. The vessels at many plants have permanently open vents with no pressure/vacuum relief valves. Many of them have only partial covers or no covers, and have supplemental vents in tank sidewalls that allow wind to pass through the vessels. Also, vessels at several of the plants are in need of repair, with warped covers on access hatches or openings at the roof's edge. Thus, application of the AP–42 equations would be inappropriate for nationwide emission estimates.

Furthermore, the emission mechanisms of the vessels in the tar processing area of the plant also are such that the equations are not appropriate for nationwide emission estimates. For example, tar storage and tar dewatering tanks are heated in many cases to remove water, which increases the flow and concentration of emissions; this situation is not accounted for by the AP–42 equations. The liquids in tar decanters and other sources also contain dissolved gases that are emitted from the vessels (in addition to working and breathing losses). The AP–42 methodology does not estimate emissions from generation of water vapor or dissolution of gases from these tanks. The field testing performed as the basis of the EPA emission factors for these vessels included direct measurement of vapor phase concentrations and flow rates. Estimates by AP–42 for these vessels would tend to underestimate emissions.

Equations based on the same principles as those in AP–42 were used to develop the emission factor for storage tanks containing light-oil, BTX mixtures, or benzene. These vessels tend to be covered and sealed to prevent product loss. In addition, the liquids in these vessels are pure, as in the case of refined benzene, or like BTX, are mixtures of constituents with well-known vapor pressures. The AP–42 equations can be applied with more accurate results for these conditions than for the nonhomogeneous mixtures contained in other types of vessels.

Comment: Comments received from some members of the affected industry raised concerns regarding the safety of coke oven gas-blanketing systems. They believe that the blanketing system would increase worker risk, the risk of overpressure or underpressure of vessels, and the severity of potential fires or explosions.

Response: The EPA has worked with the industry and independent experts over the past 10 years to understand the features of gas blanketing systems already installed and to include features in the cost analysis for safe and effective operation. The system costed by EPA as the basis of the standards includes such features as: flame arrestors; an atmospheric vent on the collecting main or gas holder to relieve excess pressure; three-way valves to lower the possibility of operator error;

and steam-traced lines with drip points, condensate traps, and steam-out connections to reduce plugging problems. The EPA also has included provisions in the standards such as an annual maintenance check, to ensure proper operation and maintenance once a system is installed, and believes that adherence to these provisions will reduce or eliminate factors that cause unsafe conditions.

Coke oven gas-blanketing has been applied to process vessels at seven plants, one of which used it at both by-product plants within the main plant. While gas blanketing has been applied to only a few vessels at some plants, it has been widely applied throughout the plant at others. Not all of the systems have included the safety features that EPA included in its cost analysis. No specific safety or operational problems have been reported to EPA that routine maintenance would not resolve.

The EPA carefully reviewed the report submitted by the commenters in support of their concerns. After its evaluation EPA concluded that, with proper design, operation, and maintenance, coke oven gas-blanketing does not pose the degree of safety problems alleged in the report. The specific points raised by the commenters are addressed in detail in the BID.

Finally the standards provide flexibility in the design of the system. For example, additional features to enhance the safety can be included, such as the purge system noted by some of the commenters. Also, other blanketing gases, such as nitrogen, may be used. The use of another gas may reduce or eliminate some of the commenters' concerns. The EPA approximated the cost of a nitrogen blanketing system to be roughly 20 to 75 percent higher than a coke oven gas-blanketing system.

Benzene Storage Vessels: As discussed previously in this notice, the storage standards selected for promulgation were the same as those proposed under Approaches A, B, and C. Technical comments on and changes to the proposed regulation are discussed in the response below. Additional comments and detailed responses are contained in the BID.

Comment: Comments were received on storage technical issues and wording of the proposed standards. Some commenters addressed specific provisions of the standards. They are noted in the response where the respective provisions are discussed. Other commenters requested general consistency between the benzene standards and the standards in 40 CFR part 60 Subpart Kb for new vessels storing VOL. While considering these comments, EPA also thoroughly reviewed the regulations proposed under the various policy approaches for any inconsistencies within the proposed benzene standards or with Subpart Kb, where appropriate.

Response: One change to the regulatory language clarifies that, as stated in the preamble to the proposed benzene standards, existing IFR vessels with shingled seals would have to be retrofitted with continuous primary seals (either liquid-mounted, vapor-mounted primary with a continuous secondary seal, or mechanical shoe). This has been clarified by changing the wording in § 61.271(a)(2) to limit the exclusion of existing vessels equipped with IFR's to only those IFR vessels equipped with continuous seals. A definition of a continuous seal has also been provided.

This clarification is necessary to bring the regulation into conformity with the intention stated in both the preamble to the proposed regulation (53 FR 28541) and in section III of this notice, to require that all vessels must be equipped with continuous seals. The estimated residual risks presented in the proposal preamble and the estimated residual risks after application of the controls required by the promulgated standards are the same. These estimates reflect the replacement of shingled seals with continuous seals.

Another change is the deletion of § 61.271(a)(6) of the proposed regulation which provided that owners or operators of IFR vessels with secondary seals did not have to install certain fittings such as gasketed covers on all openings in the IFR. This change means that all IFR vessels must be equipped with the fittings required in § 61.271(a)(5). This change will have an impact on only those vessels equipped with secondary seals, and the addition of these fittings will result in an estimated additional reduction of 0.07 Mg/yr for an affected "typical" IFR vessel with a volume of 605,000 liters (160,000 gallons), and a diameter of 9.1 meters (30 feet). The annualized cost of retrofitting these fittings at first degassing, $46/year (1982 dollars) was considered reasonable for any IFR vessel. This change is consistent with 40 CFR part 60 subpart Kb, which requires all vessels to have controlled fittings.

A specific comment was that existing vessels with noncontact IFR's should be allowed to wait until the first degassing to comply with the requirement for each opening in the roof to have a projection that extends below the liquid surface rather than being required to comply within 90 days as proposed in § 61.271(a)(8). This provision, in § 61.271(a)(4) in the final standards, has not been changed. The American Petroleum Institute (API) publication, "Evaporation Loss from Internal Floating-Roof Tanks," presents general descriptions of the components in use for IFR vessels (Docket No. A–80–14, Item IV–H–4). This publication describes two basic designs including noncontact floating roof decks, and both of these designs are provided with projections that extend below the liquid surface wherever penetrations occur in the deck. The 2519 test series upon which the emission estimates for these vessels are based used a noncontact IFR with such projections as well. The EPA considers the noncontact deck provided with projections extending below the liquid surface at each opening to be the typical configuration. The intent of this requirement in the regulation is to ensure that vessels with noncontact IFR's conform with the typical baseline level of control. Therefore, it is unnecessary and unreasonable to allow a delay in compliance with this requirement.

The provisions for repair of damaged seals were reviewed and revised in response to comments. One commenter favored delay of repair of damaged seals detected during the annual visual inspection of IFR vessels until the first degassing. After considering the comments, § 61.272(a)(2)(ii) of the proposed standards was deleted. In the proposed standards, conflicting requirements for the repair of damage to seals were given in §§ 61.272(a)(2)(i) and 61.272(a)(2)(ii), with (i) allowing a 30-day repair period with a possible 30-day extension, and (ii) allowing repair to be delayed until the first degassing. However, in the final standards, this section and other sections dealing with repair of damaged seals allow 45 days for repair (instead of 30 days), with the opportunity to request a 30-day extension if repair within 45 days is not feasible. These changes will make the repair period in the benzene regulation consistent with the standards for VOL storage tanks (40 CFR part 60 subpart Kb). The reason that Subpart Kb has a 45-day (versus 30-day) repair period is that in the event that special materials not normally kept in stock by suppliers were needed, 30 days may be insufficient for repair of this equipment. The same situation would exist for vessels subject to the benzene rule. Therefore, EPA determined that it was reasonable to make this rule consistent with subpart Kb. In response to the commenter's request for a delay of repair until the first degassing, EPA

would like to point out that the annual visual inspection and the associated repair requirements are mandatory only for IFR vessels equipped with only a primary seal. Since single-seal IFR vessels are only required to be degassed and inspected internally once every 10 years, excess emissions resulting from a damaged seal on such a vessel might go unrepaired for 10 years if the repair may be delayed until degassing.

Benzene Equipment Leaks: The majority of comments received on equipment leaks concerned the emission estimates and the feasibility of demonstrating compliance with mass emission standards. These comments are discussed in this section and are discussed in more detail in the BID. The BID also addresses additional minor comments on the wording of the proposed standards and cost estimates.

Comment: Several commenters thought that the EPA's estimate of benzene emissions for equipment leaks was even more overstated than EPA believed. The reasons cited by the commenters included: (1) The estimate assumed a higher percentage of leaking components than is actually found in the chemical industry; (2) the estimate assumed higher rates for both leaking and nonleaking components than are actually found in the chemical industry; (3) the estimate does not accurately reflect the extent to which effective control components are used in the chemical industry; and (4) the estimates derived from industry average factors should not be used to estimate emissions from facilities handling toxic chemicals and complying with low OSHA exposure limits. The commenters referenced several studies in support of these points, and one commenter thought EPA should have developed more realistic estimates of emissions from equipment leaks

Response: In the July 28, 1988, notice (53 FR 28496) EPA discussed many of the same concerns expressed by the commenters and indicated that this overstatement was a consideration in the proposed decision under Approach A. No quantitative estimates of the overstatement, or the bias, were presented at proposal because of the limited data available. To address the primary concern of the commenters, EPA reviewed available information sources to see if any improvements to the estimates could be developed. This assessment is summarized below, and the other concerns of the commenters are addressed in the BID.

To consider a representative sample of current performance, EPA examined compliance reports from 1987 and 1988 for a randomly-selected sample of 25 facilities operating about 40 process units subject to the benzene NESHAP. Many of these units had no leaking pumps or valves (i.e., a leak frequency of 0.0 percent), and the average leak frequencies were 0.27 percent for valves and 2.3 percent for pumps. These leak frequencies are lower than the average expected leak rates of 3 to 5 percent for valves and roughly 10 percent for pumps.

In addition to the compliance reports for facilities subject to the existing NESHAP, EPA also reviewed a limited amount of comprehensive data for several process units with equipment in benzene service. For these units, the measured concentration showed emission rates that were 20 to 30 times lower than would be predicted using the EPA's estimation procedures.

Data for other air toxics show a similar pattern. Specifically, recent comprehensive studies on process units handling butadiene, ethylene oxide, or phosgene indicate average leak frequencies of 0 to 5 percent and emission ratios that are a factor of 5 to 20, or more, lower than the EPA's estimates.

Although this information provides an indication of the magnitude of the bias in the emission estimates, it is not a sufficient basis for developing emission factors that would be generally applicable to all facilities. This occurs because leak frequency and the associated emission rates vary widely among facilities and are believed to be a function of original design, age of the process unit, equipment used, quality of the maintenance, and motivation. Development of less biased emission estimates requires information that is not available at this time and that can only be obtained through an extensive study of the industry. Consequently, EPA has not been able to develop better estimates and the emission estimates remain as presented in the proposal notice.

Comment: A number of industry representatives commented that significant further reductions in emissions from equipment leaks cannot be achieved without the development of new technology. The specific concerns raised by the commenters included: (1) The feasibility of applying specific equipment (e.g., dual mechanical seal pumps in corrosive duty) to all types of facilities with equipment in benzene service, and (2) the actual emission reductions achieved by sealed bellows valves. In contrast, one commenter, an equipment vendor, estimated existing sealed bellows valves could be applied to 80 or 85 percent of the process valves in a typical unit.

Response: The EPA agrees that significant reductions beyond the existing standards will require much better understanding of factors affecting emissions than is presently available. Because of this and the need to ensure compliance with specific emission levels, EPA sees the need for a new regulatory approach, based on performance and/or emissions, that will result in quantifiable emission levels, give credit for original plant design, and motivate innovation. The EPA has initiated a negotiated rulemaking to address technical questions regarding performance of control measures or equipment specifications (54 FR 17944, April 25, 1989).

Regarding the commenters' specific points on the applicability of sealed bellows valves, information available to EPA continues to support the conclusion that while sealed bellows valves are useful in some situations, they are not universally applicable and thus will not eliminate all benzene emissions from valves (Docket No. A–79–27, Item VII–A–2). Some of the considerations which have limited the applicability of sealed bellows valves are variability of service life, corrosion and mechanical failure in service with corrosive chemicals, significant emissions when the bellows fail, and limits on pressure and temperature of service streams.

V. Detailed Summary of Final Standards and Impacts

No standards are promulgated for maleic anhydride or EB/S process vents. No additional standards are promulgated for benzene equipment leaks beyond those contained in 40 CFR part 61 subpart J. The final standards for coke by-product recovery plants and benzene storage vessels and the associated health, environmental, energy, cost, and economic impacts are summarized below.

Coke By-Product Recovery Plants

Summary of Standards: The regulations in 40 CFR part 61 subpart L, establish equipment standards for the control of emissions from each tar decanter tar dewatering tank tar-intercepting sump, tar storage tank, flushing-liquor circulation tank, light-oil condenser, light-oil decanter wash-oil decanter, and wash-oil circulation tank. These standards also apply to storage tanks containing benzene, BTX, light-oil or excess ammonia-liquor at furnace coke by-product recovery plants. "Furnace coke" and "foundry coke" are defined in the regulations to identify plants subject to controls for these storage tanks. Each of these sources are

required to be totally enclosed with emissions ducted to the gas collection system gas distribution system, or other enclosed point in the by-product recovery process. Unless otherwise specified pressure-relief devices, vacuum-relief devices, access hatches, and sampling ports are the only openings allowed on each source. Access hatches and sampling ports must be equipped with a gasketed cover.

The standards for these sources are achievable with the use of a gas blanketing system. A gas blanketing system is a closed system operated at positive (or negative) pressure and is generally composed of piping connections, and flow-inducing devices (if necessary) that transport emissions from the enclosed source back to the coke-oven battery gas holder, the collecting main, or another point in the by-product recovery process. Dirty or clean coke oven gas, nitrogen, or natural gas are examples of gases that may be used as the gas blanket.

To ensure proper operation and maintenance of the control equipment, subpart L requires a semiannual inspection of the connections and seals on each gas blanketing system for leaks, using EPA Method 21 (40 CFR part 60 appendix A). Monitoring also is required at any time after the control system is repressurized following removal of the cover or opening of any access hatch. For the gas blanketing system, an organic chemical concentration of more than 500 ppm by volume above a background concentration indicates the presence of a leak. The standards also require a semiannual visual inspection of each source and the piping of the control system for visible defects such as gaps or tears. A first attempt at repair of each leak or visible defect is required within 5 days of detection with repair within 15 days. The owner or operator is required to record the results of the inspections for each source and to include the results in a semiannual report. The standards also require an annual maintenance inspection for abnormalities such as pluggages sticking valves, and clogged or improperly operating condensate traps. A first attempt at repair is required within 5 days and any necessary repairs are to be made within 15 days of the inspection.

Equipment standards also are established for the control of emissions from light-oil sumps. The standards require that the surface area of each sump be completely enclosed. These standards are based on the use of a tightly fitting permanent or removable cover, with a gasket on the rim of the cover. The standards allow the use of an access hatch and a vent in the sump cover. However any access hatch must be equipped with a gasket and with a cover or lid, and any vent must be equipped with a water leg seal, pressure-relief device, or vacuum-relief device. Semiannual inspections of the gaskets and seals for detectable emissions is required: monitoring also is required at any time the seal system is disturbed by removal of the cover. The inspection and monitoring requirements are the same as previously described for gas-blanketed sources. The standards do not allow venting of steam or gases from other points in the coke by-product process to the light-oil sump.

For furnace and foundry coke by-product plants, the standards for naphthalene processing operations, final coolers, and the associated cooling towers require zero emissions from the final cooler and cooling tower as well as from naphthalene processing. These standards are based on the use of a wash-oil final cooler: however, other final cooler designs that achieve the emission limit can be used.

The standards also apply to leaks (i.e., fugitive emissions) from new and existing pieces of equipment in benzene service, including pumps valves exhausters pressure-relief devices sampling connections, and open-ended lines, all of which except exhausters comprise those components that contact or contain materials having a benzene concentration of at least 10 percent by weight. Exhausters that contact or contain materials having a benzene concentration of at least 1 percent by weight also are in benzene service. Because the standards for equipment leaks are the same as the requirements in 40 CFR 61 Subpart V, for equipment except exhausters, Subpart L for coke by-product recovery plants references Subpart V where appropriate rather than repeating the provisions. Subpart V also has been amended where necessary for clarification of the cross referencing. The specific requirements for exhausters are summarized in detail below, because they are not in Subpart V.

The standards require that all exhausters in benzene service be monitored quarterly for the detection of leaks. If an organic chemical concentration at or above 10,000 ppm is detected, as measured by Method 21 the standards require a first attempt at repair within 5 days, with repair of the leak within 15 days from the date the leak was detected, except when repair would require a process unit shutdown. "Repair" means that the measured concentration is below 10,000 ppm. The standards provide three types of alternatives to the leak detection and repair requirements for exhausters. An owner or operator may: (1) Use "leakless" equipment to achieve a "no detectable emissions" limit (i.e., 500 ppm above a background concentration, as measured by Method 21) (2) equip the exhauster with enclosed seal areas vented to a control device designed and operated to achieve a 95-percent benzene control efficiency, or (3) equip the exhauster with seals having a barrier fluid system. Specific requirements for each of these three alternatives to the leak detection and repair program also are included in the regulation.

Compliance with the standards will be assessed through plant inspections and the review of records and reports that document implementation of the requirements. On a semiannual basis, the owner or operator is required to report the number of leaks detected and the number of leaks not repaired during the 6-month period. The owner or operator also is required to submit a signed statement in each semiannual report, indicating whether provisions of the standards have been met for the 6-month period.

Summary of Environmental, Health, and Energy Impacts: The EPA estimates that the standards will reduce nationwide benzene emissions from 36 coke by-product recovery plants by about 16,500 Mg/yr, a reduction of 97 percent from the baseline level of about 17,000 Mg/yr. Nationwide emissions of volatile organic compounds (including benzene) from these plants would be reduced by about 116,000 Mg/yr (or by about 99 percent) from the baseline level of about 117,000 Mg/yr. Implementation of the standards is expected to reduce the annual leukemia incidence associated with nationwide benzene emissions from these plants from 1 case every 6 months (2 cases/year) at the baseline level to about 1 case every 20 years (0.05 case/year) a reduction of 97 percent. The MIR would be reduced from about 7×10^{-3} at baseline to about 2×10^{-4}.

Implementation of the standards is expected to result in a national energy savings of approximately 14,500 terajoules (TJ)/yr from recovered coke oven gas, assuming recovery of at least 16 liters of gas/min/Mg of coke/day at furnace plants and 12 liters of gas/min/Mg of coke/day at foundry plants.

Although an increased cyanide concentration in wastewater is expected with the use of indirect cooling instead of direct final cooling at coke by-product plants, the increase (about 200 g/Mg of coke) is not anticipated to cause problems for compliance with effluent regulations.

Summary of Cost and Economic Impacts: The nationwide capital cost of the standards for furnace and foundry plants combined is estimated at about $74 million (1984 dollars); nationwide annual costs are estimated at $16 million/yr.

The increase incurred in the price of furnace and foundry coke as a result of the standards is estimated to be less than one percent. The EPA's economic analysis indicates that at baseline, several plants may have marginal costs of operation greater than the price of coke. The analysis predicts that implementation of the standards may add one more plant to this group. However, a company decision to actually close a plant is based on a number of factors that an economic model cannot consider, including: the premium a plant is willing to pay for a secure, captive coke supply; requirements for a particular coke quality; age of the batteries, foundry, or steel mill; continued access to profits from steel production; and management's perception regarding their future costs and revenues. The EPA recognizes that implementation of the standards could be the factor that would trigger closure decisions at plants that are presently marginal or operating at a loss.

Benzene Storage Vessels

Summary of the Standards: The final standards, in 40 CFR 61 Subpart Y, are most similar to the standards proposed for benzene storage vessels under proposed policy Approaches A, B, and C. The standards require control of all new and existing storage vessels greater than or equal to 38 m^3 (10,000 gallons) used to store benzene meeting the specifications incorporated by reference in § 61.270(a) for industrial grade benzene or refined benzene-485, -535, or -545. The standards do not apply to storage vessels used for storing benzene at coke by-product recovery facilities because they are considered under the coke by-product recovery plants NESHAP. The standards require use of certain kinds of equipment on each type of benzene storage vessel. Table 2 lists the requirements.

TABLE 2.—EQUIPMENT REQUIRED ON BENZENE STORAGE VESSELS BY 40 CFR PART 61 SUBPART Y

Vessel size and time of construction	Requirements
1. Fixed roof IFR vessel	
a. >38 m^3, commenced construction after July 28, 1988; *or* >38m^3, commenced construction prior to July 28, 1988, and had no IFR, or had an IFR without a continuous seal as of July 28, 1988.	IFR with liquid-mounted or mechanical shoe continuous primary seal [1] and gasketed roof fittings.
b. >38 m^3, commenced construction prior to July 28, 1988, and had an IFR as of July 28, 1988.	IFR with a continuous seal [2] and gasketed roof fittings.[3]
2. EFR vessel	
a. >38 m^3, commenced construction after July 28, 1988; *or* >38m^3, commenced construction prior to July 28, 1988, and did not have a liquid-mounted primary seal as of July 28, 1988.	Liquid-mounted or mechanical shoe primary seal and a continuous secondary seal.
b. >38 m^3, commenced construction prior to July 28, 1988, and had a liquid-mounted primary seal as of July 28, 1988.	Liquid-mounted primary seal and a continuous secondary seal.[4]

[1] A vapor-mounted primary seal is also allowed, provided that the vessel is also equipped with a continuous secondary seal.
[2] For example, liquid-mounted, vapor-mounted, or mechanical shoe seals are allowed.
[3] Gasketing of roof fittings is required the first time the vessel is degassed.
[4] The secondary seal is required the first time the vessel is degassed.

The benzene storage vessel standards require that fixed roof vessels include an IFR with a continuous seal and gasketed roof fittings. Specifically, the standards require that new fixed roof vessels and existing fixed roof vessels to which an IFR was added after July 28, 1988, must have IFR's with either: (1) A liquid-mounted continuous seal, (2) a vapor-mounted primary seal, with a secondary seal, both of which are continuous, or (3) a mechanical shoe seal. These vessels are also required to have gasketed roof fittings, even if they have a secondary seal. These requirements must be met before vessel-filling for new vessels or within 90 days of the effective date of this regulation for existing vessels. Existing fixed roof vessels that already had IFR's on July 28, 1988, and have vapor-mounted primary seals are not required to add secondary seals or to have their vapor-mounted seals replaced with liquid-mounted seals. However, existing shingled seal IFR vessels are required to replace their shingled seal with a continuous seal within the 90-day compliance period. All vessels with IFR's prior to July 28, 1988, are also required to have gasketed fittings, even if they have secondary seals. However, for these existing vessels, the fittings can be retrofitted at the first degassing or within 10 years (whichever is first).

Owners of existing and new EFR vessels are required to install liquid-mounted primary seals (or mechanical shoe seals) and continuous secondary seals meeting certain gap requirements. For new vessels, these requirements must be met before vessel-filling. For existing vessels that did not have liquid-mounted primary seals as of July 28, 1988, they must be met within 90 days of the effective date of this regulation. Existing EFR vessels already equipped with a liquid-mounted primary seal as of July 28, 1988, are required to add the secondary seal at the first degassing of the vessel. However, those with other types of primary seals (e.g., vapor or mechanical shoe) must add the required types of primary and secondary seals within 90 days of the effective date of this regulation.

The standards require that each IFR vessel be inspected from inside prior to the filling of the vessel (if it is a new vessel or is emptied to install control equipment) and at least once every 10 years. An IFR having defects or a seal having holes or tears would have to be repaired before filling the storage vessel with benzene. The standards also require that the IFR and its seal be inspected through roof hatches on the fixed roof at least once annually. However, if an IFR were equipped with a primary and secondary seal, the owner or operator could conduct an internal inspection every 5 years rather than perform the annual inspections. Any defects such as roof sinking, liquid on the deck, holes or tears in the seal, or primary seal detachment (or secondary seal detachment, if one is in service) as viewed through the roof hatches are required to be repaired within 45 days or the storage vessel would have to be emptied. If repair within 45 days is not possible, and alternate storage is not available to allow the tank to be emptied, the owner or operator could request an extension of up to 30 additional days.

The standards also require that, for EFR vessels, the primary seal and secondary seal gaps be measured initially and at least once every 5 years for the primary seal and at least once annually for the secondary seal. Conditions not meeting the standards which are identified during these inspections must be repaired within 45 days or the vessel would have to be emptied. An extension of up to 30 days may be requested if the repair is not possible within the 45 days allowed.

Summary of the Environmental, Health, and Energy Impacts: Under the standards summarized above, benzene emissions from this source category are estimated to be reduced from the baseline range of 620 to 1,290 Mg/yr to a level of 510 Mg/yr. The residual incidence of leukemia from exposure to benzene emissions after application of the standards is estimated to be 1 case every 25 years (0.04 case/year), and the MIR is predicted to be 3×10^{-5}. This can be compared with an incidence range of 1 case every 10 to 20 years (0.1 to 0.05 case/year) and an MIR range of 4×10^{-5} to 4×10^{-4} under the baseline conditions.

Because the control equipment and work practices required by the standards do not involve the generation of any wastewater or solid waste, there are no expected impacts on water quality or solid waste disposal. Further, no noise or radiation impacts are expected, nor are any changes in energy use predicted.

Summary of the Cost and Economic Impacts: National capital costs of control associated with achieving the standards are $0.66 million (1982 dollars). The nationwide annual cost is $0.1 million/yr (1982 dollars). No major adverse economic impacts are anticipated as a result of these standards.

VI. Administrative

Paperwork Reduction Act

The information collection provisions associated with the rules have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA) of 1980, 44 U.S.C. 3501 et seq. and have been assigned OMB Control Number 2060–0185.

During the first 3 years that the standards are in effect, the public reporting burden for collection of information, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information is estimated to be:

(1) 2,134 averaged annual hours with an average of 17 hours/year per respondent for plants with benzene storage vessels; and

(2) 5,835 averaged annual hours with an average of 162 hours/year per respondent for coke by-product recovery plants.

No new standards are being promulgated for EB/S process vents and equipment leaks, therefore, there are no associated recordkeeping and reporting burdens. The existing standards for benzene equipment leaks will remain in effect. Consequently, there is no change in the reporting and recordkeeping burden.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.) requires EPA to consider potential impacts of proposed regulations on small "entities." If a preliminary analysis indicates that a proposed regulation would have a significant economic impact on 20 percent or more of small entities, then a regulatory flexibility analysis must be prepared.

Present RFA guidelines indicate that an economic impact should be considered significant if it meets one of the following criteria:

(1) Compliance increases annual production costs by more than 5 percent;

(2) Compliance costs as a percentage of sales for small entities are at least 10 percent more than compliance costs as a percentage of sales for large entities;

(3) Capital costs of compliance represent a "significant" portion of capital available to small entities, considering internal cash flow plus external financial capabilities; and

(4) Regulatory requirements are likely to result in closures of small entities.

For EB/S process vents and equipment leaks no additional controls are required, therefore, no small businesses will be adversely affected. For benzene storage vessels, very few businesses would be considered small businesses. According to Small Business Administration guidelines, a small business that manufactures cyclic crudes and cyclic intermediates, pharmaceuticals, and many other chemicals is one that has 750 employees or fewer. Very few of the businesses in the existing industry employ fewer than 750 people. Benzene storage facilities owned by small businesses will not be adversely affected by the standards. In the economic analysis for this standard, the price increase and profitability impacts were estimated for small as well as for larger facilities. The impacts for the small benzene storage facilities were very small (about $800/year).

For coke by-product recovery plants, EPA has determined under the Small Business Administration guidelines that any coke firm that employs fewer than 1,000 workers is a small business. Six foundry coke firms were identified as being small. The economic analysis for the standards estimates that one plant may exceed criterion (2) above. However, the standards are not subject to the RFA because there is not a substantial number (i.e., 20 percent) of the small businesses that would be adversely affected.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that the rules for benzene storage vessels and coke by-product recovery plants will not have a significant economic impact on a substantial number of small entities.

Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered by EPA in the development of this rulemaking. The principal purposes of the docket are:

(1) To allow interested parties to identify and locate documents so that they can participate effectively in the rulemaking process; and

(2) To serve as the record in case of judicial review (except for interagency review materials [Section 307(d)(7)(A) of the CAA]).

Miscellaneous

As prescribed by section 112 of the CAA, as amended, establishment of today's national emissions standards was preceded by the Administrator's listing of benzene as a hazardous air pollutant on June 8, 1977 (42 FR 29332).

In accordance with section 117 of the CAA, publication of these actions on benzene was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies to the maximum extent practical.

Under Executive Order 12291, EPA is required to judge whether these regulations are "major rules" and therefore subject to certain requirements of the Order. The EPA has determined that the regulations for benzene storage vessels and for coke by-product recovery plants will 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." These regulations are not major because:

(1) Nationwide annual compliance costs are not as great as the threshold of $100 million;

(2) The regulations do not significantly increase prices or production costs; and

(3) The regulations do not cause significant, adverse effects on domestic competition, employment, investment, productivity, innovation, or competition in foreign markets.

The regulations presented in this notice were submitted to OMB for review as required by Executive Order 12291.

Any written comments from OMB to EPA and written EPA responses to those comments are included in the dockets listed at the beginning of today's notice

under "Dockets." These dockets are available for public inspection at the EPA's Air Docket, which is listed in the **ADDRESSES** section of this preamble.

VII. List of Subjects in 40 CFR Part 61

Asbestos, Benzene, Beryllium, Coke oven emissions, Hazardous substances, Incorporation by reference, Inorganic arsenic, Intergovernmental relations, Mercury, Radionuclides, Reporting and recordkeeping requirements, Vinyl chloride, Volatile hazardous air pollutants.

Dated: August 31, 1989.

F. Henry Habicht,

Acting Administrator.

For the reasons set out in the preamble, Chapter I, Title 40, of the Code of Federal Regulations, Part 61, is amended as follows:

PART 61—[AMENDED]

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

Authority: Secs. 101, 112, 114, 116, 301 Clean Air Act as amended (42 U.S.C. 7401, 7412, 7414, 7416, 7601).

2. By adding paragraphs (a)(7), (8), (9), and (10) to § 61.18 of Subpart A—General Provisions as follows:

§ 61.18 Incorporations by reference.

* * * * *

(a) * * *

(7) ASTM D 836–84, Standard Specification for Industrial Grade Benzene, IBR approved _____ (date of publication in the **Federal Register**), for 61.270(a).

(8) ASTM D 835–85, Standard Specification for Refined Benzene–485, IBR approved _____ (date of publication in the **Federal Register**), for 61.270(a).

(9) ASTM D 2359–85a, Standard Specification for Refined Benzene–535, IBR approved _____ (date of publication in the **Federal Register**), for § 61.270(a).

(10) ASTM D 4734–87, Standard Specification for Refined Benzene–545, IBR approved _____ (date of publication in the **Federal Register**), for § 61.270(a).

3. Subpart L is added as follows:

Subpart L—National Emission Standard for Benzene Emissions from Coke By-Product Recovery Plants

Sec.

61.130 Applicability and designation of sources.
61.131 Definitions.
61.132 Standard: Process vessels, storage tanks, and tar-intercepting sumps.
61.133 Standard: Light-oil sumps.
61.134 Standard: Naphthalene processing, final coolers, and final-cooler cooling towers.
61.135 Standard: Equipment leaks.
61.136 Compliance provisions and alternative means of emission limitation.
61.137 Test methods and procedures.
61.138 Recordkeeping and reporting requirements.
61.139 Delegation of authority.

Subpart L—National Emission Standard for Benzene Emissions from Coke By-Product Recovery Plants

§ 61.130 Applicability and designation of sources.

(a) The provisions of this subpart apply to each of the following sources at furnace and foundry coke by-product recovery plants: tar decanters, tar storage tanks, tar-intercepting sumps, flushing-liquor circulation tanks, light-oil sumps, light-oil condensers, light-oil decanters, wash-oil decanters, wash-oil circulation tanks, naphthalene processing, final coolers, final-cooler cooling towers, and the following equipment that are intended to operate in benzene service: pumps, valves, exhausters, pressure relief devices, sampling connection systems, open-ended valves or lines, flanges or other connectors, and control devices or systems required by § 61.135.

(b) The provisions of this subpart also apply to benzene storage tanks, BTX storage tanks, light-oil storage tanks, and excess ammonia-liquor storage tanks at furnace coke by-product recovery plants.

§ 61.131 Definitions.

As used in this subpart, all terms not defined herein shall have the meaning given them in the Act, in Subpart A of part 61, and in Subpart V of part 61. The following terms shall have the specific meanings given them:

"Annual coke production" means the coke produced in the batteries connected to the coke by-product recovery plant over a 12-month period. The first 12-month period concludes on the first December 31 that comes at least 12 months after the effective date or after the date of initial startup if initial startup is after the effective date.

"Benzene storage tank" means any tank, reservoir, or container used to collect or store refined benzene.

"BTX storage tank" means any tank, reservoir, or container used to collect or store benzene-toluene-xylene or other light-oil fractions.

"Coke by-product recovery plant" means any plant designed and operated for the separation and recovery of coal tar derivatives (by-products) evolved from coal during the coking process of a coke oven battery.

"Equipment" means each pump, valve, exhauster, pressure relief device, sampling connection system, open-ended valve or line, and flange or other connector in benzene service.

"Excess ammonia-liquor storage tank" means any tank, reservoir, or container used to collect or store a flushing liquor solution prior to ammonia or phenol recovery.

"Exhauster" means a fan located between the inlet gas flange and outlet gas flange of the coke oven gas line that provides motive power for coke oven gases.

"Foundry coke" means coke that is produced from raw materials with less than 26 percent volatile material by weight and that is subject to a coking period of 24 hours or more. Percent volatile material of the raw materials (by weight) is the weighted average percent volatile material of all raw materials (by weight) charged to the coke oven per coking cycle.

"Foundry coke by-product recovery plant" means a coke by-product recovery plant connected to coke batteries whose annual coke production is at least 75 percent foundry coke.

"Flushing-liquor circulation tank" means any vessel that functions to store or contain flushing liquor that is separated from the tar in the tar decanter and is recirculated as the cooled liquor to the gas collection system.

"Furnace coke" means coke produced in by-product ovens that is not foundry coke.

"Furnace coke by-product recovery plant" means a coke by-product recovery plant that is not a foundry coke by-product recovery plant.

"In benzene service" means a piece of equipment, other than an exhauster, that either contains or contacts a fluid (liquid or gas) that is at least 10 percent benzene by weight or any exhauster that either contains or contacts a fluid (liquid or gas) at least 1 percent benzene by weight as determined by the provisions of § 61.137(b). The provisions of § 61.137(b) also specify how to determine that a piece of equipment is not in benzene service.

"Light-oil condenser" means any unit in the light-oil recovery operation that functions to condense benzene-containing vapors.

"Light-oil decanter" means any vessel, tank, or other type of device in the light-oil recovery operation that functions to separate light oil from water downstream of the light-oil condenser. A

light-oil decanter also may be known as a light-oil separator.

"Light-oil storage tank" means any tank, reservoir, or container used to collect or store crude or refined light-oil.

"Light-oil sump" means any tank, pit, enclosure, or slop tank in light-oil recovery operations that functions as a wastewater separation device for hydrocarbon liquids on the surface of the water.

"Naphthalene processing" means any operations required to recover naphthalene including the separation, refining, and drying of crude or refined naphthalene.

"Process vessel" means each tar decanter, flushing-liquor circulation tank, light-oil condenser, light-oil decanter, wash-oil decanter, or wash-oil circulation tank.

"Semiannual" means a 6-month period; the first semiannual period concludes on the last day of the last full month during the 180 days following initial startup for new sources; the first semiannual period concludes on the last day of the last full month during the 180 days after the effective date of the regulation for existing sources.

"Tar decanter" means any vessel, tank, or container that functions to separate heavy tar and sludge from flushing liquor by means of gravity, heat, or chemical emulsion breakers. A tar decanter also may be known as a flushing-liquor decanter.

"Tar storage tank" means any vessel, tank, reservoir, or other type of container used to collect or store crude tar or tar-entrained naphthalene, except for tar products obtained by distillation, such as coal tar pitch, creosotes, or carbolic oil. This definition also includes any vessel, tank, reservoir, or container used to reduce the water content of the tar by means of heat, residence time, chemical emulsion breakers, or centrifugal separation. A tar storage tank also may be known as a tar-dewatering tank.

"Tar-intercepting sump" means any tank, pit, or enclosure that serves to receive or separate tars and aqueous condensate discharged from the primary cooler. A tar-intercepting sump also may be known as a primary-cooler decanter.

"Wash-oil circulation tank" means any vessel that functions to hold the wash oil used in light-oil recovery operations or the wash oil used in the wash-oil final cooler.

"Wash-oil decanter" means any vessel that functions to separate, by gravity, the condensed water from the wash oil received from a wash-oil final cooler or from a light-oil scrubber.

§ 61.132 Standard: Process vessels, storage tanks, and tar-intercepting sumps.

(a)(1) Each owner or operator of a furnace or a foundry coke byproduct recovery plant shall enclose and seal all openings on each process vessel, tar storage tank, and tar-intercepting sump.

(2) The owner or operator shall duct gases from each process vessel, tar storage tank, and tar-intercepting sump to the gas collection system, gas distribution system, or other enclosed point in the by-product recovery process where the benzene in the gas will be recovered or destroyed. This control system shall be designed and operated for no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background and visual inspections, as determined by the methods specified in § 61.245(c). This system can be designed as a closed, positive pressure, gas blanketing system.

(i) Except, the owner or operator may elect to install, operate, and maintain a pressure relief device, vacuum relief device, an access hatch, and a sampling port on each process vessel, tar storage tank, and tar-intercepting sump. Each access hatch and sampling port must be equipped with a gasket and a cover, seal, or lid that must be kept in a closed position at all times, unless in actual use.

(ii) The owner or operator may elect to leave open to the atmosphere the portion of the liquid surface in each tar decanter necessary to permit operation of a sludge conveyor. If the owner or operator elects to maintain an opening on part of the liquid surface of the tar decanter, the owner or operator shall install, operate, and maintain a water leg seal on the tar decanter roof near the sludge discharge chute to ensure enclosure of the major portion of liquid surface not necessary for the operation of the sludge conveyor.

(b) Following the installation of any control equipment used to meet the requirements of paragraph (a) of this section, the owner or operator shall monitor the connections and seals on each control system to determine if it is operating with no detectable emissions, using Reference Method 21 (40 CFR part 60, appendix A) and procedures specified in § 61.245(c), and shall visually inspect each source (including sealing materials) and the ductwork of the control system for evidence of visible defects such as gaps or tears. This monitoring and inspection shall be conducted on a semiannual basis and at any other time after the control system is repressurized with blanketing gas following removal of the cover or opening of the access hatch.

(1) If an instrument reading indicates an organic chemical concentration more than 500 ppm above a background concentration, as measured by Reference Method 21, a leak is detected.

(2) If visible defects such as gaps in sealing materials are observed during a visual inspection, a leak is detected.

(3) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected.

(4) A first attempt at repair of any leak or visible defect shall be made no later than 5 calendar days after each leak is detected.

(c) Following the installation of any control system used to meet the requirements of paragraph (a) of this section, the owner or operator shall conduct a maintenance inspection of the control system on an annual basis for evidence of system abnormalities, such as blocked or plugged lines, sticking valves, plugged condensate traps, and other maintenance defects that could result in abnormal system operation. The owner or operator shall make a first attempt at repair within 5 days, with repair within 15 days of detection.

(d) Each owner or operator of a furnace coke by-product recovery plant also shall comply with the requirements of paragraphs (a)–(c) of this section for each benzene storage tank, BTX storage tank, light-oil storage tank, and excess ammonia-liquor storage tank.

§ 61.133 Standard: Light-oil sumps.

(a) Each owner or operator of a light-oil sump shall enclose and seal the liquid surface in the sump to form a closed system to contain the emissions.

(1) Except, the owner or operator may elect to install, operate, and maintain a vent on the light-oil sump cover. Each vent pipe must be equipped with a water leg seal, a pressure relief device, or vacuum relief device.

(2) Except, the owner or operator may elect to install, operate, and maintain an access hatch on each light-oil sump cover. Each access hatch must be equipped with a gasket and a cover, seal, or lid that must be kept in a closed position at all times, unless in actual use.

(3) The light-oil sump cover may be removed for periodic maintenance but must be replaced (with seal) at completion of the maintenance operation.

(b) The venting of steam or other gases from the by-product process to the light-oil sump is not permitted.

(c) Following the installation of any control equipment used to meet the requirements of paragraph (a) of this

section, the owner or operator shall monitor the connections and seals on each control system to determine if it is operating with no detectable emissions, using Reference Method 21 (40 CFR part 60, appendix A) and the procedures specified in § 61.245(c), and shall visually inspect each source (including sealing materials) for evidence of visible defects such as gaps or tears. This monitoring and inspection shall be conducted semiannually and at any other time the cover is removed.

(1) If an instrument reading indicates an organic chemical concentration more than 500 ppm above a background concentration, as measured by Reference Method 21, a leak is detected.

(2) If visible defects such as gaps in sealing materials are observed during a visual inspection, a leak is detected.

(3) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected.

(4) A first attempt at repair of any leak or visible defect shall be made no later than 5 calendar days after each leak is detected.

§ 61.134 Standard: Naphthalene processing, final coolers, and final-cooler cooling towers.

(a) No ("zero") emissions are allowed from naphthalene processing, final coolers and final-cooler cooling towers at coke by-product recovery plants.

§ 61.135 Standard: Equipment leaks.

(a) Each owner or operator of equipment in benzene service shall comply with the requirements of 40 CFR 61, Subpart V, except as provided in this section.

(b) The provisions of § 61.242–3 and § 61.242–9 of Subpart V do not apply to this subpart.

(c) Each piece of equipment in benzene service to which this subpart applies shall be marked in such a manner that it can be distinguished readily from other pieces of equipment in benzene service.

(d) Each exhauster shall be monitored quarterly to detect leaks by the methods specified in § 61.245(b) except as provided in § 61.136(d) and paragraphs (e)–(g) of this section.

(1) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

(2) When a leak is detected, it shall be repaired as soon as practicable, but no later than 15 calendar days after it is detected, except as provided in § 61.242–10 (a) and (b). A first attempt at repair shall be made no later than 5 calendar days after each leak is detected.

(e) Each exhauster equipped with a seal system that includes a barrier fluid system and that prevents leakage of process fluids to the atmosphere is exempt from the requirements of paragraph (d) of this section provided the following requirements are met:

(1) Each exhauster seal system is:

(i) Operated with the barrier fluid at a pressure that is greater than the exhauster stuffing box pressure; or

(ii) Equipped with a barrier fluid system that is connected by a closed vent system to a control device that complies with the requirements of § 61.242–11; or

(iii) Equipped with a system that purges the barrier fluid into a process stream with zero benzene emissions to the atmosphere.

(2) The barrier fluid is not in benzene service.

(3) Each barrier fluid system shall be equipped with a sensor that will detect failure of the seal system, barrier fluid system, or both.

(4)(i) Each sensor as described in paragraph (e)(3) of this section shall be checked daily or shall be equipped with an audible alarm.

(ii) The owner or operator shall determine, based on design considerations and operating experience, a criterion that indicates failure of the seal system, the barrier fluid system, or both.

(5) If the sensor indicates failure of the seal system, the barrier system, or both (based on the criterion determined under paragraph (e)(4)(ii) of this section), a leak is detected.

(6)(i) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in § 61.242–10.

(ii) A first attempt at repair shall be made no later than 5 calendar days after each leak is detected.

(f) An exhauster is exempt from the requirements of paragraph (d) of this section if it is equipped with a closed vent system capable of capturing and transporting any leakage from the seal or seals to a control device that complies with the requirements of § 61.242–11 except as provided in paragraph (g) of this section.

(g) Any exhauster that is designated, as described in § 61.246(e) for no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, is exempt from the requirements of paragraph (d) of this section if the exhauster:

(1) Is demonstrated to be operating with no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as measured by the methods specified in § 61.245(c); and

(2) Is tested for compliance with paragraph (g)(1) of this section initially upon designation, annually, and at other times requested by the Administrator.

(h) Any exhauster that is in vacuum service is excluded from the requirements of this subpart if it is identified as required in § 61.246(e)(5).

§ 61.136 Compliance provisions and alternative means of emission limitation.

(a) Each owner or operator subject to the provisions of this subpart shall demonstrate compliance with the requirements of §§ 61.132 through 61.135 for each new and existing source, except as provided under §§ 61.243–1 and 61.243–2.

(b) Compliance with this subpart shall be determined by a review of records, review of performance test results, inspections, or any combination thereof, using the methods and procedures specified in § 61.137.

(c) On the first January 1 after the first year that a plant's annual coke production is less than 75 percent foundry coke, the coke by-product recovery plant becomes a furnace coke by-product recovery plant and shall comply with 61.132(d). Once a plant becomes a furnace coke by-product recovery plant, it will continue to be considered a furnace coke by-product recovery plant, regardless of the coke production in subsequent years.

(d)(1) An owner or operator may request permission to use an alternative means of emission limitation to meet the requirements in §§ 61.132, 61.133, and 61.135 of this subpart and §§ 61.242–2, –5, –6, –7, –8, and –11 of Subpart V. Permission to use an alternative means of emission limitation shall be requested as specified in § 61.12(d).

(2) When the Administrator evaluates requests for permission to use alternative means of emission limitation for sources subject to §§ 61.132 and 61.133 (except tar decanters) the Administrator shall compare test data for the means of emission limitation to a benzene control efficiency of 98 percent. For tar decanters, the Administrator shall compare test data for the means of emission limitation to a benzene control efficiency of 95 percent.

(3) For any requests for permission to use an alternative to the work practices required under § 61.135, the provisions of § 61.244(c) shall apply.

§ 61.137 Test methods and procedures.

(a) Each owner or operator subject to the provisions of this subpart shall

comply with the requirements in § 61.245 of 40 CFR Part 61, Subpart V.

(b) To determine whether or not a piece of equipment is in benzene service, the methods in § 61.245(d) shall be used, except that, for exhausters, the percent benzene shall be 1 percent by weight, rather than the 10 percent by weight described in § 61.245(d).

§ 61.138 Recordkeeping and reporting requirements.

(a) The following information pertaining to the design of control equipment installed to comply with §§ 61.132 through 61.134 shall be recorded and kept in a readily accessible location:

(1) Detailed schematics, design specifications, and piping and instrumentation diagrams.

(2) The dates and descriptions of any changes in the design specifications.

(b) The following information pertaining to sources subject to § 61.132 and sources subject to § 61.133 shall be recorded and maintained for 2 years following each semiannual (and other) inspection and each annual maintenance inspection:

(1) The date of the inspection and the name of the inspector.

(2) A brief description of each visible defect in the source or control equipment and the method and date of repair of the defect.

(3) The presence of a leak, as measured using the method described in § 61.245(c). The record shall include the date of attempted and actual repair and method of repair of the leak.

(4) A brief description of any system abnormalities found during the annual maintenance inspection, the repairs made, the date of attempted repair, and the date of actual repair.

(c) Each owner or operator of a source subject to § 61.135 shall comply with § 61.246.

(d) For foundry coke by-product recovery plants, the annual coke production of both furnace and foundry coke shall be recorded and maintained for 2 years following each determination.

(e)(1) An owner or operator of any source to which this subpart applies shall submit a statement in writing notifying the Administrator that the requirements of this subpart and 40 CFR 61, Subpart V, have been implemented.

(2) In the case of an existing source or a new source that has an initial startup date preceding the effective date, the statement is to be submitted within 90 days of the effective date, unless a waiver of compliance is granted under § 61.11, along with the information required under § 61.10. If a waiver of compliance is granted, the statement is to be submitted on a date scheduled by the Administrator.

(3) In the case of a new source that did not have an initial startup date preceding the effective date, the statement shall be submitted with the application for approval of construction, as described under § 61.07.

(4) The statement is to contain the following information for each source:

(i) Type of source (e.g., a light-oil sump or pump).

(ii) For equipment in benzene service, equipment identification number and process unit identification: percent by weight benzene in the fluid at the equipment; and process fluid state in the equipment (gas/vapor or liquid).

(iii) Method of compliance with the standard (e.g., "gas blanketing," "monthly leak detection and repair," or "equipped with dual mechanical seals"). This includes whether the plant plans to be a furnace or foundry coke by-product recovery plant for the purposes of § 61.132(d).

(f) A report shall be submitted to the Administrator semiannually starting 6 months after the initial reports required in § 61.138(e) and § 61.10, which includes the following information:

(1) For sources subject to § 61.132 and sources subject to § 61.133,

(i) A brief description of any visible defect in the source or ductwork,

(ii) The number of leaks detected and repaired, and

(iii) A brief description of any system abnormalities found during each annual maintenance inspection that occurred in the reporting period and the repairs made.

(2) For equipment in benzene service subject to § 61.135(a), information required by § 61.247(b).

(3) For each exhauster subject to § 61.135 for each quarter during the semiannual reporting period,

(i) The number of exhausters for which leaks were detected as described in § 61.135 (d) and (e)(5),

(ii) The number of exhausters for which leaks were repaired as required in § 61.135 (d) and (e)(6),

(iii) The results of performance tests to determine compliance with § 61.135(g) conducted within the semiannual reporting period.

(4) A statement signed by the owner or operator stating whether all provisions of 40 CFR part 61, subpart L, have been fulfilled during the semiannual reporting period.

(5) For foundry coke by-product recovery plants, the annual coke production of both furnace and foundry coke, if determined during the reporting period.

(6) Revisions to items reported according to paragraph (e) of this section if changes have occurred since the initial report or subsequent revisions to the initial report.

Note: Compliance with the requirements of § 61.10(c) is not required for revisions documented under this paragraph.

(g) In the first report submitted as required in § 61.138(e), the report shall include a reporting schedule stating the months that semiannual reports shall be submitted. Subsequent reports shall be submitted according to that schedule unless a revised schedule has been submitted in a previous semiannual report.

(h) An owner or operator electing to comply with the provisions of §§ 61.243–1 and 61.243–2 shall notify the Administrator of the alternative standard selected 90 days before implementing either of the provisions.

(i) An application for approval of construction or modification, as required under §§ 61.05(a) and 61.07, will not be required for sources subject to 61.135 if:

(1) The new source complies with § 61.135, and

(2) In the next semiannual report required by § 61.138(f), the information described in § 61.138(e)(4) is reported.

(Approved by the Office of Management and Budget under control number _____)

§ 61.139 Delegation of authority.

(a) In delegating implementation and enforcement authority to a State under Section 112(d) 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: § 61.136(d).

4. Section 61.241 of Subpart V is amended by revising the definition of "repaired" and by adding a definition of "stuffing box pressure" as follows:

§ 61.241 Definitions.

* * * * *

"Repaired" means that equipment is adjusted, or otherwise altered, to eliminate a leak.

"Stuffing box pressure" means the fluid (liquid or gas) pressure inside the casing or housing of a piece of equipment, on the process side of the inboard seal.

* * * * *

5. Section 61.245 of Subpart V is amended by revising introductory paragraph (b) and introductory paragraph (c) as follows:

§ 61.245 Test methods and procedures.

* * * * *

(b) Monitoring, as required in §§ 61.242, 61.243, 61.244, and 61.135, shall comply with the following requirements:

* * * * *

(c) When equipment is tested for compliance with or monitored for no detectable emissions, the owner or operator shall comply with the following requirements:

* * * * *

6. Section 61.246 of Subpart V is amended by revising the introductory texts of paragraphs (b), (c), and (e) and by revising paragraphs (e)(2), (e)(4)(i), and (h)(1) to read as follows:

§ 61.246 Recordkeeping requirements.

* * * * *

(b) When each leak is detected as specified in §§ 61.242–2, 61.242–3, 61.242–7, 61.242–8, and 61.135, the following requirements apply:

* * * * *

(c) When each leak is detected as specified in 61.242–2, 61.242–3. 61.242–7, 61.242–8, and 61.135, the following information shall be recorded in a log and shall be kept for 2 years in a readily accessible location:

* * * * *

(e) The following information pertaining to all equipment to which a standard applies shall be recorded in a log that is kept in a readily accessible location:

* * * * *

(2)(i) A list of identification numbers for equipment that the owner or operator elects to designate for no detectable emissions as indicated by an instrument reading of less than 500 ppm above background.

(ii) The designation of this equipment for no detectable emissions shall be signed by the owner or operator.

* * * * *

(4)(i) The dates of each compliance test required in §§ 61.242–2(e), 61.242–3(i), 61.242–4, 61.242–7(f), and 61.135(g).

* * * * *

(h) * * *

(1) Design criterion required in §§ 61.242–2(d)(5), 61.242–3(e)(2), and 61.135(e)(4) and an explanation of the design criterion; and

* * * * *

7. Section 61.247 of Subpart V is amended by revising paragraph (b)(5) to read as follows:

§ 61.247 Reporting requirements.

* * * * *

(b) * * *

(5) The results of all performance tests and monitoring to determine compliance with no detectable emissions and with §§ 61.243–1 and 61.243–2 conducted within the semiannual reporting period.

* * * * *

8. Subpart Y is added as follows:

Subpart Y—National Emission Standard for Benzene Emissions from Benzene Storage Vessels

Sec.

61.270 Applicability and designation of sources.
61.271 Emission standard.
61.272 Compliance provisions.
61.273 Alternative means of emission limitation.
61.274 Initial report.
61.275 Periodic report.
61.276 Recordkeeping.
61.277 Delegation of authority.

Subpart Y—National Emission Standard for Benzene Emissions from Benzene Storage Vessels

§ 61.270 Applicability and designation of sources.

(a) The source to which this subpart applies is each storage vessel that is storing benzene having a specific gravity within the range of specific gravities specified in ASTM D 836–84 for Industrial Grade Benzene, ASTM D 835–85 for Refined Benzene-485, ASTM D 2359–85a for Refined Benzene-535, and ASTM D 4734–87 for Refined Benzene-545. These specifications are incorporated by reference as specified in § 61.18.

(b) Except for paragraph (b) in § 61.276, storage vessels with a design storage capacity less than 38 cubic meters (10,000 gallons) are exempt from the provisions of this subpart.

(c) This subpart does not apply to storage vessels used for storing benzene at coke by-product facilities.

(d) This subpart does not apply to vessels permanently attached to motor vehicles such as trucks, rail cars, barges, or ships.

(e) This subpart does not apply to pressure vessels designed to operate in excess of 204.9 kPa and without emissions to the atmosphere.

(f) A designated source subject to the provisions of this subpart that is also subject to applicable provisions of 40 CFR part 60 subparts K, Ka, and Kb shall be required to comply only with the subpart that contains the most stringent requirements for that source.

§ 61.271 Emission standard.

The owner or operator of each storage vessel with a design storage capacity greater than or equal to 38 cubic meters (10,000 gallons) to which this subpart applies shall comply with the requirements in paragraph (d) of this section and with the requirements either in paragraph (a), (b), or (c) of this section, or equivalent as provided in § 61.273.

(a) The storage vessel shall be equipped with a fixed roof and an internal floating roof.

(1) An internal floating roof means a cover that rests on the liquid surface (but not necessarily in complete contact with it) inside a storage vessel that has a permanently affixed roof. The internal floating roof shall be floating on the liquid surface at all times, except during initial fill and during those intervals when the storage vessel is completely emptied or subsequently emptied and refilled. When the roof is resting on the leg supports, the process of filling, emptying, or refilling shall be continuous and shall be accomplished as rapidly as possible.

(2) Each internal floating roof shall be equipped with one of the closure devices listed in paragraphs (a)(2) (i), (ii), or (iii) of this section between the wall of the storage vessel and the edge of the internal floating roof. This requirement does not apply to each existing storage vessel for which construction of an internal floating roof equipped with a continuous seal commenced on or before July 28, 1988. A continuous seal means a seal that forms a continuous closure that completely covers the space between the wall of the storage vessel and the edge of the internal floating roof.

(i) A foam- or liquid-filled seal mounted in contact with the liquid (liquid-mounted seal). A liquid-mounted seal means a foam- or liquid-filled seal mounted in contact with the liquid between the wall of the storage vessel and the floating roof continuously around the circumference of the vessel.

(ii) Two seals mounted one above the other so that each forms a continuous closure that completely covers the space between the wall of the storage vessel and the edge of the internal floating roof. The lower seal may be vapor-mounted, but both must be continuous.

(iii) A metallic shoe seal. A metallic shoe seal (also referred to as a mechanical shoe seal) is, but is not limited to, a metal sheet held vertically against the wall of the storage vessel by springs or weighted levers and is connected by braces to the floating roof. A flexible coated fabric (envelope) spans the annular space between the metal sheet and the floating roof.

(3) Automatic bleeder vents are to be closed at all times when the roof is floating, except when the roof is being floated off or is being landed on the roof leg supports.

(4) Each opening in a noncontact internal floating roof except for automatic bleeder vents (vacuum breaker vents) and the rim space vents is to provide a projection below the liquid surface.

(5) Each internal floating roof shall meet the specifications listed below. If an existing storage vessel had an internal floating roof with a continuous seal as of July 28, 1988, the requirements listed below do not have to be met until the first time after September 14, 1989, the vessel is emptied and degassed or September 14, 1999, whichever occurs first.

(i) Each opening in the internal floating roof except for leg sleeves, automatic bleeder vents, rim space vents, column wells, ladder wells, sample wells, and stub drains is to be equipped with a cover or lid. The cover or lid shall be equipped with a gasket. Covers on each access hatch and automatic gauge float well shall be bolted.

(ii) Each penetration of the internal floating roof for the purposes of sampling shall be a sample well. Each sample well shall have a slit fabric cover that covers at least 90 percent of the opening.

(iii) Each automatic bleeder vent shall be gasketed.

(iv) Rim space vents shall be equipped with a gasket.

(v) Each penetration of the internal floating roof that allows for passage of a ladder shall have a gasketed sliding cover.

(vi) Each penetration of the internal floating roof that allows for passage of a column supporting the fixed roof shall have a flexible fabric sleeve seal or a gasketed sliding cover.

(6) Each cover or lid on any opening in the internal floating roof shall be closed (i.e., no visible gaps), except when a device is in actual use Covers on each access hatch and each automatic gauge float well which are equipped with bolts shall be bolted when they are not in use. Rim space vents are to be set to open only when the internal floating roof is not floating or at the manufacturer's recommended setting.

(b) The storage vessel shall have an external floating roof.

(1) An external floating roof means a pontoon-type or double-deck-type cover that rests on the liquid surface in a vessel with no fixed roof.

(2) Each external floating roof shall be equipped with a closure device between the wall of the storage vessel and the roof edge. Except as provided in paragraph (b)(5) of this section, the closure device is to consist of two seals, one above the other. The lower seal is referred to as the primary seal and the upper seal is referred to as the secondary seal.

(i) The primary seal shall be either a metallic shoe seal or a liquid-mounted seal. A liquid-mounted seal means a foam- or liquid-filled seal mounted in contact with the liquid between the wall of the storage vessel and the floating roof continuously around the circumference of the vessel. A metallic shoe seal (which can also be referred to as a mechanical shoe seal) is, but is not limited to, a metal sheet held vertically against the wall of the storage vessel by springs or weighted levers and is connected by braces to the floating roof. A flexible coated fabric (envelope) spans the annular space between the metal sheet and the floating roof. Except as provided in § 61.272(b)(4), the primary seal shall completely cover the annular space between the edge of the floating roof and the vessel wall.

(ii) The secondary seal shall completely cover the annular space between the external floating roof and the wall of the storage vessel in a continuous fashion except as allowed in § 61.272(b)(4).

(3) Except for automatic bleeder vents and rim space vents, each opening in the noncontact external floating roof shall provide a projection below the liquid surface. Except for automatic bleeder vents, rim space vents, roof drains, and leg sleeves, each opening in the roof is to be equipped with a gasketed cover, seal or lid which is to be maintained in a closed position at all times (i.e., no visible gap) except when the device is in actual use. Automatic bleeder vents are to be closed at all times when the roof is floating, except when the roof is being floated off or is being landed on the roof leg supports. Rim vents are to be set to open when the roof is being floated off the roof leg supports or at the manufacturer's recommended setting. Automatic bleeder vents and rim space vents are to be gasketed. Each emergency roof drain is to be provided with a slotted membrane fabric cover that covers at least 90 percent of the area of the opening.

(4) The roof shall be floating on the liquid at all times (i.e., off the roof leg supports) except during initial fill until the roof is lifted off leg supports and when the vessel is completely emptied and subsequently refilled. The process of emptying and refilling when the roof is resting on the leg supports shall be continuous and shall be accomplished as rapidly as possible.

(5) The requirement for a secondary seal does not apply to each existing storage vessel that was equipped with a liquid-mounted primary seal as of July 28, 1988, until after the first time after September 14, 1989, when the vessel is emptied and degassed or 10 years from September 14, 1989, whichever occurs first.

(c) The storage vessel shall be equipped with a closed vent system and a control device.

(1) The closed vent system shall be designed to collect all benzene vapors and gases discharged from the storage vessel and operated with no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background and visual inspections, as determined in § 61.242–11 (Subpart V).

(2) The control device shall be designed and operated to reduce inlet benzene emissions by 95 percent or greater. If a flare is used as the control device, it shall meet the specifications described in the general control device requirements of 40 CFR 60.18.

(3) The specifications and requirements listed in paragraphs (c)(1) and (c)(2) of this section for closed vent systems and control devices do not apply during periods of routine maintenance. During periods of routine maintenance, the benzene level in the storage vessel(s) serviced by the control device subject to the provisions of § 61.271(c) may be lowered but not raised. Periods of routine maintenance shall not exceed 72 hours as outlined in the maintenance plan required by § 61.272(c)(1)(iii).

(4) The specifications and requirements listed in paragraphs (c)(1) and (c)(2) of this section for closed vents and control devices do not apply during a control system malfunction. A control system malfunction means any sudden and unavoidable failure of air pollution control equipment. A failure caused entirely or in part by design deficiencies, poor maintenance, careless operation, or other preventable upset condition or equipment breakdown is not considered a malfunction.

(d) The owner or operator of each affected storage vessel shall meet the requirements of paragraph (a), (b), or (c) of this section as follows:

(1) The owner or operator of each existing benzene storage vessel shall meet the requirements of paragraph (a), (b), or (c) of this section no later than 90 days after December 13, 1989, with the exceptions noted in paragraphs (a)(5) and (b)(5), unless a waiver of compliance has been approved by the Administrator in accordance with § 61.11.

(2) The owner or operator of each benzene storage vessel upon which construction commenced after September 14, 1989, shall meet the

requirements of paragraph (a), (b), or (c) of this section prior to filling (i.e., roof is lifted off leg supports) the storage vessel with benzene.

(3) The owner or operator of each benzene storage vessel upon which construction commenced on or after July 28, 1988, and before September 14, 1989, shall meet the requirements of paragraph (a), (b), or (c) of this section on September 14, 1989.

§ 61.272 Compliance provisions.

(a) For each vessel complying with § 61.271(a) (fixed roof and internal floating roof) each owner or operator shall:

(1) After installing the control equipment required to comply with § 61.271(a), visually inspect the internal floating roof, the primary seal, and the secondary seal (if one is in service), prior to filling the storage vessel with benzene. If there are holes, tears or other openings in the primary seal, the secondary seal, or the seal fabric, or defects in the internal floating roof, the owner or operator shall repair the items before filling the storage vessel.

(2) Visually inspect the internal floating roof and the primary seal or the secondary seal (if one is in service) through manholes and roof hatches on the fixed roof at least once every 12 months after initial fill, or at least once every 12 months after September 14, 1989, except as provided in paragraph (a)(4)(i) of this section. If the internal floating roof is not resting on the surface of the benzene liquid inside the storage vessel, or there is liquid on the roof, or the seal is detached, or there are holes or tears in the seal fabric, the owner or operator shall repair the items or empty and remove the storage vessel from service within 45 days. If a failure that is detected during inspections required in this paragraph cannot be repaired within 45 days and if the vessel cannot be emptied within 45 days, an extension of up to 30 additional days may be requested from the Administrator in the inspection report required in § 61.275(a). Such a request for an extension must document that alternate storage capacity is unavailable and specify a schedule of actions the company will take that will ensure that the control equipment will be repaired or the vessel will be emptied as soon as possible.

(3) Visually inspect the internal floating roof, the primary seal, the secondary seal (if one is in service), gaskets, slotted membranes and sleeve seals (if any) each time the storage vessel is emptied and degassed. In no event shall inspections conducted in accordance with this provision occur at intervals greater than 10 years in the case of vessels conducting the annual visual inspections as specified in paragraph (a)(2) of this section and at intervals greater than 5 years in the case of vessels specified in paragraph (a)(4)(i) of this section.

(i) For all the inspections required by paragraphs (a)(1) and (a)(3) of this section, the owner or operator shall notify the Administrator in writing at least 30 days prior to the refilling of each storage vessel to afford the Administrator the opportunity to have an observer present. If the inspection required by paragraph (a)(3) of this section is not planned and the owner or operator could not have known about the inspection 30 days in advance of refilling the vessel, the owner or operator shall notify the Administrator at least 7 days prior to the refilling of the storage vessel. Notification shall be made by telephone immediately followed by written documentation demonstrating why the inspection was unplanned. Alternatively, the notification including the written documentation may be made in writing and sent by express mail so that it is received by the Administrator at least 7 days prior to refilling.

(ii) If the internal floating roof has defects, the primary seal has holes, tears, or other openings in the seal or the seal fabric, or the secondary seal has holes, tears, or other openings in the seal or the seal fabric, or the gaskets no longer close off the liquid surfaces from the atmosphere, or the slotted membrane has more than 10 percent open area, the owner or operator shall repair the items as necessary so that none of the conditions specified in this paragraph exist before refilling the storage vessel with benzene.

(4) For vessels equipped with a double-seal system as specified in § 61.271(a)(2)(ii):

(i) Visually inspect the vessel as specified in paragraph (a)(3) of this section at least every 5 years; or

(ii) Visually inspect the vessel annually as specified in paragraph (a)(2) of this section, and at least every 10 years as specified in paragraph (a)(3) of this section.

(b) For each vessel complying with § 61.271(b) (external floating roof) the owner or operator shall:

(1) Determine the gap areas and maximum gap widths between the primary seal and the wall of the storage vessel, and the secondary seal and the wall of the storage vessel according to the following frequency.

(i) For an external floating roof vessel equipped with primary and secondary seals, measurements of gaps between the vessel wall and the primary seal (seal gaps) shall be performed during the hydrostatic testing of the vessel or within 90 days of the initial fill with benzene or within 90 days of September 14, 1989, whichever occurs last, and at least once every 5 years thereafter, except as provided in paragraph (b)(1)(ii) of this section.

(ii) For an external floating roof vessel equipped with a liquid-mounted primary seal and without a secondary seal as provided for in § 61.271(b)(5), measurement of gaps between the vessel wall and the primary seal (seal gaps) shall be performed within 90 days of September 14, 1989, and at least once per year thereafter. When a secondary seal is installed over the primary seal, measurement of primary seal gaps shall be performed within 90 days of installation and at least once every 5 years thereafter.

(iii) For an external floating roof vessel equipped with primary and secondary seals, measurements of gaps between the vessel wall and the secondary seal shall be performed within 90 days of the initial fill with benzene, within 90 days of installation of the secondary seal, or within 90 days after September 14, 1989, whichever occurs last, and at least once per year thereafter.

(iv) If any source ceases to store benzene for a period of 1 year or more, subsequent introduction of benzene into the vessel shall be considered an initial fill for the purposes of paragraphs (b)(1)(i), (b)(1)(ii), and (b)(1)(iii) of this section.

(2) Determine gap widths and areas in the primary and secondary seals individually by the following procedures:

(i) Measure seal gaps, if any, at one or more floating roof levels when the roof is floating off the roof leg supports.

(ii) Measure seal gaps around the entire circumference of the vessel in each place where a 0.32 centimeter (cm) (1/8 in) diameter uniform probe passes freely (without forcing or binding against the seal) between the seal and the wall of the storage vessel and measure the circumferential distance of each such location.

(iii) The total surface area of each gap described in paragraph (b)(2)(ii) of this section shall be determined by using probes of various widths to measure accurately the actual distance from the vessel wall to the seal and multiplying each such width by its respective circumferential distance.

(3) Add the gap surface area of each gap location for the primary seal and the secondary seal individually. Divide the sum for each seal by the nominal

diameter of the vessel and compare each ratio to the respective standards in § 61.272(b)(4) and § 61.272(b)(5).

(4) Repair conditions that do not meet requirements listed in paragraph (b)(4)(i) and (ii) within 45 days of identification in any inspection or empty and remove the storage vessel from service within 45 days.

(i) The accumulated area of gaps between the vessel wall and the metallic shoe seal or the liquid-mounted primary seal shall not exceed 212 cm^2 per meter of vessel diameter (10.0 in^2 per foot of vessel diameter) and the width of any portion of any gap shall not exceed 3.81 cm (1½ in).

(A) One end of the metallic shoe is to extend into the stored liquid and the other end is to extend a minimum vertical distance of 61 cm (24 in) above the stored liquid surface.

(B) There are to be no holes, tears, or other openings in the shoe, seal fabric, or seal envelope.

(ii) The secondary seal is to meet the following requirements:

(A) The secondary seal is to be installed above the primary seal so that it completely covers the space between the roof edge and the vessel wall except as provided in paragraph (b)(4)(ii)(B) of this section.

(B) The accumulated area of gaps between the vessel wall and the secondary seal shall not exceed 21.2 cm^2 per meter of vessel diameter (1.0 in^2 per foot of vessel diameter) or the width of any portion of any gap shall not exceed 1.27 cm (½ in). These seal gap requirements may be exceeded during the measurement of primary seal gaps as required by paragraph (b)(1)(i) or (b)(1)(ii) of this section.

(C) There are to be no holes, tears, or other openings in the seal or seal fabric.

(iii) If a failure that is detected during inspections required in this paragraph cannot be repaired within 45 days and if the vessel cannot be emptied within 45 days, an extension of up to 30 additional days may be requested from the Administrator in the inspection report required in § 61.275(d). Such extension request must include a demonstration of unavailability of alternate storage capacity and a specification of a schedule that will assure that the control equipment will be repaired or the vessel will be emptied as soon as possible.

(5) The owner or operator shall notify the Administrator 30 days in advance of any gap measurements required by paragraph (b)(1) of this section to afford the Administrator the opportunity to have an observer present.

(6) Visually inspect the external floating roof, the primary seal, secondary seal, and fittings each time the vessel is emptied and degassed.

(i) If the external floating roof has defects, the primary seal has holes, tears, or other openings in the seal or the seal fabric, or the secondary seal has holes, tears, or other openings in the seal or the seal fabric, the owner or operator shall repair the items as necessary so that none of the conditions specified in this paragraph exist before filling or refilling the storage vessel with benzene.

(ii) For all the inspections required by paragraph (b)(6) of this section, the owner or operator shall notify the Administrator in writing at least 30 days prior to filling or refilling of each storage vessel to afford the Administrator the opportunity to inspect the storage vessel prior to refilling. If the inspection required by paragraph (b)(6) of this section is not planned and the owner or operator could not have known about the inspection 30 days in advance of refilling the vessel, the owner or operator shall notify the Administrator at least 7 days prior to refilling of the storage vessel. Notification shall be made by telephone immediately followed by written documentation demonstrating why the inspection was unplanned. Alternatively, this notification including the written documentation may be made in writing and sent by express mail so that it is received by the Administrator at least 7 days prior to the refilling.

(c) The owner or operator of each source that is equipped with a closed vent system and control device as required in § 60.271(c), other than a flare, shall meet the following requirements.

(1) Within 90 days after initial fill or after September 14, 1989, whichever comes last, submit for approval by the Administrator, an operating plan containing the information listed below.

(i) Documentation demonstrating that the control device being used achieves the required control efficiency during reasonably expected maximum loading conditions. This documentation is to include a description of the gas stream which enters the control device, including flow and benzene content under varying liquid level conditions (dynamic and static) and manufacturer's design specifications for the control device. If the control device or the closed vent capture system receives vapors, gases or liquids, other than fuels, from sources that are not designated sources under this subpart, the efficiency demonstration is to include consideration of all vapors, gases and liquids received by the closed vent capture system and control device. If an enclosed combustion device with a minimum residence time of 0.75 seconds and a minimum temperature of 816 °C is used to meet the 95 percent requirement, documentation that those conditions exist is sufficient to meet the requirements of this paragraph.

(ii) A description of the parameter or parameters to be monitored to ensure that the control device is operated and maintained in conformance with its design and an explanation of the criteria used for selection of that parameter (or parameters).

(iii) A maintenance plan for the system including the type of maintenance necessary, planned frequency of maintenance, and lengths of maintenance periods for those operations that would require the closed vent system or the control device to be out of compliance with § 61.271(c). The maintenance plan shall require that the system be out of compliance with § 61.271(c) for no more than 72 hours per year.

(2) Operate, monitor the parameters, and maintain the closed vent system and control device in accordance with the operating plan submitted to the Administrator in accordance with paragraph (c)(1) of this section, unless the plan was modified by the Administrator during the approval process. In this case, the modified plan applies.

(d) The owner or operator of each source that is equipped with a closed vent system and a flare to meet the requirements in § 61.271(c) shall meet the requirements as specified in the general control device requirements in 40 CFR 60.18 (e) and (f).

§ 61.273 Alternative means of emission limitation.

(a) Upon written application from any person, the Administrator may approve the use of alternative means of emission limitation which have been demonstrated to his satisfaction to achieve a reduction in benzene emissions at least equivalent to the reduction in emissions achieved by any requirement in § 61.271 (a), (b), or (c) of this subpart.

(b) Determination of equivalence to the reduction in emissions achieved by the requirements of § 61.271 (a), (b), or (c) will be evaluated using the following information to be included in the written application to the Administrator:

(1) Actual emissions tests that use full-size or scale-model storage vessels that accurately collect and measure all benzene emissions from a given control device, and that accurately simulate wind and account for other emission

variables such as temperature and barometric pressure.

(2) An engineering evaluation that the Administrator determines is an accurate method of determining equivalence.

(c) The Administrator may condition approval of equivalency on requirements that may be necessary to ensure operation and maintenance to achieve the same emission reduction as the requirements of § 61.271 (a), (b), or (c).

(d) If, in the Administrator's judgment, an application for equivalence may be approvable, the Administrator will publish a notice of preliminary determination in the **Federal Register** and provide the opportunity for public hearing. After notice and opportunity for public hearing, the Administrator will determine the equivalence of the alternative means of emission limitation and will publish the final determination in the **Federal Register.**

§ 61.274 Initial report.

(a) The owner or operator of each storage vessel to which this subpart applies and which has a design capacity greater than or equal to 38 cubic meters (10,000 gallons) shall submit an initial report describing the controls which will be applied to meet the equipment requirements in § 61.271. For an existing storage vessel or a new storage vessel for which construction and operation commenced prior to September 14, 1989, this report shall be submitted within 90 days of September 14, 1989, and can be combined with the report required by § 61.10. For a new storage vessel for which construction or operation commenced on or after September 14, 1989, the report shall be combined with the report required by § 61.07. In the case where the owner or operator seeks to comply with § 61.271(c) with a control device other than a flare, this information may consist of the information required by 61.272(c)(1).

(b) The owner or operator of each storage vessel seeking to comply with § 61.271(c) with a flare, shall submit a report containing the measurements required by 40 CFR 60.18(f) (1), (2), (3), (4), (5), and (6). For the owner or operator of an existing storage vessel not seeking to obtain a waiver or a new storage vessel for which construction and operation commenced prior to September 14, 1989, this report shall be combined with the report required by paragraph (a) of this section. For the owner or operator of an existing storage vessel seeking to obtain a waiver, the reporting date will be established in the response to the waiver request. For the owner or operator of a new storage vessel for which construction or operation commenced after September 14, 1989, the report shall be submitted within 90 days of the date the vessel is initially filled (or partially filled) with benzene.

(Approved by the Office of Management and Budget under control number 2060-0185).

§ 61.275 Periodic report.

(a) The owner or operator of each storage vessel to which this subpart applies after installing control equipment in accordance with § 61.271(a) (fixed roof and internal floating roof) shall submit a report describing the results of each inspection conducted in accordance with § 61.272(a). For vessels for which annual inspections are required under § 61.272(a)(2), the first report is to be submitted no more than 12 months after the initial report submitted in accordance with § 61.274, and each report is to be submitted within 60 days of each annual inspection.

(1) Each report shall include the date of the inspection of each storage vessel and identify each storage vessel in which:

(i) The internal floating roof is not resting on the surface of the benzene liquid inside the storage vessel, or there is liquid on the roof, or the seal is detached from the internal floating roof, or there are holes, tears or other openings in the seal or seal fabric; or

(ii) There are visible gaps between the seal and the wall of the storage vessel.

(2) Where an annual report identifies any condition in paragraph (a)(1) of this section the annual report shall describe the nature of the defect, the date the storage vessel was emptied, and the nature of an date the repair was made, except as provided in paragraph (a)(3) of this section.

(3) If an extension is requested in an annual periodic report in accordance with § 61.272(a)(2), a supplemental periodic report shall be submitted within 15 days of repair. The supplemental periodic report shall identify the vessel and describe the date the storage vessel was emptied and the nature of and date the repair was made.

(b) The owner or operator of each storage vessel to which this subpart applies after installing control equipment in accordance with § 61.271(a) (fixed roof and internal floating roof) shall submit a report describing the results of each inspection conducted in accordance with § 61.272(a) (3) or (4).

(1) The report is to be submitted within 60 days of conducting each inspection required by § 61.272(a) (3) or (4).

(2) Each report shall identify each storage vessel in which the owner or operator finds that the internal floating roof has defects, the primary seal has holes, tears, or other openings in the seal or the seal fabric, or the secondary seal (if one has been installed) has holes, tears, or other openings in the seal or the seal fabric, or the gaskets no longer close off the liquid surfaces from the atmosphere, or the slotted membrane has more than 10 percent open area. The report shall also describe the nature of the defect, the date the storage vessel was emptied, and the nature of and date the repair was made.

(c) Any owner or operator of an existing storage vessel which had an internal floating roof with a continuous seal as of July 28, 1988, and which seeks to comply with the requirements of § 61.271(a)(5) during the first time after September 14, 1989, when the vessel is emptied and degassed but no later than 10 years from September 14, 1989, shall notify the Administrator 30 days prior to the completion of the installation of such controls and the date of refilling of the vessel so the Administrator has an opportunity to have an observer present to inspect the storage vessel before it is refilled. This report can be combined with the one required by § 61.275(b).

(d) The owner or operator of each storage vessel to which this subpart applies after installing control equipment in accordance with § 61.271(b) (external floating roof) shall submit a report describing the results of each seal gap measurement made in accordance with § 61.272(b). The first report is to be submitted no more than 12 months after the initial report submitted in accordance with § 61.274(a), and each annual periodic report is to be submitted within 60 days of each annual inspection.

(1) Each report shall include the date of the measurement, the raw data obtained in the measurement, and the calculations described in § 61.272(b) (2) and (3), and shall identify each storage vessel which does not meet the gap specifications of § 61.272(b). Where an annual report identifies any vessel not meeting the seal gap specifications of § 61.272(b) the report shall describe the date the storage vessel was emptied, the measures used to correct the condition and the date the storage vessel was brought into compliance.

(2) If an extension is requested in an annual periodic report in accordance with § 61.272(b)(4)(iii), a supplemental periodic report shall be submitted within 15 days of repair. The supplemental periodic report shall identify the vessel and describe the date the vessel was

emptied and the nature of and date the repair was made.

(e) Excess emission report.

(1) The owner or operator of each source seeking to comply with § 61.271(c) (vessels equipped with closed vent systems with control devices) shall submit a quarterly report informing the Administrator of each occurrence that results in excess emissions. Excess emissions are emissions that occur at any time when compliance with the specifications and requirements of § 61.271(c) are not achieved, as evidenced by the parameters being measured in accordance with § 61.272(c)(1)(ii) if a control device other than a flare is used, or by the measurements required in § 61.272(d) and the general control device requirements in 40 CFR 60.18(f) (1) and (2) if a flare is used.

(2) The owner or operator shall submit the following information as a minimum in the report required by (e)(1) of this section:

(i) Identify the stack and other emission points where the excess emissions occurred;

(ii) A statement of whether or not the owner or operator believes a control system malfunction has occurred.

(3) If the owner or operator states that a control system malfunction has occurred, the following information as a minimum is also to be included in the report required under paragraph (e)(1) of this section:

(i) Time and duration of the control system malfunction as determined by continuous monitoring data (if any), or the inspections or monitoring done in accordance with the operating plan required by § 61.272(c).

(ii) Cause of excess emissions.

(Approved by the Office of Management and Budget under control number 2060–0185).

§ 61.276 Recordkeeping.

(a) Each owner or operator with a storage vessel subject to this subpart shall keep copies of all the reports and records required by this subpart for at least 2 years, except as specified in paragraphs (b) and (c)(1) of this section.

(b) Each owner or operator with a storage vessel, including any vessel which has a design storage capacity less than 38 cubic meters (10,000 gallons), shall keep readily accessible records showing the dimensions of the storage vessel and an analysis showing the capacity of the storage vessel. This record shall be kept as long as the storage vessel is in operation. Each storage vessel with a design capacity of less than 38 cubic meters (10,000 gallons) is subject to no provisions of this subpart other than those required by this paragraph.

(c) The following information pertaining to closed vent system and control devices shall be kept in a readily accessible location.

(1) A copy of the operating plan. This record shall be kept as long as the closed vent system and control device is in use.

(2) A record of the measured values of the parameters monitored in accordance with § 61.272(c)(1)(ii) and § 61.272(c)(2).

(3) A record of the maintenance performed in accordance with § 61.272(c)(1)(iii) of the operating plan, including the following:

(i) The duration of each time the closed vent system and control device does not meet the specifications of § 61.271(c) due to maintenance, including the following:

(A) The first time of day and date the requirements of 61.271(c) were not met at the beginning of maintenance.

(B) The first time of day and date the requirements of § 61.271(c) were met at the conclusion of maintenance.

(C) A continuous record of the liquid level in each storage vessel that the closed vent system and control device receive vapors from during the interval between the times specified by (c)(3)(i)(A) and (c)(3)(i)(B). Pumping records (simultaneous input and output) may be substituted for records of the liquid level.

(Approved by the Office of Management and Budget under control number 2060–0185).

§ 61.277 Delegation of authority.

(a) In delegating implementation and enforcement authority to a State under section 112(d) 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 which will not be delegated to States: § 61.273.

[FR Doc. 89–21429 Filed 9–7–89; 3:04 pm]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[AD-FRL-3620-5]

National Emission Standards for Hazardous Air Pollutants; Benzene Emissions From Chemical Manufacturing Process Vents, Industrial Solvent Use, Benzene Waste Operations, Benzene Transfer Operations, and Gasoline Marketing System

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and notice of public hearing.

SUMMARY: On February 7, 1989, as a result of a petition filed by the Natural Resources Defense Council, et al., the D.C. Circuit Court ordered EPA either to propose regulations establishing standards for emissions of benzene from several source categories or publish a notice of intention not to regulate by August 5, 1989. The court subsequently issued an amended order extending the deadline until August 31, 1989. This action proposes national emission standards for hazardous air pollutants (NESHAP) limiting emissions of benzene from the following source categories: Industrial solvent use, benzene waste operations, benzene transfer operations, and the gasoline marketing system. This action also proposes not to regulate the chemical manufacturing process vent source category. These actions are being proposed under Section 112 of the Clean Air Act.

A public hearing will be held, if requested, to provide interested persons an opportunity for oral presentation of data, views, or arguments concerning these proposed actions.

DATES: *Comments.* Comments must be received by November 13, 1989.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by October 4, 1989, a public hearing will be held on October 4, 1989 beginning at 9:00 a.m. Persons interested in attending the hearing should call Ms. Mary Hinson at (919) 541–5578 to verify that a hearing will be held.

Request to Speak at Hearing. Persons wishing to present oral testimony must notify EPA by October 4, 1989.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to: Air Docket Section (LE–131), Attention (refer to the appropriate docket number), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. The applicable dockets are: Docket No. OAQPS 79–3 Part I, for health effects, listing and regulation of benzene: Docket No. A–89–03, Benzene Emissions from Process Vents at Chemical Plants; Docket No. A–89–04, Benzene Transfer Operations; Docket No. A–89–05, Benzene Solvent Use; Docket No. A–89–06, Benzene Waste Operations; and Docket No. A–89–07, Gasoline Marketing System (bulk terminals, bulk plants, and service station storage).

Public Hearing. If anyone contacts EPA requesting a public hearing, it will be held on October 11, 1989. Persons interested in attending the hearing or wishing to present oral testimony should notify Ms. Mary Hinson, Standards Development Branch (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5578.

Docket. The docket for each source category, containing supporting information used in developing the proposed standards or used as the basis for not regulating, is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at EPA's Air Docket Section, Waterside Mall, Room M1500, 1st Floor, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For information on benzene emissions and regulations, contact either Mr. Doug Bell at (919) 541–5568, or Dr. Janet Meyer at (919) 541–5254, Standards Development Branch, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711. For information concerning the health effects of benzene and the risk assessment, contact Mr. Scott Voorhees at (919) 541–5348, Pollutant Assessment Branch, Emission Standards Division (MD–13), at the above address.

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

I. Background Documents and Notices
A. Background Documents
B. Previous Federal Register Notices
II. Definitions
A. Terms
B. Acronyms
III. Background
IV. Characterization of Benzene Health Risks
V. Policy for Developing NESHAP
VI. Discussion of Source Categories
A. Benzene Emissions from Chemical Manufacturing Process Vents
B. Benzene Transfer Operations
C. Industrial Solvent Use
D. Benzene Waste Operations
E. Gasoline Marketing System
VII. Administrative Requirements
A. Paperwork Reduction Act
B. Regulatory Flexibility Act
C. Public Hearing
D. Docket
E. Executive Order 12291
F. Miscellaneous
G. Request for Comment

I. Background Documents and Notices

A. Background Documents

The following is a listing of background documents pertaining to the health effects of benzene and previous regulatory development efforts for each source category. The complete title, EPA publication number, publication date, and National Technical Information Service (NTIS) and docket numbers are included. Where appropriate, an abbreviated descriptive title used to refer to the document throughout this notice is also listed.

General Health and Policy Documents Regarding Benzene (Docket No. OAQPS 79–3, Part I)

(1) "Assessment of Human Exposures to Atmospheric Benzene," EPA–450/3–78–031. May 1978. (NTIS Number PB–284203). (Docket Item II–A–28).

(2) "Assessment of Health Effects of Benzene Germane to Low Level Exposures," EPA–600/1–78–61. September 1978. (NTIS Number PB–289789). (Docket Item II–A–30).

(3) "Carcinogen Assessment Group's Final Report on Population Risk to Ambient Benzene Exposures," EPA–450/5–80–004. January 1979. (NTIS Number PB82–227372). (Docket Items II–A–31 and 31A).

(4) "Response to Public Comments on EPA's Listing and Regulation of Benzene Under Section 112: Comments of a General Policy Nature," EPA–450/5–84–001. May 1984. (Docket Item VII–B–2).

(5) "Response to Public Comments on EPA's Listing of Benzene Under Section 112," EPA–450/5–82–003. May 1984. (Docket Item VII–B–1).

(6) "Interim Quantitative Cancer Unit Risk Estimates Due to Inhalation of Benzene." Internal Draft. EPA–600/X–85–022. February 1985. (Docket Item VIII–A–4).

Benzene Emissions From Chemical Manufacturing Process Vents (Docket No. A–89–03)

(1) "Organic Chemical Manufacturing, Volume 7: Selected Processes," EPA–450/3–80–028b. December 1980. (NTIS Number PB81–220568) (Docket Items II–A–2 through II–A–6).

Benzene Transfer Operations (Docket No. A–89–04)

(1) "Controlling Hydrocarbon Emissions from Tank Vessel Loading,"

Marine Board Commission on Engineering and Technical Systems, National Research Council, National Academy Press. Washington, D.C. 1987. (Docket Item II–I–2).

(2) "Draft Regulatory Impact Analysis: Proposed Refueling Emission Regulations for Gasoline-Fueled Motor Vehicles," EPA–450/3–87–001a, July 1987. (NTIS Number PB–221677/REB) (Docket Item II–A–2).

(3) "Compilation of Air Pollutant Emission Factors", AP–42, Supplement No. 2, September 1985. (Docket Item II–A–1).

Industrial Solvent Use (Docket No. A–89–05)

(1) "Rubber Tire Manufacturing Industry—Background Information for Proposed Standards," EPA–450/3–81–008a. July 1981. (NTIS Number PB83–163543). (Docket Item II–A–I). Referred to in solvent use section of this preamble as: Rubber Tire BID.

Benzene Waste Operations (Docket No. A–89–06)

(1) "Hazardous Waste TSDF—Background Information for Proposed RCRA Air Emission Standards, Volume II—Appendices," Draft. March 1988.

(2) "Control of Volatile Organic Emissions from Industrial Wastewater, Volume II—Appendices," Preliminary Draft. April 1989.

(3) "Hazardous Waste Treatment, Storage, and Disposal Facilities—Air Emission Models," EPA–450/3–87–026. December 1987.

Gasoline Marketing System (Docket No. A–89–07)

(1) "Bulk Gasoline Terminals—Background Information for Proposed Standards," EPA–450/3–80–038a. December 1980. (Docket Item II–A-1).

(2) "Bulk Gasoline Terminals—Background Information for Promulgated Standards," EPA–450/3–80–038b. August 19B3. (Docket Item II–A–2).

(3) "Evaluation of Air Pollution Regulatory Strategies for Gasoline Marketing Industry," EPA–450/3–84–012a (Executive Summary, EPA–450/3–84–012b). July 1984. (Docket Item II–A–3).

(4) "Draft Regulatory Impact Analysis, Proposed Refueling Emission Regulations for Gasoline-Fueled Vehicles—Volume I—Analysis of Gasoline Regulatory Marketing Strategies," EPA–450/3–87–001a. July 1987. (Docket Item II–A–4). A copy of this document may be obtained from the EPA Library (MD–35), Research Triangle Park, N.C. 27711, telephone (919) 541–2777.

(5) "Evaluation of Air Pollution Regulatory Strategies for Gasoline Marketing Industry—Responses to Public Comments," EPA–450/3–84–012c. July 1987. (Docket Item II–A–5). A copy of this document may be obtained from the EPA Library (MD–35), Research Triangle Park, N.C. 27711, telephone (919) 541–2777.

The background documents listed above can be found in the dockets or purchased from NTIS, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161, telephone number (703) 487–4650.

B. Previous Federal Register Notices

Previous **Federal Register** notices pertaining to standards development for the five source categories emitting benzene are listed below in chronological order. Since the complete **Federal Register** citations and dates are listed here, they will not be repeated throughout this notice.

(1) "National Emission Standards for Hazardous Air Pollutants; Addition of Benzene to List of Hazardous Air Pollutants," 42 FR 29332, June 8, 1977.

(2) "Standards of Performance for New Stationary Sources; Emissions Limitation of Volatile Organic Compounds From Gasoline Tank Truck Loading Racks at Bulk Gasoline Terminals (Proposed Rule)," 45 FR 83126, December 17, 1980.

(3) "Standards of Performance for New Stationary Sources: Bulk Gasoline Terminals (Final Rule)," 48 FR 37578, August 18, 1983.

(4) "National Emission Standards for Hazardous Air Pollutants; Regulation of Benzene; Response to Public Comments," 49 FR 23478, June 6, 1984.

(5) "Regulatory Strategies for the Gasoline Marketing Industry" (Notice of Document Availability for Public Comment), 49 FR 31706, August 18, 1984.

(6) "Standards of Performance for New Stationary Sources; Volatile Organic Liquid Storage Vessels (including Petroleum Liquid Storage Vessels) Constructed after July 23, 1984" (Final Rule), 52 FR 11420, April 8, 1987.

(7) "Control of Air Pollution from New Motor Vehicles and New Motor Vehicle Engines: Refueling Emission Regulations for Gasoline-Fueled Light-Duty Vehicles and Trucks and Heavy-Duty Vehicles" (Proposed Rule), 52 FR 31162, August 19, 1987.

(8) "Occupational Exposure to Benzene" (Final Rule), 52 FR 34460, September 11, 1987.

(9) "Standards of Performance for New Stationary Sources; Rubber Tire Manufacturing Industry" (Final Rule), 52 FR 34868, September 15, 1987.

(10) "National Emission Standards for Hazardous Air Pollutants; Benzene Emissions from Maleic Anhydride Plants, Ethylbenzene/Styrene Plants, Benzene Storage Vessels, Benzene Equipment Leaks, and Coke By-Product Recovery Plants" (Proposed Rule), 53 FR 28496, July 28, 1988.

(11) "National Emission Standards for Hazardous Air Pollutants; Regulation of Radionuclides" (Proposed Rule), 54 FR 9612, March 7, 1989.

II. Definitions

A. Terms

The following terms are used in one or more discussions in the preamble. However, the particular proposed regulation should be consulted with regard to the exact definition of any term as it relates to a specific source category.

Azeotropic. Of or pertaining to a solution of two or more liquids, the composition of which does not change upon distillation.

Bulk plant. A facility which is used for the storage and distribution of a product by tank truck, and which receives the majority of its product by tank truck.

Bulk terminal. Any facility which is used for the storage and distribution of a product and which receives a product by ship or barge, or other transport vehicle.

Carbon adsorber. A product recovery or emissions control method whereby hydrocarbons and other compounds are selectively adsorbed on the surface of activated carbon.

Condenser. A product recovery or emissions control method in which one or more volatile components of a vapor mixture are separated from the remaining vapors through saturation followed by a pressure or temperature induced phase change.

Flare. An emissions control device that uses an open flame for combustion of gases to destroy organic compounds.

Gasoline. Any petroleum distillate or petroleum distillate/alcohol blend having a Reid vapor pressure of 27.6 kilopascals or greater which is used as a fuel for internal combustion engines.

Group A—Human Carcinogen. This group refers to agents for which there is sufficient evidence from epidemiologic studies to support a causal association between exposure to the agents and cancer in humans.

Group B—Probable Human Carcinogen. This group includes agents for which the weight of evidence of human carcinogenicity based on epidemiologic studies is "limited" and also includes agents for which the weight of evidence of carcinogenicity

based on animal studies is "sufficient." The group is divided into two subgroups. Usually, Group BI is reserved for agents for which there is limited evidence of carcinogenicity from epidemiologic studies. Agents for which there is "sufficient" evidence from animal studies and for which there is "inadequate evidence" or "no data" from epidemiologic studies would usually be categorized under Group B2. It is reasonable, for practical purposes, to regard an agent for which there is "sufficient" evidence of carcinogenicity in animals as if it presented a carcinogenic risk to humans.

Incidence. The estimated average number of excess fatal cancers expected annually in the exposed population.

Incidence by Risk Group. For various levels of individual risk, the estimated annual incidence of fatal cancers within the population at that level of individual risk, incurred as a result of exposure to a given hazardous air pollutant.

Loading rack. The loading arms, pumps, meters, shutoff valves, relief valves, and other piping and valves necessary to fill delivery tank trucks.

Maximum Individual Lifetime Risk (MIR). The additional cancer risk to a person due to exposure for a 70-year lifetime at a point of maximum concentration of an emitted pollutant.

Reactant. A substance that acts upon, or is acted upon by other reactant substances in a chemical reaction to produce product substances.

Risk Distribution. For various levels of individual lifetime risk, the cumulative number of people estimated to be at that level of risk or greater due to exposure to ambient concentrations of a given hazardous air pollutant.

Service station. Any facility which dispenses gasoline for the purpose of refueling motor vehicles.

Solvent. A substance capable of dissolving another substance to form a uniformly dispersed mixture.

Splash loading. A method of filling a storage/transfer vessel or container where the fill pipe dispensing the liquid is lowered only partway into the vessel.

Submerged loading. A method of filling a storage/transfer vessel or container where the fill pipe either extends below the liquid surface or the fill pipe is permanently attached to the bottom of the vessel.

Tank truck. A delivery tank truck used at bulk terminals or bulk plants which is loading a product or which has loaded a product on the immediately previous load.

Thermal incinerator. Any enclosed combustion device that is used to destroy organic compounds and does not extract energy in the form of steam or process heat.

Vapor balance. Direct displacement of air and hydrocarbon vapors from a vessel receiving volatile organic liquids to the vessel delivering the volatile organic liquid by means of a hose, pipe, or other equipment.

Vapor balance service. An emissions control method for vessels in which the vapors displaced during product loading/unloading are retrieved and transported back to the loading vessel.

Vapor collection system. Any equipment used for containing total organic compounds vapors displaced during the loading of vessels with volatile organic liquids.

Vapor processing system. All equipment used for recovering or oxidizing organic compounds vapors displaced from the affected facility.

Vapor recovery system. An emissions control method for vessels whereby vapors displaced during product loading/unloading are captured and routed through a single point for retrieval or destruction.

Vapor-tight tank truck. A tank truck which has demonstrated within the 12 preceding months that its product delivery tank will sustain a pressure change of not more than 750 pascals (75 mm of water) within 5 minutes after it is pressurized to 4,500 pascals (450 mm of water). This capability is to be demonstrated using the pressure test procedure specified in Method 27 of Appendix A to 40 CFR Part 60.

B. Acronyms

ARAR—applicable or relevant and appropriate requirement
BID—background information document
BDAT—best demonstrated available technology
CAA—Clean Air Act
CERCLA—Comprehensive Environmental Response, Compensation, and Liability Act
CMA—Chemical Manufacturers Association
CRA—compression-refrigeration-absorption
CRC—compression-refrigeration-condensation
CTG—control techniques guidelines
EB/S—ethylbenzene/styrene
EPA—Environmental Protection Agency
FWPCA—Federal Water Pollution Control Act
HEM—Human Exposure Model
ISC—Industrial Source Complex (dispersion model)
ISDB—Industrial Studies Data Base
LDR—land disposal restrictions
LOA—lean oil absorption
MIR—maximum individual lifetime risk
NESHAP—national emission standards for hazardous air pollutants
NIOSH—National Institute for Occupational Safety and Health
NSPS—new source performance standard
NTIS—National Technical Information Service
OMB—Office of Management and Budget
OSHA—Occupational Safety and Health Administration
OSW—Office of Solid Waste
OW—Office of Water
POTW—publicly owned treatment work
PRDB—Petroleum Refineries Data Base
RCRA—Resource Conservation and Recovery Act
SARA—Superfund Amendment and Reauthorization Act
SBA—Small Business Administration
SIC—Standard Industrial Classification
SIP—State Implementation Plan
SRI—Stanford Research Institute
SWMU—solid waste management unit
TFE—thin-film evaporation
TSCA—Toxic Substances Control Act
TSDF—treatment, storage, and disposal facility
TSDR—treatment, storage, disposal and recycling facility
URE—unit risk estimate
VOC—volatile organic compound

III. Background

Since the early 1900's, the scientific and medical communities have recognized benzene as a potentially toxic substance. Benzene was recognized as a potential human carcinogen (leukemia) in the early 1970's based on occupational studies of synthetic rubber, chemical, and shoe workers. Other documented occupational effects include impairment of the blood-forming system, immunotoxicity, chromosome breakage, and neurotoxicity. Results of animal studies support the leukemogenic potential of benzene and show also reproductive and developmental toxicity.

Benzene is common in our indoor and outdoor air. Major sources of benzene include automobile exhaust, automobile refueling operations, consumer products, cigarette smoking, and industrial emissions.

In 1977, the Administrator announced his decision to list benzene as a hazardous air pollutant under Section 112 of the CAA (42 FR 29332, June 8, 1977). Benzene was determined to be a hazardous air pollutant because of its carcinogenic properties. A hazardous air pollutant is defined in Section 112(a)(1) of the CAA as

* * * an air pollutant to which no ambient air quality standard is applicable and which * * * may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness.

Section 112(b)(1)(B) of the CAA requires EPA to establish emission standards for a hazardous air pollutant "at the level which in [the Administrator's] judgment provides an ample margin of safety to protect the public health from such hazardous air pollutant."

The listing of benzene as a hazardous air pollutant led to the publication of proposed standards for benzene emissions from maleic anhydride process vents, EB/S process vents, benzene storage vessels, and benzene equipment leaks in 1980 and 1981. After receipt of comments from industry and members of the public, EPA published a final rule setting an emission standard for benzene equipment leaks on June 6, 1984 (49 FR 23498). On that date, EPA also withdrew its proposed standards for maleic anhydride process vents, EB/S process vents, and benzene storage vessels (49 FR 23558). The withdrawal was based on the conclusion that both the benzene health risks to the public from these three source categories, and the potential reductions in health risks achievable with available control techniques were too small to warrant Federal regulatory action under section 112 of the CAA. Also on that date, EPA published a proposed standard for benzene emissions from coke by-product recovery plants (49 FR 23522).

On July 28, 1987, the United States Court of Appeals for the District of Columbia Circuit remanded to the EPA an emissions standard for vinyl chloride which had also been promulgated under section 112 of the CAA (the *Vinyl Chloride* decision). In this decision, the court concluded that EPA had improperly considered cost and technological feasibility without first making a determination of acceptable risk based exclusively on health considerations. In light of this decision, the EPA requested, and the court granted, a voluntary remand of the June 6, 1984, benzene equipment leaks NESHAP and the three withdrawals.

The EPA also decided to reconsider the 1984 proposal for coke by-product recovery plants. In reviewing these previous decisions for compliance with the *Vinyl Chloride* decision, EPA reevaluated the assumptions and methodology it has used in making section 112 regulatory determinations. The EPA decided that substantial input from the public and all interested organizations should be solicited in formulating a strategy on how to execute the requirements of section 112 of the CAA in future rulemakings. Consequently, the EPA published in the **Federal Register** on July 28, 1988 (53 FR 28496) four proposed policy approaches for making section 112 regulatory decisions and published alternative proposed standards for benzene emissions from maleic anhydride plants, EB/S plants, benzene storage vessels, benzene equipment leaks, and coke by-product recovery plants. The EPA policy for developing NESHAP resulted from consideration of public comments on those four proposed policy approaches.

On February 7, 1989, the United States District Court for the District of Columbia responded to a petition filed in 1984 by the Natural Resources Defense Council, et al. This petition sought to compel the EPA Administrator, within the 180-day time frame embodied in section 112 of the CAA, to propose emission standards for a variety of benzene source categories, none of which had been included in the Court of Appeals remand.

The court subsequently ordered EPA to publish in the **Federal Register** on or before August 5, 1989, either a notice of intent not to regulate, or a notice of proposed regulations establishing NESHAP limiting emissions of benzene from the following sources: chemical manufacturing process units, including ethylene plants, chlorobenzene plants, nitrobenzene plants, linear alkylbenzene plants, cyclohexane plants; waste disposal from chemical manufacturing plants and refineries; industrial solvent usage; and bulk terminals, bulk plants, and gasoline service stations (including the filling of gasoline service station tanks by gasoline tank trucks, but not including the refueling of motor vehicles at gasoline service stations). The notice was also to include an opportunity for public hearings on these proposed regulations to be held within 30 days of publishing the **Federal Register** notice. The court amended its order on May 8, 1989, to require EPA to issue its proposal by August 31, 1989, and final decisions by February 27, 1990.

IV. Characterization of Benzene Health Risks

This section summarizes data on the health effects associated with exposure to benzene. A more complete characterization of the health effects of benzene can be found in an earlier EPA notice in the **Federal Register** [53 FR 28496, July 28, 1988] and in the Toxicological Profile for Benzene published by the EPA for the Toxic Substances and Disease Registry (ATSDR/TP-88/03).

Benzene was broadly recognized as a potential human carcinogen in the early 1970s with the publication of several epidemiological studies of benzene-exposed workers by OSHA (Docket No. OAQPS 79-3, part I, Item X-J-2).

The EPA's listing of benzene as a hazardous air pollutant under section 112 of the Clean Air Act on June 8, 1977, was based primarily on retrospective studies on occupationally exposed human populations. Of these, three reports documenting an association received the greatest emphasis: Infante et al., published in 1977, Aksoy et al., published in 1976, and Ott et al., published in 1977 (Docket No. OAQPS 79-3, part I, Items II-I-86, IV-J-16, and II-I-71). In the interval since the listing decision, additional human data and animal data have become available which further support a causal relationship. Notable in this regard are studies published in 1981 by Rinsky et al., of NIOSH (Docket No. OAQPS 79-3, part I, Item IV-J-9) providing improved follow-up of the Infante cohorts, and a study by CMA published by Wong et al., in 1983, of mortality among chemical workers exposed to benzene (Docket No. OAQPS 79-3, part I, Item X-I-I).

Infante et al., reported on a cohort occupationally exposed to benzene at two facilities manufacturing rubber hydrochloride (pliofilm). The study revealed a significant excess of leukemia deaths. Aksoy et al., reported the incidence of leukemia among Turkish shoe, slipper and handbag workers exposed to airborne benzene. Shoe workers had more than twice the rate of leukemia when compared to the incidence in the general population. Ott et al., reported the long-term mortality patterns of workers in chemical manufacturing facilities. Three deaths from leukemia were observed when only 0.8 were expected. Rinsky et al. (1981, 1987), provided a follow-up retrospective mortality study of the benzene exposed workers in the pliofilm industry (Docket No. OAQPS 79-3, part I, Items IV-J-9 and X-I-3). In the 1981 analysis, seven leukemia cases were observed as compared to 1.25 expected cases. In their 1987 analysis, nine cases of leukemia were observed when 2.7 were expected.

Wong et al., compared the causes of death for chemical workers exposed and workers not exposed to benzene. They found significant increased risk for benzene exposed workers of over four-fold when compared to nonexposed workers.

The EPA reviewed the weight of evidence of carcinogenicity from the various occupational studies and

concluded that there is sufficient human evidence of a causal relationship between benzene exposure and leukemia. Based on this evaluation, EPA has classified benzene as Group A, a known human carcinogen, following the procedures set forth in EPA's Guidelines for Cancer Risk Assessment (51 FR 33992, September 24, 1986).

In addition to leukemia, several of the studies described above noted increases in other cancers, most notably lymphosarcoma and multiple myeloma, in benzene-exposed cohorts. In these cases, however, the data are currently considered insufficient to document an association.

Toxic effects in humans, other than cancer, have been associated with benzene exposure in various epidemiologic studies of occupationally exposed populations. Effects on the human hematopoietic [blood forming] system have been documented by OSHA (Docket No. OAQPS 79-3, part I, Item X-J-2). A common clinical finding in benzene hematotoxicity is a decrease in various cellular elements of the circulating blood, termed cytopenia. This decrease can proceed to aplastic anemia, which is a rare disorder characterized by a reduction in all cellular elements in the peripheral blood and bone marrow. The OSHA has observed a case fatality rate of 30 to 50 percent within the first year of diagnosis of aplastic anemia.

Public comments on the July 28, 1988, **Federal Register** notice included a new quantitative risk assessment for benzene and comments on numerous assumptions on uncertainties associated with the risk assessment. The EPA's assessment of the new risk model and response to comments on the quantitative risk characterization is summarized in today's separate notice of final rulemaking for the other benzene source categories. A more detailed discussion of the assessment is given in the BID for the 1989 final decisions on those sources. In summary, EPA believes that the unit risk estimate for benzene is based on the current scientific knowledge and is the most appropriate approach at this time.

Exposure Assessment

Estimation of the potential leukemia risk associated with the emissions of benzene from industrial sources requires estimation of the concentrations of benzene to which the population may be exposed, and determination of the magnitude of population exposure. In the absence of adequate monitored ambient air levels near the industrial sources, EPA used mathematical models to predict the dispersion of emissions and subsequent potential for human exposure.

Estimates of population exposure to benzene in the ambient air resulting from emissions from industrial sources were developed using EPA's HEM. The HEM accepts as inputs the locations and emission characteristics of the subject source categories of benzene. This information is combined with census and meteorological data contained in the model to estimate the magnitude and distribution of population exposure. Emission and plant parameters often must be estimated rather than measured, particularly in determining the magnitude of fugitive emissions, and where there are large numbers of sources that individually emit small amounts of benzene. This can lead to overestimates or underestimates of exposure. Similarly, meteorological data are not available at specific plant sites, but are available only from the closest recording weather stations that may or may not be representative of the meteorology of the plant vicinity. The dispersion modeling of the emissions usually assumes that the terrain in the vicinity of the sources is flat. For sources located in complex terrain where the surrounding topography is at higher elevation than the emission point, this assumption would tend to underestimate the maximum annual concentration of benzene, although estimates of aggregated population exposure would be less affected.

The exposure modeling also assumes that the population density in the vicinity of the source remains unchanged for 70 years and that the population is exposed for 24 hours per day for a 70-year lifetime. The exposure estimates do not consider the dynamics of population growth, decline, or mobility. This may lead to over- or underestimates of population exposure, depending on the nature of population flux. The benzene exposure assessment also assumes the industrial sources under analysis will operate for 70 years to account for potential lifetime exposures. This assumption may overestimate maximum and aggregate exposure. The degree of overstatement varies, however, among industries.

The current exposure analysis does not include an analysis of indirect exposure pathways of benzene such as dermal absorption or ingestion. Furthermore, the analysis does not include concomitant exposure that may result from pollutants co-emitted from the sources. Exclusion of such factors may underestimate total potential exposure and risk from these sources. A final uncertainty in the exposure analysis is that the current version of the HEM does not account for potential increased maximum exposures that may result from the colocation of facilities, although EPA believes this effect would, in most cases, be very small.

Risk Characterization

The exposure estimates obtained from the HEM are combined with the estimate of carcinogenic potency for benzene ("unit risk") or URE to calculate the probability of the increased risk of cancer in the exposed population. In combining the estimates of population exposure with the URE for benzene, two measures of excess leukemia risks are calculated: the aggregate population risk, and the maximum individual lifetime cancer risk. Individual lifetime risks can also be expressed in terms of population risk distribution. The aggregate population risk, expressed as annual cancer incidence, is defined as the average number of excess cancer cases expected annually in the exposed population residing in the vicinity of the industrial sources of benzene. This measure is obtained by dividing the expected excess lifetime incidence by 70.

The MIR is defined as the probability of contracting cancer following a lifetime exposure to benzene at the maximum modeled long-term ambient benzene concentration. Estimates of maximum individual lifetime cancer risk are usually expressed as a probability represented in scientific notation as a negative exponent of 10. A risk of contracting cancer of 1 chance in 10,000 is written as 1×10^{-4}, 1 chance in 1,000,000 as 1×10^{-6}, etc. These risks, because of the uncertainties and assumptions inherent in the dose/response assessment and exposure assessment, cannot be construed as absolute measures of the true risk burden to the benzene exposed population. The quantitative risk assessment is best viewed as a relative estimate of the likelihood of cancer associated with benzene emissions from the industrial source category, for comparison with estimates from alternative emission scenarios or other benzene source categories.

The subsequent sections of this notice discuss the distribution of lifetime cancer risk and an estimate of the number of people that may fall within a particular risk interval. The risk distributions discussed are specific to benzene emissions from the industrial sources identified in this notice. Sources that are located within the HEM exposure modeling radius (e.g., 50 km) of each other would result in an overestimation of the number of people

exposed to the long-term predicted benzene concentration. However, the estimates of aggregate population risk are not affected by this particular modeling approach. That is because with a linear dose/response model, two individuals exposed to a concentration of 1 ppm benzene represent the same population risk as one individual exposed to a concentration of 2 ppm benzene.

The MIR will almost never be significantly affected by proximity of sources unless the industrial sources are located very close together. This is because the predicted benzene concentrations within the modeling radius decline quickly with distance from the emission point. In the rare cases where sources are very close in proximity (within 200 to 300 meters), the MIR may be underestimated.

The estimated distribution of individual cancer risks, however, is affected by the proximity of sources. Correction for double counting of exposed individuals would somewhat increase the individual risk for the population who are exposed to more than one source. Elimination of double counting may shift some of the population at the lower risk levels (i.e., 10^{-6}) to the next higher risk level. However, the principal effect of eliminating double counting would be a reduction in the number of people in the middle to lower risk categories.

Other factors of the quantitative risk assessment may tend to overestimate or underestimate the computed benzene risks. The relative uncertainty associated with the derivation of the cancer risk estimates can only be qualitatively discussed. The EPA currently cannot statistically describe the error range associated with each of the assumptions comprising the quantitative risk assessment. For example, the fact that the risk assessment focused only on leukemia and not other forms of cancer that have been causally linked with benzene exposure in epidemiological studies may lead to an underestimation of the overall potential cancer risk. In addition, the risk analysis excludes consideration of serious, noncancer effects associated with occupational exposure to benzene. Though it is not known whether such effects could occur at much lower ambient benzene exposures, there remains a possibility that the current analysis may underestimate the total potential population health risk. In the interest of protecting public health, however, EPA has focused on leukemia, an effect which is assumed to pose some risk of occurring at any level of exposure.

Although benzene exposure has been associated with other cancer and noncancer effects (multiple myeloma, lymphomas, aplastic anemia, pancytopenia, depression of blood cells, and chromosomal aberrations), EPA has determined that leukemia incidence in workers provides the strongest basis for quantitative risk assessment. Departure from the assumption of nonthreshold, low dose linearity inherent in the derivation of the URE for benzene might result in different estimates (more likely lower than higher) of benzene's carcinogenic potency. The EPA does not find, however, that there is sufficient scientific evidence given the current knowledge of the mechanisms of carcinogenesis, to warrant departure from the nonthreshold and low dose linearity assumptions.

The assumptions involving the exposure assessment may tend to overestimate or underestimate risk. The dispersion modeling normally assumes flat terrain in the vicinity of the source. For sources located in rolling or complex terrain, this assumption would tend to underpredict maximum benzene exposure and MIR. Other assumptions are likely to overestimate the exposure to the most exposed subset of the population. Estimates of MIR are based on the assumption that the individual is exposed for 70 years to the estimated maximum annual average concentration and that the source continues to operate for 70 years. The degree of overestimation will vary among industries and as a function of individuals' movements.

A final factor of uncertainty in the risk assessment is the fact that the analysis does not account for individuals within the exposed population who may be uniquely susceptible to benzene carcinogenesis because of incompetent immunity, or chronic infirmity. For this subgroup within the exposed population the risks may be underestimated.

V. Policy for Developing NESHAP

Under section 112 of the CAA, EPA is required to establish emission standards for hazardous air pollutants at a level that provides an ample margin of safety to protect public health. In *Natural Resources Defense Council* v. *EPA*, 824 F.2d 1146 (1987) (hereafter referred to as *Vinyl Chloride*), the Court of Appeals held that EPA must (1) determine a "safe" or "acceptable" risk level based solely on health factors, and (2) then set the standard at the level—which may be equal to or lower, but not higher than the "safe" or "acceptable" level—that protects public health with an ample margin of safety. Cost and technological feasibility may not be considered in the first step, but may be considered in the second step when deciding among alternative levels that provide an ample margin of safety.

The policy for decisions on NESHAP is discussed in today's separate notice presenting the final decisions for benzene emissions from maleic anhydride plants, EB/S plants, benzene storage vessels, benzene equipment leaks, and coke by-product recovery plants.

VI. Discussion of Source Categories

A. Benzene Emissions From Chemical Manufacturing Process Vents

1. Source Category Overview

Benzene is emitted through process vents from a number of chemical manufacturing process units where it is either used as a reactant, is present as an impurity in a reactant or other process feedstock, or is produced as a product or by-product. Currently, there are 3 aniline, 2 benzene sulfonic acid, 3 chlorobenzene, 1 cumene, 32 ethylene, 1 hydroquinone, 4 linear alkylbenzene, 4 nitrobenzene, and 4 phenol units that emit benzene through process vents. The February 7, 1989, court order also specified cyclohexane facilities as chemical manufacturing process units that should be considered in this source category. Also, during the course of this investigation, benzene usage was identified in resorcinol and pyridine manufacturing processes. Cyclohexane, resorcinol and pyridine manufacturing processes were investigated and found not to be emitting benzene through process vents. Thus, a total of 54 chemical manufacturing units currently emit benzene through process vents.

With the exception of ethylene units, the emission streams from process vents in all of the above manufacturing processes are continuous in nature. In ethylene plants, however, the process emissions are intermittent in nature and occur from process upsets, compressor outages, and power failures.

This source category does not include benzene emissions from ethylbenzene and styrene process vents, as these were examined previously under the EB/S source category. Nor does it include equipment leak emissions of benzene from chemical plant process units; equipment leaks of benzene have been regulated since 1984 under the standard in 40 CFR part 61, subpart J.

2. Basis for Emission Estimate

The estimated current nationwide emissions from this source category are

about 340 megagrams per year (Mg/yr). This section describes how facilities in the category were identified, how emissions were calculated, and what uncertainties are present in these estimates.

First, facilities potentially belonging to this category were identified from the SRI 1988 Directory of Chemical Producers (Docket No. A–89–03, Item II–I–2). Then, some companies were contacted to determine whether these facilities actually do use and emit benzene. For those that do, as much information was obtained as possible on their process vents, emissions, and controls. Data for one facility were obtained from a State air permit application. Site-specific emissions information obtained for individual plants is documented in Docket No. A–89–03, Items II–D–1 through II–D–11 and 11–E–1 through II–E–46.

For those facilities that were either not contacted or were not able to provide complete information, various methods were used to estimate emissions. Ethylene plant emissions were estimated using the model plant methodology presented in the draft document "Benzene Emissions from Nitrobenzene, Chlorobenzene, Linear Alkylbenzene, and Ethylene Plant Vents—Background Information" (Docket No. A–89–03, Item II–A–10), together with current plant capacity data. Emissions from the other types of chemical processes, except phenol units, were estimated using model plant emission factors corrected for capacity; these emission factors were taken from the EPA document "Organic Chemical Manufacturing, Volume 7: Selected Processes" (Docket No. A–89–03, Items II–A–2 through II–A–6).

For phenol units, site-specific data were available for two facilities. Since no other methodology was available to estimate emissions from the remaining two plants, their emissions were assumed to occur at the higher level of the two units for which emissions are known and then were adjusted for capacity differences.

Uncertainties in the emission estimates vary among the individual facilities and with the way the emission estimate was derived. For annual emission estimates obtained directly from the plants, EPA has accepted the estimates, but does not know what calculation methods and assumptions were used by plant personnel, how well these reflect actual conditions, and what uncertainties might be associated with them. For facilities that provided measured hourly emission rate data, EPA assumed that these plants operate at 100 percent capacity, which is a conservative, but presumably realistic, assumption.

Uncertainties are also present in the emission estimates based on the model plant methodologies. These estimates may be over- or underestimated, depending on how much the actual plants differ from the model plants used.

3. Control Techniques

Many process vents are known to be currently controlled using devices such as flares, incinerators, process heaters, and carbon adsorbers. These control devices, when properly designed, operated, and maintained, can achieve control efficiencies of at least 98 percent, except for carbon adsorbers which achieve at least 95 percent. The majority of process vent emissions from nitrobenzene and ethylene plants are controlled under SIP's that typically require combustion control devices.

Some additional emission reduction can be achieved for this category by controlling those vents not already controlled by a combustion device. For most of the facilities in this source category, either flares or incinerators could be applied, depending on the suitability to flow conditions and presence of acid gases. Process heaters, if already present at the facility, could also be used to limit emissions from uncontrolled vents.

4. Estimates of Exposure and Risk

Benzene emissions from chemical plant process vents were modeled using the HEM to estimate benzene concentrations and population exposures within 50 km of the facilities. Detailed documentation of the analysis is included in Docket No. A–89–03, Item 11–B–6. The baseline excess leukemia risks predicted by this modeling showed a nationwide annual incidence of 0.01 case/year and a MIR of 4×10^{-5}.

5. Basis for Proposed Negative Determination

Decision on Acceptable Risk. As stated above, the baseline MIR is about 4×10^{-5} which is below the presumptive acceptable risk of approximately 1×10^{-4}. The estimated annual incidence is about 0.01 case/year. These risks are not expected to be significantly affected by the colocation of facilities. The EPA estimated that the majority of the people (greater than 99.9 percent) exposed to benzene from this source category would be exposed to risk levels less than 1×10^{-6}. For those exposures exceeding 1×10^{-6}, the incidence is only 0.001 case/year in a modeled population of 30,000.

The EPA also considered the noncancer health effects associated with benzene exposures at levels comparable to an MIR level of 4×10^{-5}. Benzene concentrations reported to produce noncancer health effects are two to three orders of magnitude above the exposure levels predicted for these sources. Therefore, noncancer health effects do not affect the decision.

After considering all these factors, EPA judged that the emission level at baseline represents an acceptable risk.

Decision on Ample Margin of Safety. To consider alternative emission levels, EPA examined available control technologies to reduce emissions from process vents. The two control alternatives explored represent the application of 98 percent efficient combustion control devices to process vents which are presently controlled by less efficient devices. The alternatives differ in that one (Alternative 2) applies controls to all process units, whereas the other (Alternative 1) applies controls only to vents from chlorobenzene and phenol units, which in general had higher benzene emission levels and generated greater risk.

Tables A–1 and A–2 present the control costs and emission and risk reductions achievable through the application of additional controls. As shown in the tables, both control alternatives achieve only small additional emission and risk reductions. In addition, benzene exposures reported to produce noncancer health effects are at least three orders of magnitude above the exposure levels expected under all alternatives for this source category. Furthermore, these control alternatives would only slightly reduce the estimated incidence in the population exposed to risks greater than 1×10^{-6}. Specifically, at the present level of control the number of people at risk levels greater than 1×10^{-6} is estimated to be 30,000 and the incidence in this population is only 0.001 case/year. Alternative 1 would reduce the population at greater than 1×10^{-6} risk to 20,000 and the cancer incidence estimated for this population group would be only 0.0004 case/year. More than 80 percent of the total incidence reduction of 0.003 case/year would occur in the 60 million people exposed to risks below 1×10^{-6}. Alternative 2 would eliminate exposures to risk greater than 1×10^{-6} and the incidence would be about 0.0004 case/year for this population of 60 million. These additional control levels would cost about $2.8 million and $39 million per year (1984 dollars). While these additional costs are relatively small, they are disproportionately large in comparison to the small additional emission and health risk reduction achieved.

TABLE A-1.—CHEMICAL MANUFACTURING PROCESS VENTS: RISK INFORMATION

Alternative	Maximum individual lifetime risk	Incidence (case/year)	Incremental incidence reduction
Baseline	4×10^{-5}	0.01	
1	1×10^{-5}	0.008	0.004
2	1×10^{-6}	0.0004	0.007

Note: All risk estimates are rounded to one significant figure. Due to independent rounding, figures given in the table may not sum to the value given.

TABLE A-2.—CHEMICAL MANUFACTURING PROCESS VENTS: CONTROL OPTION IMPACTS

Alternative	Annual cost $MM/yr (1984)[a]	Benzene reductions, mg/yr	Incremental benzene reductions, mg/yr
Baseline			
1	2.8	34	34
2	39	214	175

[a] $MM is millions of dollars. The dollar year is 1984.

Regulatory Status

Majority of process vents are currently controlled under SIP's.

Description of Alternatives

Baseline: No. rule. Emissions are about 340 Mg/yr of benzene.

Alternative 1: Require 98 percent efficient combustion control on vents from process units manufacturing chlorobenzene or phenol.

Alternative 2: Require 98 percent efficient combustion control of all vents from process units using benzene.

Based on these factors, EPA decided that the baseline level of control protects the public health with an ample margin of safety. The EPA is, therefore, proposing not to regulate chemical manufacturing process vents under Section 112 of the CAA (this is called a negative determination).

6. Impacts of Proposed Standard

Since no standard is proposed, there will be no impacts.

B. Benzene Category Operations

1. Source Category Overview

Benzene emissions from transfer operations occur at certain chemical production facilities, bulk terminals, and coke by-product recovery plants from the loading of rail tank cars, tank trucks, and marine vessels. Emissions of benzene from transfer operations are a composite of losses from vapors formed in the empty receiving vessel by the evaporation of residual product from previous loads and vapors generated in the vessel as the new product is being loaded. The source category includes the loading of pure benzene and mixtures containing benzene that are recovered at coke by-product plants from coke oven gases. These mixtures typically contains about 76 percent benzene.

Through this investigation, approximately 110 benzene transfer operation emission sources within these categories were identified. This includes 73 production facilities, 8 bulk terminals, and 30 coke by-product recovery plants. Benzene emissions from these sources have not previously been regulated by any Federal standards; however, some States do have regulations which would apply to transfer operations where benzene is emitted.

2. Basis for Emission Estimate

Nationwide uncontrolled benzene emissions from transfer operations are estimated to be approximately 4,600 Mg/yr. This section describes how the nationwide estimate was determined, including how facilities in the category were identified, how emissions were calculated, and what uncertainties are present in these estimates.

Transfer operation sources were identified from available directories listing chemical production facilities and from information previously gathered by EPA and located in EPA files (see Docket No. A-89-04, Item II-I-4). A representative number of individual sites were then contacted by telephone to obtain information on the amount and composition of benzene loaded, the type of receiving vessel, and the loading method. Where such information was unavailable for a particular site, estimates were made using engineering judgment, as discussed below. Benzene emissions were then estimated based on loading loss equations contained in "Compilation of Air Pollutant Emission Factors" (AP-42). A complete explanation of the approach and assumptions used in estimating emissions may be found in Docket No. A-84-04, Item II-B-6.

With respect to benzene throughput for each facility, specific data on annual throughput was not obtained via the telephone survey for every facility. Therefore, engineering judgment was used to develop the throughput for each facility type. For bulk terminals, sufficient throughput information was available from the telephone survey. The average throughput approach was also used to generate the facility throughput for benezene producers. For coke by-product recovery facilities, only limited throughput information was obtained during the telephone survey. However, coke capacity data were available for each facility. An average ratio was developed for benzene throughput versus coke capacity. This ratio factor was multiplied times the coke capacity to determine the benzene throughput for each facility not contacted during the telephone survey.

For determining the type of receiving vessel, information gathered from the telephone survey was extrapolated to the entire list of sources under each transfer operation type. For benzene producers which were not contacted, it was assumed that 50 percent of the total quantity of benzene transferred was transported by marine vessels and 50 percent was transferred using railcars. Based on the industrial contacts, 100 percent railcar loading was assumed for all coke by-product plants.

For loading method, it was assumed that all transfer operations employed submerged loading. This type of loading produces lower emissions than other methods. Marine vessels use only submerged loading. Standard practice for railcars is to topload with a submerged pipe. Standard practice for tank trucks is to topload with a submerged pipe or to bottom load. It is highly unlikely for tank trucks to top splash load for organics such as benzene.

There are several uncertainties present in the emission estimates. First, the number of benzene transfer facilities is uncertain. Although the estimated number is believed to represent the vast majority of facilities that currently exist, it is possible that some smaller benzene producers could have been overlooked due to time constraints. Alternatively, it is also possible that some benzene transfer facilities identified in this study may no longer be in operation. Therefore, it is not known whether the uncertainty in the number of facilities tends to overstate or understate emissions.

Other uncertainties exist in the industry profile data, including the benzene throughput, receiving vessel type, loading method, and presence of a vapor balance system. Overall, EPA believes that reasonable assumptions were made in light of available information such that emissions would be neither overstated nor understated.

3. Control Techniques

The EPA surveyed some of the benzene transfer operations and found that only one facility (of those surveyed) currently has controls in place. Based on these findings and discussions with industry representatives, EPA assumed that all facilities included in this source

category are uncontrolled (except for the one identified controlled facility).

Control of benzene emissions from transfer operations can be accomplished by collecting and routing benzene vapors displaced from the receiving vessel to an add-on control device. Such devices include incinerators, carbon adsorbers, flares, and condensers. In all cases, a vapor recovery system would have to be installed. The efficiencies of these controls when properly designed, maintained, and operated are typically 98, 95, 98 and 90 percent, respectively.

4. Estimates of Exposure and Risk

Benzene emissions from benzene transfer operations were modeled using the HEM to estimate benzene concentrations and population exposures within 50 km of the facilities. Detailed documentation of the analysis is included in Docket No. A–89–04, Item II–B–5. The baseline excess leukemia risks predicted by this modeling showed a nationwide annual incidence of 1 case/year and a MIR of 6×10^{-3}.

5. Basis for Proposed Standard

Decision on Acceptable Risk. The baseline MIR of 6×10^{-3} for benzene transfer operations is unacceptable for benzene, a known human carcinogen. The EPA examined several alternatives in deciding what constitutes an acceptable risk level. These alternatives and the risks are illustrated in Table B–1. After examining these different alternatives and their associated risk distributions, EPA has decided that Alternative 1 represents a risk that is acceptable for benzene transfer operations after considering several factors.

TABLE B–1.—BENZENE TRANSFER OPERATIONS: RISK INFORMATION

Alternative	Maximum individual lifetime risk	Incidence (case/year)	Incremental incidence reduction
Baseline	6×10^{-3}	1	
1	4×10^{-5}	0.02	1
2	7×10^{-6}	0.009	0.01
3	1×10^{-6}	0.007	0.002

NOTE: All risk estimates are rounded to one significant figure. Due to independent rounding, figures given in the table may not sum to the value given.

Control to the level of Alternative 1 would reduce the MIR to about 4×10^{-5} and the annual incidence to 0.02. The majority of the people (greater than 99.9 percent) exposed to benzene emissions from this category would be exposed to risk levels lower than 1×10^{-6}. It is estimated that about 40,000 people would be exposed to risk levels between 4×10^{-5} and 1×10^{-6} and the incidence in this group would be only 0.001 case/year. In estimating these risk levels, EPA has not found that colocation of facilities significantly affects the magnitude of the MIR. The EPA also considered the noncancer health effects associated with benzene exposures expected after application of Alternative 1 or at exposures comparable to an MIR of 4×10^{-5}. Noncancer health effects have been associated with exposure to benzene, but exposure levels reported to produce noncancer health effects are at least three orders of magnitude above the levels of exposure expected after application of Alternative 1.

After considering all these factors, EPA judged the emission level associated with Alternative 1 to be acceptable.

Decision on Ample Margin of Safety. The EPA considered selecting a level of emissions more stringent than that associated with the acceptable risk to provide an ample margin of safety. To reduce the complexity of studying the costs and benefits of different combinations of control options, EPA defined the maximum controls that are technically feasible and which could be applied to transfer operations at producers, bulk terminals, and coke by-product recovery plants. Alternative controls were then defined based on which of these sources within the category that the maximum controls were applied. Alternative 1 involved maximum control of producers and terminals only. Alternative 2 applied maximum controls to coke by-product plants as well as producers and terminals. To achieve risks of less than 1×10^{-6}, Alternative 3 placed a limitation on benzene throughput in addition to the controls of Alternative 2. Table B–2 presents the control costs and emission reductions associated with these alternatives.

TABLE B–2.—BENZENE TRANSFER OPERATIONS: CONTROL OPTION IMPACTS

Alternative	Annual cost $MM/yr (1987)[a]	Benzene reductions, mg/yr	Incremental benzene reductions, mg/yr
Baseline			
1	30	4,330	4,330
2	34	4,380	50
3	34[b]	4,400	20

[a] $MM is millions of dollars. The dollar year is 1987.

[b] Annualized cost of required controls. There may be costs and economic impacts associated with the emission cap which would require reduced throughput at the larger facilities.

Regulatory Status

Benzene transfer operations are largely uncontrolled.

Description of Alternatives

Baseline: No rule. Emissions are about 4,600 Mg/yr of benzene.

Alternative 1: Incineration (98 percent control) of benzene transfer emission at producers and terminals.

Alternative 2: Incineration (98 percent control) of benzene transfer emission at producers, terminals and coke by-product plants.

Alternative 3: Incineration (98 percent control) of benzene transfer emissions at producers, terminals, and coke by-product plants, and an emission limit of 1,150 kg/yr.

In comparing Alternative 1 with Alternatives 2 and 3, EPA found that the alternatives provide essentially the same level of protection. While each alternative reflects a significant reduction from the baseline uncontrolled level, control beyond Alternative 1 achieves only small additional risk and emission reductions. For example, with Alternative 2 the total nationwide incidence would be reduced from 0.02 case/year to 0.009 case/year. Most (about 90 percent) of this reduction is associated with exposures to risk levels below 1×10^{-6}. The number of people estimated to be exposed to risk levels greater than 1×10^{-6} would be only reduced from 40,000 to 3,000 under Alternative 2. Alternative 3 eliminates exposures to risks greater than 1×10^{-6} but does not reduce the incidence. For all three alternatives the proportion of the population at risk levels below 1×10^{-6} exceeds 99.9 percent. In addition, benzene exposures reported to produce noncancer health effects are at least three orders of magnitude above the exposure levels expected under all alternatives examined for this source category.

The controls required by Alternatives 2 and 3 would cost $35 million (1987 dollars) per year, an increase in annual control costs of $4 million over the costs of Alternative 1. Because the costs of Alternatives 2 and 3 are disproportionately great compared to the small additional emission and health risk reductions achieved, EPA has determined that it is not necessary to reduce small additional emission and health risk below the acceptable level. Therefore, EPA decided that the emission control requirements of Alternative 1 will protect the public health with an ample margin of safety.

Summary and Basis for Format of Standards. The standard for benzene

use at bulk transfer facilities requires a 98 weight-percent reduction of benzene emissions and requires that loading of benzene be limited to vapor-tight tank trucks, railcars, or marine vessels. The standard exempts facilities with an annual throughput of less than 1.3 million liters (0.3 million gallons) of benzene and those facilities loading material consisting of less than 70 weight-percent benzene. The annual throughput cutoff exempts facilities that may only load benzene periodically throughout the year from being subject to the percent reduction requirement. The cutoff by benzene concentration exempts loading operations such as gasoline that are covered under other standards.

The 98 percent value is based on the typical performance of an incinerator or a flare, which are universally applicable to facilities expected to be subject to this standard. Available test data indicate that properly designed, operated, and maintained incinerators or flares can achieve at least a 98 weight-percent reduction of organic compounds. Although the standard is based on the use of an incinerator or flare, any control device may be used as long as a 98 weight-percent reduction is achieved. Vapor-tight vessels are required to limit the fugitive emissions from this source category. A weight-percent reduction standard was considered feasible since the necessary data for calculating this value could be readily available to the owner or operator of an affected facility.

6. Impacts of Proposed Standard

Under the proposed standard, benzene emissions from this source category will be reduced from a baseline level of 4,600 Mg/yr to an estimated 270 Mg/yr. This represents a reduction of approximately 94 percent. The residual incidence of leukemia from exposure to benzene emissions after application of this standard is estimated to be 0.02 case/year, and the MIR is predicted to be 4×10^{-5}. This can be compared with an incidence of 1 case/year and a MIR of 6×10^{-3} under baseline conditions.

Potential environmental impacts of this standard depend on the control device selected by each facility to attain compliance. Incinerators and flares are not expected to produce any wastewater or solid waste impacts. However, if carbon adsorbers are used, some minor wastewater and solid waste impacts can be expected from desorption of the carbon beds with steam, and then the final disposal of spent carbon. Because it is not known how many benzene transfer facilities will employ carbon absorbers, rather than incinerators or flares, to comply with the standard, the wastewater and solid waste impacts of this standard cannot be quantified at this time. However, because of regulations being developed under other Acts such as RCRA and the Clean Water Act, and the regulations being considered for benzene waste, these impacts are expected to be small. No changes in energy use are predicted.

National capital costs of control associated with achieving the standard are $167 million (in 1987 dollars). The nationwide annual cost is $30 million/year (in 1987 dollars).

7. Request for Comments

Because there are no standards for determining the vapor tightness of marine vessels and limited experience in the determination of vapor tightness of marine vessels, EPA is requesting public comment on the methods of determining the vapor tightness of marine vessels. As proposed, the vapor tightness of a marine vessel can be demonstrated by Method 21, by a pressurized air or inert gas test, by operating the marine vessel at negative pressure, or by an alternative procedure approved by the Administrator. The EPA is interested in comments and data on the comparability of these methods.

Also, Methods 25A and 25B, which do not identify specific compounds, have been cited as the methods by which to measure average benzene concentration upstream and downstream of control devices. These methods have been referenced, assuming that most of the organics passing through control devices applied to this source category will be benzene in the vapor phase (facilities loading material containing less than 70 percent benzene are exempt from the standard). The EPA is requesting comments on the appropriateness of using Methods 25A and 25B, and whether other, compound-specific methods would be preferable.

To reduce the number of control options, EPA defined the maximum controls that could be applied to benzene transfer operations at producers and bulk terminals. The EPA solicits comments on the emission reductions and control costs of other available control options.

C. Industrial Solvent Use

1. Source Category Overview

This source category includes the use of benzene as an azeotropic agent, distilling agent, reaction solvent, extracting agent, and recrystallizing agent, as well as the more typically pictured use as an agent to dissolve other substances. Facilities presently known to be using benzene as a solvent include pharmaceutical manufacturing, general organic synthesis, alcohol manufacturing, caprolactam production, and plastics, resins and synthetic rubber manufacturing. A total of 10 plants of these types have been identified as currently using and emitting benzene as a solvent. In addition to these uses, benzene is present in small quantities in solvents used in the rubber tire manufacturing industry. In the above-mentioned industries, solvent benzene is emitted to the atmosphere through process vents, dryer vents, and building ventilation systems.

Solvent emissions of benzene had been previously reported from the manufacture and use of pesticides, use of printing inks, application of surface coatings, and various other uses. However, these uses of benzene were investigated and were found to have ceased (Docket No. A-89-05, Item II-B-6).

Because of OSHA and other regulations concerning benzene that have gone into effect, benzene solvent use has declined or stopped in many plants during the past 10 years. Some of the facilities included currently in this source category indicated that they plan to eliminate benzene solvent use within the next several years.

2. Basis for Emission Estimate

Total nationwide emissions of benzene from the solvent use category are estimated at approximately 450 Mg/yr. This section describes the development of this emission estimate and estimates for individual facilities, including identification of the facilities, calculation of emissions, and a discussion of uncertainties involved.

Facilities that emit benzene from solvent uses were identified through a literature survey and through the 1987 SARA 313 emissions inventory (see Docket A-89-05, Item II-B-6). After a list of facilities potentially using benzene as a solvent was compiled, individual companies were contacted to verify benzene use, emission sources, level of emissions, and current controls. Plant-specific emissions estimates for the facilities that confirmed solvent use were developed directly from the SARA 313 reported stack emissions. One plant reported emissions from multiple uses of benzene and could not separate the solvent use from the remaining emissions. However, plant personnel did know the amount of benzene currently used as a solvent per yer. For this plant, it was conservatively estimated that all of the benzene consumed in solvent uses

each year was emitted to the atmosphere.

The rubber tire manufacturing industry uses solvents containing trace amounts of benzene. Although the quantity of benzene contained in the solvent is small, typically 0.3 percent, significant emissions could be generated depending on the amount of solvent used. To assess the maximum potential emissions from an individual plant, the largest tire manufacturing facility was identified using information in the Rubber Tire BID. Solvent use emissions of benzene for that plant were estimated based on estimated tire production (in 1986), process VOC emission factors (in grams/tire) taken from the Rubber Tire BID, and a benzene level of 0.3 percent in the solvent. These emissions were then extrapolated to the remaining 53 tire manufacturing facilities based on their estimated proportional share of the total 1986 nationwide tire production.

As with all estimates, the emission estimates developed for this source category contain uncertainties. The information on tire production, percentage of benzene contained in the solvent, and emissions factors used for the particular tire manufacturing facility discussed above could either over- or underestimate emissions depending on how well it actually reflected conditions at that plant. The range around the estimated tire manufacturing emissions of benzene from this facility is likely a factor of approximately two higher or lower than the estimate used. An underestimation by a factor of 2 would mean that the actual MIR from this facility would be a factor of 2 higher than predicted.

Extrapolation of the emissions from this tire plant to all tire plants in the United States could also over- or underestimate emissions depending on how representative the 1986 tire production numbers are for 1989 production, and how representative earlier solvent use per tire estimates are of present operations and controls.

Of the remaining nine general organic synthesis facilities and one pharmaceutical manufacturing plant included in the solvent use category, emissions estimates for nine of these were based on SARA 313 reported emissions. Exclusion of plants that were too small to have reported benzene emissions under SARA or were otherwise overlooked would cause emissions to be slightly underestimated. The emissions for those facilities that did report are assumed to have been accurately calculated by plant personnel. Errors made or assumptions used in the calculations could cause these emissions to be either over- or underestimated depending on the specific computation methodology used by each individual plant. In addition, changes in benzene use at the facilities could affect the estimate. The one other general organic synthesis plant, whose emissions were estimated by assuming that all solvent benzene used is emitted, has been treated conservatively.

3. Control Techniques

Currently, three of the facilities using benzene as a solvent are known to use control devices to reduce their emissions. The control devices reported by the three facilities include carbon adsorbers, condensers, and incinerators. The other facilities included in this category either are known not to have control devices or, in the absence of site-specific information, were assumed not to be using them.

Control devices that are typically used to reduce emissions from the types of operations in this source category include incinerators and carbon adsorbers, with efficiencies of 98 and 95 percent, respectively, when well designed, operated, and maintained. Incinerators were assumed to be generally applicable to facilities using benzene in general organic synthesis operations.

Pharmaceutical manufacturing typically involves batch processes and therefore intermittent emissions. Carbon adsorbers are the most commonly used control for this type of facility. Incinerators can be used in some cases, but are not common.

The tire manufacturing operations which involve benzene solvent use may be conducted in open areas to allow worker access. The benzene emissions are therefore fugitive in nature, and a capture system must be installed to collect vapors and route them to a control device. The capture efficiency of such systems when applied to tire manufacturing processes is about 65 to 85 percent. Therefore, the capture and associated incinerator control systems are expected to achieve an overall efficiency of 75 percent when applied to tire production solvent use emissions.

4. Estimates of Exposure and Risk

Benzene emissions from industrial solvent use were modeled using the HEM to estimate benzene concentrations and population exposures within a 50 km radius of the facilities. Detailed documentation of the analysis is included in Docket No. A–89–05, Item II–B–7. The baseline risks predicted by this modeling showed a nationwide annual excess leukemia incidence of 0.02 case/year and a MIR of 3×10^{-5}.

Risks from tire manufacturing emissions of benzene were determined by modeling the largest tire manufacturing plant and extrapolating the risks from this plant to the rest of the industry based on production ratios.

5. Basis for Proposed Standard

Decision on Acceptable Risk. As stated earlier, the baseline MIR is about 3×10^{-5} which is below the presumptive acceptable risk of approximately 1×10^{-4}. The estimated annual incidence is about 0.02 case/year. These risks are not expected to be significantly affected by the colocation of facilities. The majority of the people (greater than 99 percent) would be exposed to risk levels lower than 1×10^{-6}. For those exposures at risk levels exceeding 1×10^{-6}, the cancer incidence is only 0.006 case/year in an estimated population of 200,000.

The EPA also considered the noncancer health effects associated with benzene exposures at levels comparable to an MIR level of 3×10^{-5}. Benzene concentrations reported to produce noncancer health effects are about three orders of magnitude above the exposure levels predicted for these sources. Therefore, noncancer health effects do not affect the decision on acceptability. After considering all these factors and the uncertainties in the estimates, EPA judged that the emission level at baseline represents an acceptable risk.

Decision on Ample Margin of Safety. To consider alternative emission levels, EPA examined available control technologies to reduce emissions from the different categories of solvent users. The EPA first examined the alternative of the application of best control to all facilities. Application of controls to all sources would reduce risks from 3×10^{-5} to 1×10^{-6} and the incidence from 0.02 to 0.002 case/year. Tables C–1 and C–2 present the risk reductions and the control costs and emission reductions achievable through the application of the best controls on these sources.

TABLE C–1.—INDUSTRIAL SOLVENT USE: RISK INFORMATION

Alternative	Maximum individual lifetime risk	Incidence (case/year)	Incremental incidence reduction
Baseline	3×10^{-5}	0.02	
1	1×10^{-6}	0.002	0.02

NOTE: All risk estimates are rounded to one significant figure. Due to independent rounding, figures given in the table may not sum to the value given.

TABLE C-2.—INDUSTRIAL SOLVENT USE: CONTROL OPTION IMPACTS

Alternative	Annual cost $MM/yr (1984)[a]	Reductions, Mg/yr		Incremental reductions, Mg/yr	
		BZ[b]	VOC[b]	BZ	VOC
Baseline					
1	14.4	416	41,500	416	41,500

[a] $MM is millions of dollars. The dollar year is 1984.
[b] BZ is benzene. VOC is volatile organic compounds, including benzene.

Regulatory Status

Present regulatory status under SIP's is unknown.

Description of Alternatives

Baseline. No rule. Benzene emissions are 450 Mg/yr, and VOC emissions are 41,500 Mg/yr, including benzene.

Alternative 1: Require 95 percent control for pharmaceutical manufacturing, 75 percent for tire manufacturing (NSPS), and 98 percent for general organic synthesis industries.

After considering the control costs, technical feasibility, and the benefits of control of benzene and cocontrol of other pollutants, EPA has concluded that it is appropriate to require application of additional controls to two of the groups of sources. These sources are tire manufacturing facilities and pharmaceutical facilities. The factors considered in making this judgment were: (1) the cost of control relative to the risk reduction achieved, (2) possible understatement, in some cases, of emissions from rubber tire manufacturing plants, and (3) controls would also reduce emissions of pollutants contributing to urban air toxics problems.

Control of these sources would reduce the total cancer incidence from these sources by about 0.02 case/year and would reduced the number of people at risk levels greater than 1×10^{-6} from approximately 200,000 to approximately 10,000. The incidence in this population group would be reduced from about 0.005 case/year to about 0.0002 case/year. More than 90 percent of the remaining incidence of 0.003 case/year would be associated with exposures to risk levels below 1×10^{-6}. Additionally, more than 99.9 percent of the 20 million people exposed to these sources are at risks less than 1×10^{-6}. Benzene exposures reported to produce noncancer health effects are at least three orders of magnitude above the exposure levels expected for these sources. Application of these controls is estimated to cost about $12 million/year (1984 dollars).

In conclusion, EPA decided that control of these sources would provide an ample margin of safety. Therefore, EPA is proposing standards to limit emissions from tire manufacturing and pharmaceutical manufacturing as described in the next section.

Standards are not being proposed for the other facilities using benzene as a solvent. For these sources, the risks are about 3×10^{-5} and 0.002 case/year, and the MIR estimate is considered to reflect an upperbound estimate of potential emissions from the facility. Fewer than 100 people are estimated to be exposed to risks greater than 1×10^{-5}, with an incidence of 0.00002 case/year. In addition, more than 99.9 percent of the population exposed to benzene from these sources is exposed to risk levels below 1×10^{-6}. More than 90 percent of the total incidence of 0.002 case/year is associated with the large population at risk levels below 1×10^{-6}. Additional control is not considered warranted because the costs are high relative to the risk reduction achieved. For these reasons, EPA has concluded that a Federal standard is not warranted for solvent use in industries other than the tire manufacturing and pharmaceuticals.

Summary and Basis for Formats of Standards. The proposed rubber tire manufacturing standard requires plants to either achieve a 75 weight-percent reduction in emissions of benzene from solvent use using an emission capture system and a control device (e.g., incinerator or carbon adsorber), or to reduce their emissions to 1,500 kg/yr. or less. The standard only requires plants using less than 1,500 kg/yr of benzene as a solvent to document their solvent usage and the percent benzene in the solvent(s).

The control devices currently in use at tire manufacturing operations yield an overall efficiency of 75 percent, as discussed previously. Therefore, the standard has been written to require plants to achieve this level of control. Although the standard is based on a combination of capture and control using incineration or carbon adsorption, any combination of capture and control devices may be used as long as an overall 75 weight-percent reduction of benzene is demonstrated.

It was also recognized, however, that some plants may use less than the average amount of solvent in manufacturing tires or may already have reduced their benzene emissions by either purchasing solvents with an extremely low concentration of benzene (0.1 percent or less), or by substituting water-based cements or tire sprays for organic solvent-based cements or tire sprays. In order to give these facilities credit for this and still achieve the goal of an acceptably low risk, an alternative to the 75 percent control is given by allowing facilities to demonstrate that they emit less than 1.5 Mg/yr of benzene from solvent use.

The standard for benzene solvent use at pharmaceutical facilities requires a 95 weight-percent reduction of benzene. A weight-percent reduction standard was used for this source category because it can be determined from measurements of flowrate and control device inlet and outlet benzene concentration. However, to credit process design changes that prevent or minimize pollution, an alternative to the 95 weight-percent reduction is also provided. This alternative standard allows facilities to comply by demonstrating that process vent emissions are less than 1 Mg/yr.

The 95 percent value is based on the typical performance of carbon adsorption systems, which are universally applicable to facilities expected to be subject to this standard. Available test data indicate that properly designed, operated, and maintained carbon adsorbers can achieve at least 95 weight-percent reduction of organic compounds.

Although the standard is based on carbon adsorption, any type of control device may be used as long as a 95 weight-percent reduction of benzene is demonstrated.

6. Impacts of Standards

Under the standards summarized above, benzene emissions from tire manufacturing and pharmaceutical manufacturing will be reduced from an estimated baseline level of 129 Mg/yr to approximately 30 Mg/yr. This represents a reduction of approximately 76 percent in the benzene emissions from these two types of facilities. For the entire source category, with baseline emissions of 454 Mg/yr, this represents a 21 percent reduction to a level of 357 Mg/yr. The residual incidence for the source category after application of these standards is estimated to be 0.005 case/year, and the MIR is predicted to be 3×10^{-5}. of this total, the uncontrolled sources contribute 0.002 case/year incidence and a MIR of 3×10^{-5}. This can be compared with an incidence of 0.02 case/year and an MIR risk of 3×10^{-5} under baseline conditions.

Because carbon adsorbers might be used to comply with the proposed standards for pharmaceutical and tire manufacturing plants, some wastewater and solid waste impacts can be expected from desorption of the carbon beds with steam, and the final disposal

of spent carbon. However, because of regulations being developed under other Acts such as RCRA and the Clean Water Act and the regulations being considered for benzene waste, these impacts from the pharmaceutical and tire regulations are expected to be small. The use of incinerators is not predicted to have such impacts. No changes in energy use are predicted.

National capital costs of control associated with achieving these standards are $23 million (in 1984 dollars). The nationwide annual cost is about $12 million/year (in 1984 dollars). This represents the combined costs of using carbon adsorbers at pharmaceutical facilities and incinerators at the tire manufacturing facilities.

7. Request for Comments

The EPA is requesting public comment on whether the emission estimates for rubber tire manufacturing facilities are underestimated. The EPA also solicits comments on the emission reductions and costs of alternative control requirements.

In decisions on control levels to provide an ample margin of safety, EPA includes consideration of the appropriate balance among the benefits of control of hazardous air pollutants, cocontrol of other pollutants, cost and technical feasibility. A significant factor in the judgments on this source category was the cocontrol of VOC achieved by the alternatives in addition to the primary benefit of reducing benzene. However, this was not the only consideration. Additional considerations included the benefits of controlling sources of urban air toxics, and of maintaining or improving air quality. Because VOC cocontrol would be a significant effect of these NESHAP, EPA is interested in public comment on how VOC cocontrol should be considered in decisions on ample margin of safety, particularly when the risk and risk reductions are small.

D. Benzene Waste Operations

1. Source Category Overview

Benzene is produced primarily by petroleum refineries and chemical plants using catalytic reforming, naphtha cracking (for pyrolysis gasoline), and toluene hydrodealkylation processes. Benzene also can be derived from the light oil produced at some coke by-product recovery plants. The major use of benzene recovered from petroleum and coal sources is as a feedstock, reactant or intermediate in the manufacture of other chemicals (mainly ethylbenzene, cumene, and cyclohexane) and end products.

This assessment examines the health and environmental impacts of benzene emissions from industrial waste operations. "Waste" is defined as any material resulting from industrial, commercial, mining or agricultural operations, or from community activities that is discarded or is being accumulated, stored, or physically, chemically, thermally, or biologically treated prior to being discarded, recycled, or discharged. Waste materials containing benzene that are recycled are included in this definition because of potential emissions from the recycling process. Wastes containing benzene generated by chemical plants, petroleum refineries, and coke by-product recovery plants may be treated onsite, discharged to a publicly owned treatment works, or accumulated for offsite shipment to a commercial hazardous waste treatment, storage, and disposal facility (TSDF). Because commercial TSDF's and CERCLA (Superfund) cleanup sites may receive or generate benzene-laden wastes for treatment and disposal, they also are included in the scope of this assessment. Although EPA's analyses focus on chemical plants, petroleum refineries, coke by-product recovery plants, and commercial TSDF's, any standards placed on benzene waste operations would be applicable to any waste containing benzene.

In general, the majority of benzene air emissions from waste management processes are released from storage or treatment operations conducted in open or covered tanks or in surface impoundments. Treatment operations include (but are not limited to): chemical or biological operations; separation processes such as oil/water separation, steam or air stripping, TFE, fractionation, or solvent extraction; destruction technologies such as incineration; and fixation/stabilization processes. Emissions also are released due to handling operations (including loading and filling of drums, dumpsters, tank cars or tank trucks) and storage of wastes in containers. Benzene emissions also may be released from waste disposal operations involving wastepiles, land treatment, landfills, and injection wells.

2. Basis for Emission Estimate

Benzene emissions are released to the air from waste operations as a result of storing, treating, transferring, or disposing of the waste in various types of units. The quantity of waste at a facility and the benzene concentration in the waste define the quantity of benzene in the waste and place an upper bound on the benzene emission potential. Whether the benzene is present in aqueous wastes or organic wastes is important because of the effect on the volatility of benzene and potential emission rates. In addition, knowledge of the types and sequence of storage, treatment, and disposal processes is needed to estimate the quantity of benzene likely to be emitted. These and other types of information were assembled from a variety of existing data sources to provide the basis for the emission estimates underlying today's proposed standards.

a. Emission Source Data. Waste management processes and the quantity of resultant air emissions differ widely among facilities and industries. Waste operations at chemical plants, petroleum refineries, coke by-product recovery plants, and commercial TSDF's are estimated to emit approximately 5,300 Mg/yr benzene. Emission measurements were not made at the facilities; however, the estimates are based on typical emission factors and data supplied by the facilities, such as information on waste quantity, concentration, and types of waste processing. A detailed site-specific analysis of any facility in the data base could result in emission estimates significantly different from EPA's estimates.

The EPA's data base for this assessment includes 390 facilities that have waste streams containing benzene. The benzene emissions from waste operations range from very low levels to high levels at some facilities. Although all facilities or waste streams containing benzene may not be included, the benzene data base encompasses the facilities and wastes likely to account for the majority of potential benzene emissions from waste operations. Following is a brief description of the data sources used, the methodology used to estimate emissions, and the associated uncertainties. Additional information is provided in the detailed documentation included in Docket A–89–06, Item II–B–2.

To develop the data base for benzene waste operations, EPA reviewed existing data sources to identify waste streams that contain benzene. For facilities with benzene wastes, information was compiled on the quantity of waste; the type of waste (organic or aqueous); the benzene concentration in the waste; and the types of units used to store, treat, or dispose of the waste. These four items provide the basic data needed to estimate benzene emissions from waste operations. The data sources did not provide complete information for every

waste stream at each facility. When needed, estimates and engineering judgments were made by EPA to fill data gaps.

Five existing EPA data sources served as the primary sources of information for the assessment. The majority of these data were supplied by industry through questionnaires that were completed by the facility and submitted to EPA. These data were gathered by EPA to characterize hazardous wastes, the processes that generate them, and how they are managed to support the development of regulations under RCRA, as amended. The ISDB was developed by EPA in the early 1980's from site visit reports, measurements, and questionnaire responses from facilities that generate hazardous wastes. The ISDB contains information on approximately 1,500 waste streams generated at 370 facilities. The EPA also compiled similar data for petroleum refineries that is referred to as PRDB. For the purposes of the benzene waste analysis, data were identified for 164 facilities from the ISDB and the PRDB. Another major source of data was EPA's 1987 National Survey of Hazardous Waste Generators (Generator Survey). Responses from the Generator Survey were received from the 1,000 largest hazardous waste generators in the United States, a stratified sampling of the remaining generators, and most hazardous waste TSDR. Complete data on benzene wastes were obtained for another 114 facilities from this survey. Prior to the Generator Survey, EPA also conducted a survey in 1986 of approximately 3,000 hazardous waste TSDR. The 1986 TSDR Survey provided benzene waste information on an additional 75 facilities that were not included in the other sources of data.

The 1986 TSDR survey and a portion of the PRDB did not contain data on the concentration of benzene in the wastes. However, information was available from these sources on the waste code, quantity, and types of processes. To use these data to estimate emissions, average benzene concentrations were generated from the concentration data in the Generator Survey results for combinations of RCRA waste codes, waste forms, and SIC codes. These average concentrations were applied to facilities identified in the PRDB that had missing concentration data and to the facilities in the 1986 TSDR Survey. Concentration data were available for approximately 75 percent of the wastes (based on waste quantity) in the benzene data base. The remaining 25 percent of the wastes were assigned average concentration values as described above.

An additional data source used to assess benzene waste was an EPA study conducted from 1978 to 1980 to verify the occurrence of specific priority pollutants in wastewater from a variety of processes in the organic chemicals, plastics, and synthetic fiber industry. This data source contained information on 37 plants, and 13 of these were identified as having benzene in their wastewater. For these plants, data were available for benzene concentration, waste quantity, and type of processing. Additional data on benzene in wastewater were obtained from the EPA development document for effluent limitations for the cokemaking subcategory of the iron and steel industry. This document provided both an average and a range of benzene concentrations in raw wastewater at coke by-product recovery plants and the amount of wastewater produced as a function of the coke capacity. The average values were used to estimate waste quantities and benzene concentrations for 24 coke by-product recovery plants that were not included in the other sources of data.

b. Estimates of Fraction Emitted. After compiling the data base on benzene waste operations, the next step was to estimate how much of the benzene in the waste would be emitted, given the type of waste and the process unit used for handling the waste. The emission factors used in this analysis were based on previous work done by EPA in developing air emission standards for hazardous waste TSDF's and in developing guidance for control of industrial wastewater treatment systems. The emission factors, expressed as the fraction of benzene in the waste that is emitted, were developed for 12 types of emission sources: containers, filtration, incineration, landfills, land treatment, oil/water separators, solidification, surface impoundments, tanks, truck loading, waste piles, and wastewater treatment systems. The estimated fraction of the benzene in the waste that is emitted in these sources ranged from less than 1 percent (e.g., for containers, truck loading, incineration) to high values approaching 100 percent for open sources (such as wastewater treatment, surface impoundments, and land treatment). Estimates from the April 1989 draft CTG on industrial wastewater treatment revealed that 94 to 99 percent of volatiles such as benzene are emitted in the wastewater treatment system. This estimate includes the entire transport and treatment train from the first process drain to the final effluent. Surface impoundments are also open sources that are estimated to emit most of the benzene in the waste. Estimates from the March 1988 hazardous waste TSDF draft information document indicated that roughly 50 to 100 percent of the benzene would be emitted when the waste is placed in a surface impoundment. For land treatment, the estimates ranged from 85 to 100 percent.

These emission factors are average values derived from a range of values for specific units. Depending on the unit's design and operation, the emission factor for a specific process at a given facility may be higher or lower. The emission factors are based on model units and mathematical models that were derived from mass transfer theory, laboratory measurements, and field evaluations. A detailed description of the models and comparisons of the model predictions to field measurements are given in the December 1987 TSDF air emission models document. The model units used in the emission models were derived from statistical summaries of design and operating parameters of units typically found at hazardous waste facilities. For a given type of process, the emission estimates for the different model units were combined to develop an average estimate.

Separate factors were derived for benzene dissolved in other organics and for benzene dissolved in water to reflect the effect on the volatility of benzene. Because of benzene's low solubility in water and high vapor pressure, benzene is highly volatile in wastewater or aqueous wastes. However, when benzene is dissolved in a mixture of similar organic compounds, it exhibits a lower volatility than in aqueous wastes (when compared at the same concentration). This distinction is not important for wastes processed in open area sources with a relatively long retention time because a high percentage of the benzene will volatilize, regardless of whether it is in an organic waste or aqueous waste.

The process information from the data sources indicated that the wastes are usually managed in a series of individual units. For example, a typical series could include a storage unit, treatment unit, and final disposal. A total of 58 processing sequences composed of one or more of the individual units was identified from EPA's data base. The fractions emitted for the individual units were combined to reflect an overall fraction emitted for each sequence of units. For example, a processing sequence composed of two individual units, both with a fraction

emitted of 0.5, would yield an overall fraction emitted of 0.75, indicating that 75 percent of the total benzene in the waste would be emitted.

Benzene emissions were estimated for each reported waste stream in the data base by multiplying the waste quantity times the benzene concentration times the fraction emitted for the given process sequence. The estimate for each waste stream was then summed for each facility to provide an estimate of the facility's emissions from benzene waste operations.

c. Uncertainties. There are several sources of uncertainty in the benzene emission estimates. One source of uncertainty is the waste benzene concentrations used in the computation of emissions. Actual measurements of benzene concentration in the wastes were available only for the effluent guidelines data and for a portion of the ISDB. The majority of the benzene concentration data provided by facilities was reported as being within a range of concentrations (e.g., 1 to 10 ppm, 10 to 100 ppm, etc.). For this analysis, the midpoint of the range was used to estimate emissions. If the actual concentration is typically at the upper or lower end of the range, actual emissions could be higher or lower than the estimates. Similarly, for the 25 percent of the waste quantity for which average concentrations were used, actual emissions from a waste stream could be higher or lower than the estimate to the extent that the actual benzene concentration is higher or lower than the average value used. The use of average and midrange values for benzene concentration should not introduce significant errors in estimates of total nationwide emissions.

Even where reported benzene concentrations were based on measured values, there is also potential for error. This potential error relates to the sampling point and the loss of benzene during sampling and analysis. For highly volatile compounds such as benzene, the total recovery after sampling and analysis is likely to be less than 100 percent because of losses during sample handling, storage, and analysis. The sampling point is important because not all of the concentrations were reported for the point of generation. If the reported concentrations were for the waste after transport, storage, or mixture with other wastes, then benzene losses from volatilization are likely, and the actual concentration would be higher than the reported value. An example is the effluent guidelines data, which often provided EPA source test measurements for mixed waste-waters in an equalization basin. Some of the individual benzene-containing streams may have been collected in sumps, transported in sewers, or processed in an oil/water separator prior to entering the equalization basin. Consequently, the reported concentrations would not reflect benzene losses prior to the sampling point. The net effect of loss of benzene during processing before the sampling point or during sampling and analysis is an underestimate of benzene emission. There were insufficient data on sampling locations, individual waste stream, and other specifics about the system to correct for this potential underestimate.

Another source of uncertainty in estimating benzene emissions from wastes is the waste quantities used. The information on waste quantity was generally provided by each facility. If this quantity was based on detailed historical records and was reported accurately, significant errors may not be introduced. However, investigation of some of the survey responses has shown that the facilities did not report all of their waste streams, and there is no assurance that the quantity of all benzene-containing waste was reported for each facility. Some facilities failed to report wastewaters and other hazardous wastes that are processed in units that have been exempted from RCRA permitting requirements, even though the information was specifically requested in the Generator Survey. The overall effect of incomplete reporting of waste streams is a likely underestimate of benzene emissions. There was no attempt made in the analysis to account for this potential underestimate because adequate data on unreported wastes were not available.

The estimates of fraction emitted are a significant source of uncertainty in the emission estimates for specific facilities. The values in this analysis are average or typical values; however, the actual fraction emitted for a given type of unit may be higher or lower than the typical value used. Many site-specific factors in the unit's design and operation (such as retention time, surface area, whether open or covered, quiescent or aerated) may result in actual emissions that are higher or lower than the estimates. The estimated effect of biodegradation is included as a competing removal mechanism in the estimates for wastewater treatment, impoundments, and land treatment. The only other removal mechanism included in the modeling is removal with the effluent in flowthough units. To the extent that benzene is removed significantly during treatment by some other mechanism or unknown process, emissions may be overestimated. Detailed site-specific design and operation information was not available for improved emission estimates.

Additional errors are introduced when the individual units are combined to form a processing sequence. The ISDB and the Generator Survey provided the most complete information on the sequence of units. However, assumptions were required to estimate the fraction emitted for several sequences. For example, the facilities did not generally report the individual streams that might be generated when the waste is dewatered or when it enters an oil/water separator. For dewatering and oil/water separators, assumptions were required for the quantity of wastewater and the quantity of sludge or oil that was produced. Another assumption made for the processing sequences was that solidification generally procedes disposal in a landfill or waste pile. For plants in the 1986 TSDR Survey, the general types of process units were identified but the actual sequence of units was not given. An assumption was made that the sequence is generally storage (in tanks or containers), followed by treatment (e.g., wastewater treatment), followed by disposal (land treatment, landfill). The potential errors introduced by the processing sequences may result in either over or underestimates of emissions.

Other uncertainties are introduced in the assumed level of control already in place. The estimates of baseline emissions assume that emission control devices are not used on tanks and other sources, that containers and tank trucks are splash-filled, and that wastewater treatment tanks, impoundments, landfills, waste piles, and land treatment facilities are open area sources that are not covered. In addition, organic liquids are assumed to be handled in covered tanks while aqueous wastes are assumed to be handled in a mixture of open and covered tanks. If emissions from these sources are controlled more than the assumed status, emissions are likely to be lower than estimated. However, the baseline level of control used in this analysis is expected to be reasonable based on available data.

In summary, the cumulative effect of these uncertainties is that the actual emissions from a specific facility may be higher or lower than what is estimated from the data base. Considering all of the uncertainties in the analysis, several factors suggest that total nationwide emissions may be underestimated.

These factors include: (1) Not all benzene waste streams were reported for each facility, (2) all facilities with benzene in their waste were not included, and (3) benzene losses may have occurred prior to or during sampling and analysis, causing measured benzene concentrations in wastes to be lower than actual. To improve the estimates, more detailed and complete information would be needed for all wastes containing benzene and for the units used to store, treat, or dispose of these wastes. However, the benzene data base encompasses the facilities and wastes likely to account for the majority of potential benzene emissions from waste operations.

3. Control Techniques

Several types of controls and control combinations can be applied to benzene waste operations. In general, air emission control systems can be based on (1) covers or enclosures that suppress or contain emissions such as fixed roofs, floating roofs, and floating membranes, (2) covers or enclosures with closed vent systems and control devices such as carbon adsorbers or vapor incinerators, (3) treatment processes to remove organics, (4) waste incineration, and (5) other techniques such as process modifications. These control techniques are discussed below.

a. *Covers or Enclosures.* Covers or enclosures reduce organic air emissions by suppressing the generation and loss of vapors containing the organics. Types of covers include fixed roofs, internal floating roofs and external floating roofs for tanks, covers for containers, and floating synthetic membranes for surface impoundments. Types of enclosures include air-supported or rigid enclosures for surface impoundments and container treatment or storage. Fixed roofs are applicable to open quiescent storage or treatment tanks and achieve emission reductions of 86 to 99 percent for open sources, depending on the volatility and concentration of benzene in the waste. Fixed roofs also may be used on open tanks that are mixed or aerated. For these sources, dome-shaped roofs may be used to allow room for the operation of surface-mounted aerators or agitators. Additional information on the efficiencies of fixed roofs for open storage or treatment tanks is included in Docket A–89–06, Item II–A–4.

External floating roofs are rigid covers that float on top of the waste in a tank and have a flexible seal along the periphery to control volatilization of organics from the space between the roof deck and the tank wall. These roofs are widely used in the petroleum industry on tanks containing volatile organic liquids. In waste management operations, they are applicable to quiescent storage or treatment tanks and are capable of reducing emissions by 93 to 97 percent relative to open tanks. External floating roofs may not be appropriate for tanks storing certain corrosive or solvent wastes because of potential incompatibilities between the waste and the roof seal.

Internal floating roofs are similar to external floating roofs except that internal floating roofs are used in conjunction with a fixed roof. These roofs can be applied to tanks that already have a fixed roof or can be applied along with a fixed roof to uncovered tanks. The control efficiency of internal floating roofs used in conjunction with fixed roofs is estimated to range from about 93 to 97 percent relative to fixed roof tanks. As with external floating roofs, internal floating roofs may not be applicable to tanks containing certain corrosive or solvent wastes.

Covers are also effective means of reducing emissions from containers, such as drums or dumpsters, that are used in waste management operations. Container covers are devises that fit snugly over the top of the unit to contain organic vapors and prevent their release to the atmosphere. Air emissions can be reduced or eliminated by keeping the cover closed at all times during waste storage and handling, except when waste is being added to or removed from the container.

A floating synthetic membrane is a large sheet of synthetic material that can be used as a cover for certain waste management units such as quiescent surface impoundments. These covers may float directly on the liquid waste surface or may be supported above the waste by a system of pontoons. The control efficiency of these covers is a function of the fraction of surface area covered, the permeability of the membrane material, and the operating practices used. A control efficiency of 85 percent or greater is estimated for a range of applications that include impoundments of various configurations.

b. *Closed Vent Systems and Control Devices.* Covers or enclosures may be used in combination with closed vent systems that transport emissions to a control device. Closed vent systems and control devices are applicable to open tanks, surface impoundments, treatment processes, individual drain systems, and oil-water separators. Control devices may include gas-phase carbon adsorption, vapor incineration (thermal or catalytic), flares, or condensers. Gas-phase carbon adsorption is widely used to control emissions of organics. Carbon adsorption systems can be designed to achieve a high removal efficiency by taking into account the organic constituents the humidity conditions of the gas stream. Well-designed and operated gas-phase carbon adsorption systems can consistently remove at least 95 percent of many organics, including benzene, from an emission stream. This estimate of control efficiency assumes that if the carbon is regenerated, the emissions from condenser vents associated with the regeneration process are controlled.

But thermal and catalytic vapor incineration also are widely used for organic vapor destruction in industrial settings. Thermal vapor incineration is achieved by using a proper combination of temperature, residence time, and turbulence to convert combustible material to carbon dioxide and water. Catalytic vapor incineration uses a metal or alloy-based catalyst to promote combustion reactions at temperatures lower than those required for thermal oxidation. Properly designed and operated thermal and catalytic incinerators can achieve destruction efficiencies of at least 98 percent, although both may require auxiliary fuel to maintain stable flame conditions if used on a stream with a variable or low organic content.

Flares may also be used to control benzene air emissions. Steam or air-assisted flares have been shown to achieve combustion efficiencies of at least 98 percent on organic vapors having a heat content greater than 11.2 Megajoules per cubic meter at standard conditions (MJ/scm), which is equivalent to 300 British thermal units per cubic feet at standard conditions (Btu/scf) when designed according to the requirements of 40 CFR 60.18. Nonassisted flares burning gases with heat contents of 7.45 MS/scm (200 Btu/scf) or more also can achieve combustion efficiencies of at least 98 percent.

Control of benzene air emissions may also be obtained using condensers. Condensers convert gas or vapor to liquid form by lowering its temperature or increasing its pressure. Condensation may be carried out in either contract condensers or surface condensers. Contact condensers are unlikely to be used in waste management operations because the resultant stream would create additional residues for treatment and disposal. Surface condensers most often consist of a shell and tube heat exchanger where the gas stream flows

into a cylindrical shell and condenses on the outer surface of tubes that are chilled by a coolant flowing inside the tubes. While condensation is effective for use on gas streams with a high concentration of low volatility organics, it is not as effective for gas streams containing either very low organic concentrations or high volatility organics. Well-designed condensers used to control appropriate organic air emissions streams will achieve control efficiencies in excess of 95 percent.

c. *Treatment Processes to Remove Organics.* Organic removal processes such as steam stripping and TFE can be used to eliminate volatile components such as benzene from the waste stream before the volatiles are released from the subsequent waste treatment processes. Steam stripping involves the fractional distillation of volatile constituents from a less volatile waste stream. Removal efficiencies on the order of 95 to 100 percent are achievable for volatile compounds in general, and removal efficiencies of 98 to 99 percent are expected for benzene. Both batch and continuous processes are well-demonstrated and are commonly used to remove organics from aqueous streams such as process wastewater. The products and residues from steam stripping include the condensed vapors (condensate), noncondensible gases, and the treated waste or effluent. The condensate usually is decanted to remove any separate organic layer from the aqueous layer with recycle of the aqueous condensate back to the feed stream. The separate organic layer may be placed in tanks or containers for recovery or reuse as product or fuel. Air emissions from these tanks or containers can be controlled as discussed above. The noncondensibles released through the condenser or decanter vent can be transported by a closed vent system to a control device. Other emission sources may include vents from storage, blending, or accumulation tanks prior to the unit; the tank controls discussed above also can be applied to these vessels.

In general, batch or continuous steam stripping processes may not be suitable for treatment of certain waste such as sludges. Sludges and slurries (i.e., mixtures or liquids and solids) can be treated by TFE processes. Also, TFE can be used for organic liquids and organic/aqueous (two-phase) mixtures. The TFE process is designed to promote heat transfer by spreading a thin-layer film of liquid or sludge on one side of a metallic surface while supplying heat to the other side. A mechanical agitator aids the transfer of heat to the material by exposing a large surface area for the evaporation of volatile compounds and agitates the film to maintain the solids in suspension without fouling the heat transfer area. This organic removal process can achieve removal efficiencies for benzene comparable to those for steam stripping. An EPA pilot-scale test on TFE performance in removing organics from petroleum refinery wastes found that 98.4 to 99.99 percent of the volatiles were removed. Emission sources associated with TFE include the overhead condenser vent, vents on blending, storage, or accumulation tanks prior to the unit, and vents on storage tanks containing any recovered organics. Emissions from these vents can be controlled by the control systems discussed above for steam stripping.

d. *Waste Incineration.* Waste destruction is another means by which air emissions from waste can be reduced. A properly designed and operated waste incinerator (liquid injection, rotary kiln, fluidized bed, and multiple hearth), with additional afterburner and flue gas handling systems can achieve a destruction efficiency of 99.99 percent. Incineration of benzene-containing solids where benzene is a small fraction of the mixture may also require supplemental fuel.

e. *Other Control Techniques.* In addition to the techniques described above, work practices and process modifications can also reduce emissions. Submerged filing is a work practice that can reduce emissions during container loading. During loading of liquid waste into containers, if the fill pipe does not extend below the liquid surface or is not permanently attached to the bottom of the container, splashing can occur resulting in organic vapor generation and emissions to the atmosphere through the containers opening. Emissions are reduced substantially if the end of the fill pipe is submerged below the surface of the waste during loading. This control technique is applicable to loading of liquid wastes into containers and has been estimated to reduce emissions from waste loading operations by 65 percent relative to splash filling.

The EPA also has identified one type of process modification that could potentially reduce air emissions from the management of petroleum refinery wastes. Delayed coking is a process used in some petroleum refineries to recover useful products from the heavy ends of the raw petroleum. Coking is an alternative to land treatment or landfilling of petroleum refinery wastes. Air emissions are believed to be low because the process is performed in a closed system. With the use of a closed system, volatiles driven off by the high heating temperatures used in the process can be controlled by recycling emissions back to the process or by venting emissions to a control device. Although no definitive data are available to permit a direct comparison of emissions, use of the delayed coking process for petroleum refinery waste is expected to reduce air emissions.

4. Estimates of Exposure and Risk

Benzene emissions from the 390 facilities identified in EPA's data base on waste operations are estimated at 5,300 Mg/yr. Emissions from these facilities were modeled using the HEM to estimate the benzene concentrations and population exposures within 50 km of the facilities. Detailed documentation of the analysis is included in Docket No. A–89–06, Item II–B–1. The baseline incidence was estimated at 0.3 cancer case/year with a baseline MIR of 8×10^{-3}. The majority of these incidences occur in the population exposed to risk levels of 1×10^{-6} or higher.

5. Basis for Proposed Standard

Decision on Acceptable Risk. The baseline MIR of 8×10^{-3} is above the benchmark and is considered unacceptable for benzene, a known human carcinogen. The EPA examined several alternatives in deciding what constitutes acceptable risks. Those alternatives and the risks are illustrated in Table D–1. After examining these different alternatives and the associated risk distributions, EPA decided that Alternative 1 represents a risk that is acceptable for benzene waste operations. Control to the level of Alternative 1 reduces the MIR to 1×10^{-4}, and fewer than 10 people are estimated to be exposed to 1×10^{-4} with an incidence of less than 0.0001 case. In addition, EPA estimated that the majority of the people (greater than 99.9 percent) exposed to benzene from this source category would be exposed to a risk level less than 1×10^{-6}. For those exposures exceeding 1×10^{-6}, the incidence is only 0.004 case/year in an estimated population of 90,000. The total cancer incidence remaining after control to the level of Alternative 1 is estimated to be 0.03 case/year and 80 percent of this incidence is associated with exposure at risk levels less than 1×10^{-6}. In estimating these risk levels, EPA has not found that colocation of facilities significantly affects the magnitude of the MIR.

TABLE D–1.—BENZENE WASTE OPERATIONS: RISK INFORMATION

Alternative	Maximum individual lifetime risk	Incidence (Case/yr)	Incremental incidence reduction
Baseline	8×10^{-3}	0.3	
1	1×10^{-4}	0.03	0.3
2	1×10^{-4}	0.01	0.01
3	1×10^{-4}	0.007	0.003
4	1×10^{-6}	0.002	0.005

Note: All risk estimates are rounded to one significant figure. Due to independent rounding, figures given in the table may not sum to the value given.

The EPA also considered the noncancer health effects associated with benzene exposures at levels comparable to an MIR level of 1×10^{-4}. Noncancer health effects have been associated with exposure to benzene, but the concentrations reported to produce such effects are at least two to three orders of magnitude above the exposures predicted for these sources. After considering all these factors, EPA judged the emission level associated with Alternative 1 to be acceptable.

Decision on Ample Margin of Safety. The EPA considered selecting a level of emissions more stringent than that associated with the acceptable risk to provide an ample margin of safety. To reduce the complexity of studying the costs and benefits of all different combinations of control options, EPA has defined a combination of technically feasible controls that could be applied to the waste streams containing benzene. Alternative control options were then defined based on the quantity and concentration of benzene in the waste generated or handled by facilities. The alternatives considered by EPA and impacts of each alternative are presented in Table D–2. For the first three alternatives presented, emission reductions would be achieved by applying the same controls to a large number of waste streams depending on the quantity and concentration of benzene in the waste. For each of the first three alternatives, any further emission reductions would require reductions in the quantity of waste and cannot be obtained by the application of additional controls. The fourth alternative cannot be achieved by the application of controls alone and would require reductions in the quantity of benzene waste. Therefore, no cost estimates were assessed for this alternative.

TABLE D–2.—BENZENE WASTE OPERATIONS: CONTROL OPTION IMPACTS

Alternative	Annual cost $ MM/yr (1986)	Benzene emission reduction (Mg/yr)	Incremental emission reduction (Mg/yr)
Baseline			
1	39	5,100	5,100
2	43	5,200	140
3	58	5,200	30
4		5,300	70

Regulatory Status: The analysis assumes that air emissions from benzene waste operations are not controlled under current regulations.

Comments:

Baseline: No rule. Baseline emissions are about 5,300 Mg/yr.

Alternative 1: Controls are applied if benzene quantity at a facility exceeds 10 Mg/yr and the concentration of an individual waste stream exceeds 10 ppm.

Alternative 2: Controls are applied if benzene quantity at a facility exceeds 2 Mg/yr and the concentration of an individual waste stream exceeds 10 ppm.

Alternative 3: Controls are applied if benzene quantity at a facility exceeds 0.2 Mg/yr and the concentration of an individual waste stream exceeds 0.5 ppm.

Alternative 4: Sets a benzene quantity and emission limit of 0.06 Mg/yr for a facility.

NOTE: Controls include steam stripping for wastewater, thin-film evaporation for sludges and incineration for organic liquids. Waste management units located ahead of the treatment process would include submerged fill and covers for containers and 95-percent control devices for tanks and other sources that are covered and vented.

In comparing Alternative 1 with Alternatives 2 and 3, EPA found that the alternatives provide essentially the same level of risk protection. Each alternative reflects a significant risk reduction in comparison to the baseline risks and the MIR remains at 1×10^{-4}. The number of people exposed to a risk level between 1×10^{-4} and 1×10^{-6} would be reduced from 90,000 under Alternative 1 to 20,000 under Alternative 2. Under both options, the vast majority of the exposed population (greater than 99.9 percent) would be at risk levels of less than 1×10^{-6}. The total nationwide incidence would be reduced from 0.03 case/year under Alternative 1 to 0.01 case/year under Alternative 2 or by an additional 0.02 case/year. Most (about 90 percent) of the additional reduction in incidence under Alternative 2 compared to Alternative 1 occurs in the population exposed to risks in the 1×10^{-6} range or lower. In addition, benzene exposures reported to produce noncancer health effects are at least two to three orders of magnitude above the exposure levels predicted under either alternative. Therefore, noncancer health effects do not enter into the decision.

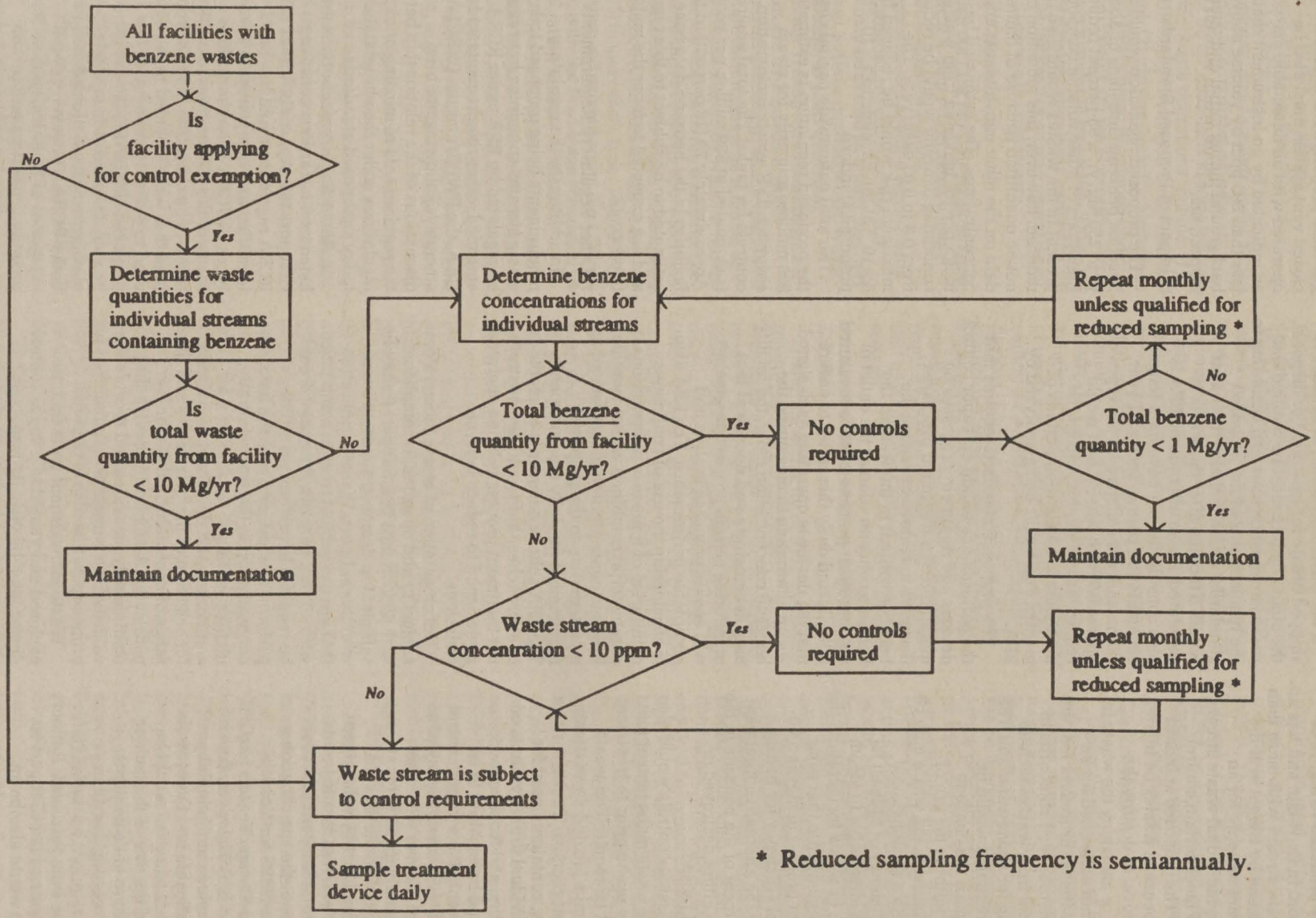
Alternative 1 reduces benzene emissions by about 95 percent and application of further control achieves an additional 1 to 3 percent reduction. The additional control levels beyond Alternative 1 would increase the annual costs by about $4 million and $19 million per year, respectively.

In conclusion, EPA decided that the emission level of Alternative 1 will protect the public health with an ample margin of safety. The EPA judged the risk reductions of Alternative 1 and the additional control levels to be essentially the same. Moreover, while the additional cost of Alternatives 2 and 3 are relatively small, they are disproportionately large in comparison to the small emission and health reductions achieved.

Summary and Basis for Format of Standards. The proposed standard is applicable to all facilities that manage benzene wastes and requires waste treatment and air emission controls at those facilities that do not qualify for specific exemptions. The proposed regulatory approach is shown schematically in Figure D–1. As shown in the figure, the facility can apply for exemptions to the control requirements. If the facility produces less than 10 Mg/yr of total waste that contains benzene, then it would be exempt from the requirements of the proposed standards (except for maintaining documentation on the quantity of benzene waste) unless a process change occurs that increases the quantity of benzene waste. Alternatively, a facility may demonstrate that the total quantity of benzene in the waste is less than 10 Mg/yr and thereby be exempt from the proposed control requirements. This determination would be made through measurements of the benzene concentrations in the individual waste streams and calculating the total quantity of benzene from the facility. If a facility qualifies for this exemption, periodic measurements of the benzene concentration in the waste streams would be required. However, if the total benzene quantity is less than 1 Mg/yr, the facility would be required only to maintain documentation of the quantity of benzene in the waste, unless a process change occurs that increases the quantity of benzene in the waste. An additional exemption from the control requirements would be allowed if the initial measurements of the benzene concentrations in the individual waste streams are less than 10 ppm by weight. However, the facility must conduct periodic measurements of the benzene concentration to show that the waste stream continues to meet the concentration exemption.

BILLING CODE 6560-50-M

FIGURE D-1. BENZENE WASTE OPERATIONS



* Reduced sampling frequency is semiannually.

BILLING CODE 6560-50-C

If the facility produces 10 Mg/yr of benzene or more in its waste and has an individual waste stream with more than 10 ppm of benzene by weight or if the facility elects not to apply for an exemption, the individual waste stream would have to meet certain control requirements. The proposed standard requires that benzene wastes be treated to reduce, remove, or destroy the benzene prior to managing the waste in units that are not controlled for air emissions. Treatment processes that are required by the proposed standards to remove benzene from wastes include steam stripping for wastewater and TFE for sludges. Treatment would be required to reduce the benzene concentration without the use of dilution. Alternatively the waste may be incinerated with a demonstrated destruction efficiency of at least 99 percent. As an alternative to steam stripping, TFE, or waste incineration, the facility may demonstrate that some other treatment process achieves a 99-percent control efficiency for benzene emissions. For the alternative treatment process, 99 percent of the benzene in the waste must be either destroyed or recovered and reused.

Benzene emission controls would also be required for waste management units that handle the waste prior to treatment and would not be required on waste management units located downstream of the treatment process. Tanks, surface impoundments, containers used for treatment, individual drain systems, oil-water separators, and treatment processes would be required to be enclosed and vented to a vapor control device that achieves an efficiency of at least 95 percent. Covers would be required for containers used for storage and transport, and waste must be loaded into containers by submerged fill. Internal or external floating roofs would be acceptable alternatives for tanks if they meet the specifications required by the NSPS for Volatile Organic Liquid Storage Vessels (40 CFR part 60, subpart Kb). However, the size and vapor pressure cutoffs in Subpart Kb are not applicable and the controls for this proposed standard would be independent of the size of the tank or the vapor pressure of its contents. Floating roofs meeting the same specifications required by the NSPS for VOC Emissions from Petroleum Refinery Wastewater Systems (40 CFR part 60, Subpart QQQ) would also be an acceptable alternative for oil-water separators except for small portions of the separator where a floating roof is infeasible.

If the waste that contains benzene is shipped offsite for treatment or disposal, the offsite facility must be notified that the waste must be managed according to the requirements of the proposed standards, which includes treatment within 6 months after the waste is generated. As an alternative, EPA is also considering the need for a longer accumulation period, such as 1 year. Comments are solicited on the types of operations and wastes that would require accumulation, and on the maximum accumulation periods of 6 months and 1 year being analyzed by EPA.

The proposed standard requires that the performance of add-on vapor control devices and treatment processes be monitored. For treatment processes designed to remove or reduce the benzene content in the wastes, the benzene concentration at the outlet of the treatment process must be measured initially and daily thereafter to ensure that the device is operating as designed. As an alternative to measuring the benzene concentration daily, the facility may demonstrate and document that monitoring certain process parameters will ensure proper operation and acceptable performance. The EPA also is considering the use of continuous monitoring of a process or operational parameter(s) combined with a monthly benzene concentration measurement as an alternative to the proposed requirement for daily measurements. The EPA solicits comments on methods or approaches that would demonstrate the treatment process is being operated as designed to reduce benzene emissions.

Documentation of waste incinerators subject to and operated in compliance with 40 CFR part 264, Subpart O shall be sufficient to demonstrate compliance with this subpart. Waste incinerators that are not subject to or in compliance with 40 CFR part 264, Subpart O would be required to perform an initial performance test, measure the benzene concentration in the waste initially, identify a process parameter(s) for monitoring, and document the criteria for selection of that parameter and the range of acceptable values for the parameter. A monitoring device that continuously measures and records the values of the parameter(s) monitored for proper operation also is required.

Waste management units that are enclosed and vented to a vapor control device must be visually inspected (initially and quarterly thereafter) to ensure that no gaps or cracks occur in the enclosure or closed vent system and that all openings are closed and gasketed properly. The enclosure and closed vent system must also be operated with no detectable emissions, as indicated by an instrument reading of less than 500 ppm by volume above background during initial and quarterly inspections.

6. Impact of Proposed Standards

The proposed regulation would reduce baseline benzene emissions of 5,300 Mg/yr to 250 Mg/yr, a 95-percent reduction. Emissions of other volatile compounds present in the wastes would also be reduced; however, this reduction could not be quantified because of limited data on the other constitutents and their concentrations. The estimated baseline incidence for leukemia from wastes containing benzene would be reduced from 0.3 to 0.03 case/year. The maximum risk would be reduced from 8×10^{-3} at the baseline to 1×10^{-4} by the proposed standard.

The total nationwide capital cost of the proposed regulation is estimated at $65 million, primarily for steam stripping, TFE, waste incineration, and controls for tanks. The total annual cost is estimated at $39 million per year. Approximately 70 (18 percent) of the 390 facilities in the benzene data base are estimated to be subject to this regulation and are expected to incur the majority of these costs.

7. Other Regulatory Requirements

In addition to the regulatory requirements being proposed today, waste streams containing benzene may be regulated by EPA under RCRA, as amended, other requirements under the CAA, the FWPCA, or the CERCLA, as amended. Following are brief discussions of the relationship between the requirements of existing or expected regulations under the above statutes and today's proposed standards.

a. *RECA Requirements.* Benzene is listed as a hazardous constituent in 40 CFR part 261, Appendix VIII of EPA's RCRA regulations, and has been identified as a component in several types of RCRA-listed hazardous wastes. Many of the 390 facilities identified as likely to be subject to today's proposal (and that were included in the data base used to estimate impacts for this proposed NESHAP) also are expected to be subject to hazardous waste management regulations developed under RCRA. However, several categories of facilities, such as small quantity generators and certain wastewater treatment units, are exempt from the RCRA permitting requirements. Today's proposed NESHAP for air emissions from benzene waste

operations would apply to sources subject to RCRA permitting requirements as well as those not subject to RCRA.

Regulatory requirements under RCRA that may have a direct or indirect impact on air emissions associated with benzene waste operations include: (1) the LDR being developed under section 3004(m), (2) air standards for hazardous waste TSDF's being developed under section 3004(n), (3) the Corrective Action program mandated by section 3004(u), and (4) existing standards under 40 CFR part 264 for the design and operation of hazardous waste incinerators.

Disposal Restrictions

Under the LDR (40 CFR parts 267 and 268), RCRA-listed hazardous wastes must be treated to reduce concentrations of specific constituents or hazardous properties before the waste may be placed in a land disposal unit (e.g., surface impoundment, waste pile, landfill, or land treatment operation). Treatment standards under the LDR are expressed as either concentration limits to which individual toxic constituents must be reduced or specific technologies by which a waste must be treated. Both the concentration limits and the technology specifications are established on the basis of treatment technologies identified as BDAT for each particular waste type. The EPA is proposing and promulgating the LDR in stages, with the final stage scheduled for promulgation in 1990. Additional information on LDR can be found in 51 FR 19300, May 28, 1986; 51 FR 40572, November 7, 1986; 52 FR 25760, July 8, 1987; 53 FR 11742, April 8, 1988; 53 FR 15000, May 17, 1988; 53 FR 31138, August 17, 1988; and 54 FR 1056, January 11, 1989.

Treatment standards have not been established for benzene as a spent solvent, as a component in waste commercial products and intermediates, or as an ignitable waste. Therefore, these benzene wastes are not currently affected by the LDR. However, treatment standards for certain wastes specific to the petroleum refining industry have been promulgated that include concentration limits for benzene in waste and wastewaters (53 FR 31138, August 17, 1988). For these waste streams, the limitation for benzene in nonwastewaters is 9.5 milligrams per kilogram (mg/kg) and for wastewater is 0.011 milligram per liter (mg/l). Although any nonprohibited technology can be used to meet these levels, these levels are based on the use of solvent extraction or fluidized bed incineration for nonwastewaters and waste incineration for wastewater residuals.

Air controls are not explicitly included for emissions released from treatment devices used to comply with the LDR. Today's proposed NESHAP would apply to many of the same waste streams that are controlled by the LDR. Because the benzene concentration limits imposed by the LDR are lower than those contained in today's proposal, treatment to comply with the LDR would also likely achieve compliance with today's proposed NESHAP. The focus of today's proposed standards would be to require treatment of wastes containing benzene and to control air releases from treatment devices. Today's proposal also would control benzene air emissions from some waste streams that are not regulated under the LDR and would require controls on waste operations that precede treatment of the waste stream.

Air Standards for Hazardous Waste TSDF's

Under the authority of RCRA, section 3004(n), EPA is currently developing standards for monitoring and control of organic air emissions from hazardous waste TSDF's. For that effort, EPA has developed a three-phased approach. Under Phases I and II, EPA is evaluating control of emissions of organics as a class, which would significantly reduce emissions of ozone precursors and air toxics. As part of Phase I, standards were proposed on February 5, 1987 (52 FR 3748) for air emissions from process vents on hazardous waste management units (including distillation, fractionation, thin-film evaporation, solvent extraction, air or steam stripping processes) and leaks in piping and associated equipment handling hazardous wastes. The EPA expects to promulgate regulations under Phase I in late 1989. In Phase II, EPA is evaluating controls of organic air emissions for other TSDF sources that are not covered by the Phase I activity or by other existing RCRA requirements. These sources may include surface impoundments, storage or treatment tanks, and containers. The EPA expects to propose standards for these sources in the **Federal Register** in late 1989.

In Phase III, EPA will evaluate the risk remaining after Phases I and II and, if needed, take further steps to reduce risk to levels within the range considered acceptable by EPA. These steps may include standards for individual toxic constituents or other approaches.

The requirements of today's proposed standards are expected to overlap with the air standards developed for hazardous waste TSDF's. Hazardous waste TSDF's that generate or handle waste containing benzene will be required to meet certain aspects of today's proposed rule in addition to any existing or future requirements under RCRA. Therefore, long-range plans for control of TSDF's should consider future RCRA requirements in addition to the NESHAP requirements for benzene waste operations.

Corrective Action

Under the authority of RCRA, section 3004(u), EPA is developing rules to address releases of hazardous waste or hazardous constituents from SWMU's that pose a threat to human health and the environment. Because the corrective action program applies to contamination of soil, water, and air media, benzene air emissions may be addressed at some site-specific SWMU's. The corrective action standards under development would establish health-based trigger levels for ambient concentrations measured at the TSDF boundary to assess whether further remedial studies are required. Site-specific, health-based cleanup standards would then be set for air emissions that exceed health-based levels. When such exposure is determined, corrective action would be required to reduce emissions. Thus, benzene emissions released at a TSDF handling benzene waste may be subject to corrective action requirements. Corrective actions would be set for an individual facility and emissions would be controlled based on site-specific exposure concerns. In contrast, today's proposed NESHAP would be a nationwide standard applicable to all facilities that meet the applicability criteria and would impose uniform control requirements for all such facilities.

Incinerator Standards

Air standards for hazardous waste incinerators are currently included in 40 CFR part 264, subpart O. The rules for hazardous waste incinerators at facilities with final RCRA permits (40 CFR part 264, subpart O) require that incinerators be operated to achieve a destruction and removal efficiency of at least 99.99 percent for principal organic hazardous constituents listed in the facility's permit. Waste streams with benzene concentrations of 10 ppm or more would be subject to the NESHAP being proposed today. For those waste streams, documentation demonstrating compliance with subpart O would be sufficient to demonstrate compliance with today's proposed standards for treatment of the waste stream. Waste management units located upstream of the waste incinerator would be required

to install air emission controls under today's proposed requirements.

b. *CAA Requirements.* The standards for benzene waste operations are expected to overlap with other regulatory measures previously taken by EPA under the CAA. Under Section 111 of the CAA, EPA has established NSPS for Storage of Volatile Organic Liquids (40 CFR part 60, subpart Kb) and for VOC Emissions from Petroleum Refinery Wastewater Systems (40 CFR part 60, subpart QQQ). These NSPS apply only to new, modified, or reconstructed facilities. Today's proposed standards would apply to any new or existing facility generating or handling benzene waste, including those subject to the NSPS. Once the benzene waste quantity and concentration levels (10 Mg/yr and 10 ppm by weight) are exceeded, waste streams containing benzene would be required to meet the control requirements of today's standards. In the case of subpart Kb, for storage, identical control requirements are specified in the proposed NESHAP for benzene waste operations. However, storage tank size and vapor pressure exemptions are not included for benzene waste operations. For benzene waste operations at or above the control requirement cutoffs (10 Mg/yr and 10 ppm by weight), controls would be required for any size of tank that contains benzene wastes. For the refinery wastewater system NSPS, more stringent control requirements are proposed for today's standards. Closed vent systems and control devices would be required for individual drain systems and oil-water separators.

The EPA also is currently developing a CTG document for VOC emissions from industrial wastewater facilities. These guidelines will be provided to States as recommendations for control of VOC emissions from industrial wastewater facilities in ozone nonattainment areas. The draft CTG for industrial wastewater is scheduled for publication in the **Federal Register** in late 1990. The preliminary recommendation in the draft CTG consists of steam stripping of the wastewater in the process area for removal of volatile organics. The recommendation for applicability cutoffs for controls had not been established at the time of this publication. It is likely that controls on waste streams containing benzene being proposed today will overlap with the CTG recommendations for industrial wastewater. Treatment of waste streams by steam stripping, TFE, or waste incineration proposed in today's standards would not necessarily achieve the expected cutoff levels for volatile organics in the industrial wastewater CTG, due to the differences in volatilities of benzene and other organics in the waste stream. To comply with both this proposed standard and the draft CTG recommendation, the facility must evaluate the concentration of benzene and other organics.

c. *FWPCA Requirements.* Benzene also is subject to regulation as a priority pollutant contained in industrial wastewater discharges subject to the FWPCA. The EPA currently is developing new and revised effluent guidelines for direct dischargers (i.e., those that discharge directly into surface waters) and categorical pretreatment regulations for indirect dischargers (i.e., those facilities that discharge into a POTW and that are regulated by pretreatment requirements under the FWCPA to reduce pollutants entering POTW's). As part of this effort, effluent guidelines are under development for centralized hazardous waste treaters. Other industrial categories are continuing to be evaluated. Discharge requirements for benzene from the manufacture of organic chemicals, plastics, and synthetic fibers are now in effect for direct dischargers and take effect in November 1990 for indirect dischargers. The FWPCA requirements are expected to control discharges of benzene and other pollutants to surface waters and POTW's, while this NESHAP would control air releases of benzene from the waste. (Note: While the effluent guidelines and standards were based on the performance achieved by steam stripping, a closed system, dischargers are not obliged to use that technology to meet the discharge requirements.) From this standpoint, the proposed NESHAP for benzene waste is expected to complement the FWPCA requirements. The owner or operator of the facility may elect to use a single treatment device to comply with the requirements of the benzene waste NESHAP (provided it is steam stripping, TFE, waste incineration, or an approved alternative) and the effluent guidelines. However, air emission controls on the treatment device would be required by today's standards. In addition, any open device or unit located upstream of treatment would be required to be controlled. The owner or operator of the facility would have to assess the overall design of the treatment system to assure compliance with the requirements of today's standards and with the effluent guideline limitations.

d. *CERCLA Requirements.* Under the provisions of CERCLA as amended by the Superfund Amendments and Reauthorization Act, EPA is authorized to undertake removal and remedial actions to clean up hazardous substance releases. Removal actions typically are immediate or expedited activities necessary to minimize exposure or danger to humans and the environment from the release of a hazardous substance. Remedial actions are longer term activities to permanently clean up hazardous substances and any soils, surface waters, or ground waters contaminated by the substances. Remedial and removal actions are required by CERCLA to comply with the requirements of Federal and State public health and environmental laws that are ARAR's for certain remedial and removal actions.

This proposed NESHAP is applicable to CERCLA sites if the benzene in the waste is 10 Mg/yr or more and the benzene concentration is 10 ppm or more. Although the control requirements being proposed under the NESHAP for benzene waste operations would not be applicable to benzene wastes that are below the cutoff levels (i.e., less than 10 Mg/yr and 10 ppm benzene), these controls may be considered "relevant and appropriate" at a specific CERCLA site. Therefore, it may be appropriate to apply these requirements to a remedial or removal action performed at a CERCLA site.

8. Request for Comments

The EPA solicits information on the following aspects of today's proposed regulation for benzene waste operations. In estimating benzene emissions from waste operations, EPA has relied on several existing information sources. The EPA requests comments on the estimation procedures and any actual quantifications of benzene emissions from waste operations. Additionally, EPA would be interested in quantification of total VOC from waste facilities.

The EPA believes that in most cases wastes would be treated within a short period of time after generation. However, because there may be some operations (e.g., batch operations) where it is necessary to accumulate sufficient quantities of waste before treatment, the proposed regulation would allow a 6-month period for accumulation of such waste. Wastes being accumulated for treatment, however, would be required to meet the proposed requirements for storage or accumulation units. As an alternative, EPA is also considering the need for a longer accumulation period, such as 1 year. Comments are solicited on the types of operations and wastes that would require accumulation and the

maximum accumulation periods being analyzed by EPA.

The EPA has developed four alternatives for the control of emissions from benzene waste operations. The EPA solicits comments on other control alternatives that may be available, their costs, and the expected emission reductions. The EPA also is considering the use of continuous monitoring of a process or operational parameter(s) combined with a monthly benzene concentration measurement as an alternative to the proposed requirement for daily measurements of the benzene concentration in the waste exiting the treatment process. The EPA is specifically interested in methods or approaches that would demonstrate the treatment process is being operated as designed to reduce benzene emissions.

E. Gasoline Marketing System

1. Source Category Overview

The term "gasoline marketing system" refers to the storage and transfer of gasoline as it moves from the bulk terminal to the service station gasoline storage tank. The major emission source categories in this system are bulk gasoline terminals, bulk gasoline plants, service stations, and delivery tank trucks.

Gasoline is normally delivered from the petroleum refinery to the terminal by way of pipeline, ship, or barge. For the terminal, large delivery tank trucks (30,000 to 36,000 liters, or 8,000 to 9,500 gallons capacity) normally deliver the gasoline to service stations or intermediate storage and handling facilities known as bulk plants. Bulk plants, using smaller delivery tank trucks (5,500 to 11,000 liters, or 1,500 to 3,000 gallons capacity), primarily supply service stations that are long distances from terminals or unable to accommodate the large terminal delivery tank trucks, and small accounts such as farms. At service stations, gasoline is transferred to storage tanks and ultimately to motor vehicles.

It is estimated that there are about 1,500 bulk gasoline terminals. A typical existing bulk gasoline terminal has: a daily throughput of about 950,000 liters (250,000 gallons); four floating roof gasoline storage tanks with a total capacity of 150,000 barrels; three tank truck loading racks with three bottom loading arms per rack; and six delivery tank trucks.

There are two major benzene emission points at a typical bulk gasoline terminal: the loading of gasoline into tank trucks and evaporation of gasoline from storage tanks. Benzene emissions during tank truck loading at an uncontrolled facility are due to the displacement of vapors in the delivery tank to the atmosphere through the hatches. Benzene emissions from tank truck loading operations are estimated at 1,600 kg/yr (3,500 lbs/yr) for a typical uncontrolled bulk gasoline terminal as described above. Benzene emissions from storage tanks at this typical uncontrolled terminal are estimated at 140 kg/yr (310 lbs/yr).

It is estimated that there are about 15,000 bulk plants in the U.S. that distribute gasoline. The typical existing bulk plant has: a daily throughput of about 25,000 liters (6,500 gallons); three fixed roof storage tanks of 38,000 to 76,000 liters (10,000 to 20,000 gallons capacity each; one delivery tank loading rack with three submerged loading arms; and two delivery tank trucks.

There are two major emission sources in bulk plants: loading of delivery tank trucks and storage tanks. During loading of delivery tank trucks, benzene emissions are caused by the displacement of gasoline vapors in the delivery tank to the atmosphere by the incoming gasoline.

Benzene emissions from storage tanks are caused by filling, emptying, and breathing losses. Filling losses occur due to the displacement of gasoline vapors when a storage tank is filled with gasoline. Emptying losses occur when gasoline is pumped out of the storage tank, and fresh air is pulled into the tank. This fresh air gradually becomes saturated with gasoline vapors, expands, and this increase in volume is emitted to the atmosphere. Breathing losses are the result of normal expansion of vapors due to temperature changes during the day.

For a typical bulk plant, such as that described above, the overall annual benzene emission rate from storage tanks is estimated at about 80 kg/yr and from delivery tank truck loading operations about 50 kg/yr.

Service stations are facilities which engage in the refueling of motor vehicles. There are about 390,000 service stations in the U.S., of which some 180,000 are public outlets. A typical retail service station has a throughput of about 190,000 liters (50,000 gallons) of gasoline per month. It has about nine gasoline pump nozzles and three underground storage tanks of 38,000 liters (10,000 gallons) capacity each. Non-public stations tend to be considerably smaller.

Benzene emissions occur at service stations from the loading of underground storage tanks. The losses from the storage tanks are due to displacement of vapors by incoming gasoline. There are also emissions from storage tanks due to emptying and breathing losses, but these are generally minimal. Benzene emissions from loading of storage tanks from the typical facility outlined above are estimated to be about 15 kg/yr (33 lbs/yr).

Benzene emissions also occur at service stations during the refueling of automobiles (Stage II). Controls for refueling emissions are being studied separately. On-board controls, typically carbon canisters used on automobiles to capture refueling emissions, have been proposed and some States have Stage II vapor recovery requirements at service stations.

There are two basic types of delivery tank trucks used for gasoline delivery: large truck-trailer transports and smaller account trucks. The delivery tank of truck-trailer transports ranges in total capacity from 30,000 to 36,000 liters (8,000 to 9,500 gallons) with one to six compartments for different grades of gasoline or other products. The delivery tank of account trucks is smaller with a total capacity of 5,500 to 11,000 liters (1,500 to 3,000 gallons) and one to six compartments. Each compartment on both truck-trailer and account trucks will typically have a hatch opening, dome cover, pressure-vacuum relief vales, and vents. Truck-trailer transports normally deliver gasoline from bulk terminals to service stations and bulk plants, while account trucks normally deliver gasoline from bulk plants to service stations. Because truck-trailer transports and account trucks usually vary only in size, on distinction is made between the two in the following discussion.

The major emission sources on delivery tanks are the hatch covers, and the pressure-vacuum relief valves or vents. A dome or hatch cover is used to seal the hatch opening during transport, and during bottom loading and unloading operations. The seal around the dome cover and around the base ring where the cover attaches to the delivery tank shell are the most likely locations for leaks to occur when the dome cover is closed. These leaks can be caused by cracked or worn seals, warped or damaged hatch cover, and cracked or improperly installed dome cover base rings. Leaks can occur at the pressure-vacuum vents if they are not properly installed or maintained. The vent seal may become dirty or damaged, which would not allow a proper seal. There may be other emission sources. Improperly installed or damaged hose couplings can be emission sources. The delivery tank shell, if damaged, can produce emission sources from cracks or failures in welds. These types of leaks

occur less frequently than those discussed above, but may be large emission sources on some delivery tanks.

2. Basis for Emission Estimates

The nationwide annual emissions from this source category are estimated to be about 4,800 megagrams (1×10^7 lbs) per year of benzene. Baseline emissions are the emissions for gasoline marketing sources in some selected "base" year. The purpose of establishing an emission baseline is to be able to estimate the impacts of reducing emissions from this baseline through the implementation of additional control measures. The baseline emissions must take into account the level of control already in place in the base year to get an accurate assessment of the impacts of the control alternatives. The base year for the gasoline marketing source category was selected as 1987. This year was selected because this was the year for which the most recent gasoline consumption figures were available.

The general approach for establishing the emission baseline was basically the same for each sector of the industry. Data were obtained on the level of control already used by the States, and emission factors were selected to represent this level control. Uncontrolled areas were defined and emission factors were selected to represent the type of loading or type of operations in those areas. Emissions were calculated by multiplying the emission factors by the corresponding throughput for the controlled and uncontrolled areas. Emission reduction estimates were based upon the same analysis procedures, but using emission factors that represent controlled facilities. The methodology used for these emission estimates, as well as cost and health risk estimates discussed later, is described in detail in the following three EPA documents (see Section I for document number, etc.): "Evaluation of Air Pollution Regulatory Strategies for Gasoline Marketing Industry"; "Draft Regulatory Impact Analysis: Proposed Refueling Emission Regulations for Gasoline-Fueled Motor Vehicles-Volume I, Analysis of Gasoline Marketing Regulatory Strategies"; and "Evaluation of Air Pollution Regulatory Strategies for Gasoline Marketing Industry—Response to Public Comments" (See Docket No. A–89–07, Category II–A). Although EPA used the same calculation methodology discussed in the above documents, key assumptions were reinvestigated and some were changed to better represent current conditions (e.g., gasoline consumption). These changes are discussed in detail in Docket Item II–B–1 of Docket A–89–07.

Benzene emissions were calculated as a ratio to VOC emissions. Benzene is a naturally occurring constituent of gasoline. Benzene content in gasoline is variable and can be changed during the blending process at a refinery. An analysis of the 1987–1988 gasoline pools, based on information contained in reports by the National Institute for Petroleum and Energy Research, showed that the benzene content in the liquid gasoline varied from 0.06 percent to 6.2 percent by volume and averaged 1.47 percent by volume. Using vapor pressure calculations, a ratio of 0.62 percent was calculated to represent the benzene to VOC ratio in the vapors emitted from the gasoline marketing sources being studied.

3. Control Techniques

As part of their control plans for VOC emissions, certain States already require vapor balance control systems for approximately half of the existing bulk plants and service station storage tanks. Controls for VOC reduce all organic compound emissions, including benzene. Loading operations at about 70 percent of existing bulk terminals are controlled through State regulations for VOC, and at all new bulk terminals (constructed after December 17, 1980) by the NSPS for VOC, 40 CFR Part 60, Subpart XX. There are also State regulations for existing terminals and an NSPS for new bulk terminals for storage tank emissions, 40 CFR Part 60, Subparts K, Ka, and Kb.

Emissions resulting from outgoing transfer operations at bulk terminals are controlled by two main elements, a vapor processing system (or vapor processor) in conjunction with a vapor collection system. The vapor collection system consists of all the piping and components necessary to safely transfer the air-vapor mixture from the loading rack and tank truck to a vapor processor. There are currently four major types of vapor processors commonly used at bulk terminals: carbon adsorbers, thermal oxidizers, flares, and refrigeration systems.

The carbon adsorption vapor recovery system uses beds of activated carbon to remove gasoline vapors from the air-vapor mixture. These units generally consist of two vertically positioned carbon beds and a carbon regeneration system. During gasoline tank truck loading activity, one carbon bed is being used for adsorption while the other bed is being regenerated.

Thermal oxidation units are used to control emissions from bulk terminals without recovering any gasoline. The gasoline vapor-air mixture generated from transfer operations at the loading rack can be piped to either a vapor holder or directly to the oxidizer unit. The vapor holder stores the air-vapor mixture from the loading rack so that the system can process gasoline vapors at a relatively constant concentration and flow. Once ignition has been initiated in the thermal oxidizer, the air-vapor mixture serves as the fuel and the combustion process continues until all of the vapors have been burned.

Flare operations are very similar to the operation of thermal oxidizer units. Also, flares, once ignited, do not use additional fuel for combustion. Current flares can be open or enclosed (shielded) and may be air assisted.

Refrigeration type recovery units recover gasoline vapors from the loading operation in the form of a liquid product. In the refrigeration system, the air-vapor mixture from the loading racks is routed to a condensation chamber and passed over a series of cooling coils. Temperatures in the condensation section can be as low as −84 °C (−120 °F). The gasoline vapors condense, with some water vapor in the air, and are separated in a gasoline/water separator.

These four vapor processing techniques have been reviewed extensively by EPA. The test data indicated that all four of these technologies could reduce VOC emissions to at least 35 mg per liter of gasoline loaded (or about 97 percent). In some instances, these technologies have been able to achieve 98 percent control or better.

Several other technologies exist and have been used for many years at terminals. These include compression-refrigeration-absorption, compression-refrigeration-condensation, and lean oil absorption systems. These technologies were considered adequate technology to meet the CTG requirements for bulk terminals and have been shown to reduce emissions to 80 mg/l.

Internal floating roofs can be used directly as a control device for existing fixed-roof tanks at terminals. An internal floating roof, regardless of design, reduces the area of exposed liquid surface in the tank. Reducing the area of exposed liquid surface, in turn, decreases the evaporative losses. The largest emission reduction is achieved by the presence of the floating-roof vapor barrier that precludes direct contact between a large portion of the liquid surface and the atmosphere. All internal floating roofs share this design benefit. The relative effectiveness of one internal floating-roof design over

another, is a function of how well the floating roof can be sealed.

From an emissions standpoint, the most basic internal floating-roof design is the noncontact, bolted, aluminum, internal floating roof with a single vapor-mounted wiper seal. The four types of emission sources from this roof design are losses from around the roof rim or seal, from around fittings on the floating roof, from deck seams, and as a result of product withdrawal. Rim or seal losses and fitting losses constitute the largest percentage contribution to the total loss from an internal floating roof tank. Depending on the type of roof and seal system selected, installing an internal floating roof in a fixed-roof tank will reduce the total emissions by 68.5 to 97.8 percent.

External floating-roof tanks do not experience the fitting losses or deck seam losses that occur with most internal floating-roof tanks. The external floating-roof tanks are constructed almost exclusively of welded steel. This accounts for the absence of the deck seam losses. Further, because of the roof design, few if any deck penetrations are necessary to accommodate fittings.

Rim seal losses and withdrawal losses do occur with external floating-roof tanks. The only difference between external floating-roof tanks and internal floating roofs is that the external floating-roof seal losses are believed to be dominated by wind induced mechanisms. A secondary seal, in conjunction with a primary seal, provides an additional level of control. Withdrawal losses in external floating-roof tanks, as with internal floating-roof tanks, are entirely a function of the turnover rate and inherent tank shell characteristics. No control measures have been identified that are applicable to withdrawal losses from floating-roof tanks.

Control of gasoline working and breathing losses resulting from storage and handling of gasoline at bulk plants can be accomplished through submerged fill and a vapor balance system. Submerged fill is the introduction of liquid gasoline into the tank being filled with the transfer line outlet being below the liquid surface. Submerged filling minimizes droplet entrainment, evaporation, and turbulence. This is compared to splash loading where the transfer line outlet is at the top of the tank. Submerged filling of tank trucks can reduce vapor loss by 58 percent when compared to splash loading.

The vapor balance system consists of a pipeline between the vapor spaces of the truck and the storage tanks which essentially creates a closed system allowing the vapor spaces of the storage tank and the truck to balance with each other. The net effect of the system is to transfer vapor displaced by liquid in the storage tank into the transport truck during transfer of gasoline into the storage tank. This prevents the compression and expansion of vapor spaces which would otherwise occur in a filling operation. If a system is leak tight, very little or no air is drawn into the system, and venting, due to compression, is also substantially reduced. Also, vapor balancing of storage tanks and outgoing account trucks reduces account truck filling losses and virtually eliminates emptying losses from storage tanks (i.e., displaced vapors are returned to the storage tank in this closed balance system). The balance system has proven to be effective in bulk plant applications for both the delivery of gasoline by transport truck to the bulk plant and for loading account trucks. Based upon EPA test data reported in the CTG for bulk gasoline plants, controls on bulk plant storage tanks can reduce filling losses by greater than 95 percent, and draining and tank truck loading losses by greater than 90 percent.

Tank trucks become a separate source of emissions when leakage occurs during gasoline loading from the truck-mounted vapor collection systems and truck compartment dome covers. This leakage has been estimated to be as high as 100 percent of the vapors which should have been captured and to average about 30 percent. Vapor leakage can be minimized by the requirement of all tanks to pass an annual leak-tight test. To meet these annual requirements, maintenance of the vapor containing equipment such as the hatch cover seals and pressure-vacuum vents must be conducted, and repairs performed. The CTG for gasoline tank trucks recommends pressure limits for the annual test on the tanks and their vapor collection equipment. The CTG recommends that the tank trucks pass an annual certification test which verifies the vapor tightness of the tank. Evaluation of test data for trucks having passed an annual leak-tight test indicated that the average leak rate was reduced to approximately 10 percent, meaning that, on the average, approximately 10 percent of the air-vapor mixture exhausted from a regulated gasoline tank truck during product loading would leak to the atmosphere without reaching the vapor processor. The leak rate can be reduced further by more frequent leak testing.

Emissions from underground tank filling operations at service stations can be reduced by the use of a vapor balance system (Stage I control). In the service station balance system, vapors which would normally be vented to the atmosphere are routed back to the delivery truck, which unloads gasoline through a vapor collection system. The truck transfers the vapors to the terminal or bulk plant for ultimate treatment by the vapor processors at the terminal.

Gasoline is loaded by gravity into the underground storage tanks via a flexible hose. Liquid gasoline displaces a nearly equal volume of partially saturated gasoline vapors. The vapor is vented through a pipe and flexible hose connected to a vapor collection system (i.e., a manifolded pipe) on the transport truck. Liquid transfer creates a slight pressure in the storage tanks and a slight vacuum in the truck compartment. These pressure differences effectively cause the transfer of displaced vapor to the truck. Because of a phenomenon known as vapor growth caused by liquid temperature differences, the truck volume cannot always accommodate all of the vapors. Any excess vapor is released through the vapor vent line. This technology has been demonstrated and installed in service stations for over 15 years. The EPA has also provided design guidance for Stage I controls as far back as 1975. Tests demonstrate balance systems to be greater than 95 percent efficient for reducing underground storage tank filling losses.

4. Estimates of Exposure and Risk

Analyses were conducted to estimate the exposure and risk associated with benzene emissions from bulk gasoline terminals, bulk gasoline plants, and storage vessels at service stations. Estimates were made for MIR, which is based on the maximum exposure and worst condition found in the analysis, and annual cancer incidences, which is based on average concentrations and conditions for individuals living in the vicinity of the facility.

The MIR analysis estimated the probability that an individual subject to high exposure levels throughout a 70-year lifetime would result in a cancer incidence. The ISC dispersion model was used to estimate individual and combined contributions to ambient concentrations at a number of receptor points from multiple emission sources. The ISC model calculated annual concentrations of benzene at receptors in the vicinity of a bulk terminal complex, a bulk plant complex, and a service station complex. The highest concentrations were used in the MIR analysis. The following paragraphs describe the methods used to calculate

the MIR attributable to each of these three industry segments.

Terminals are typically clustered together in a location either at a point along a pipeline or river. In past analyses, a complex of terminals was used to estimate the lifetime risk from bulk terminals. However, the greatest contribution to risk impacts always came from the largest facility in the complex. Therefore, in the latest analysis, risk estimation is calculated in the vicinity of the largest model terminal (3,800,000 liters or 1,000,000 gallons per day). Emission points at this terminal consisted of six storage tanks, four loading racks, and a vapor processor. The layout for the terminal was based on the apparent centers of individual terminals at known bulk terminal locations in attainment areas, shown on a topographical map. The physical dimensions of each source (release height, location, initial dispersion parameters, etc.) represent the dimensions of typical sources within a bulk terminal.

The maximum concentration predicted was then used along with the benzene unit risk factor to calculate the MIR for benzene (both controlled and uncontrolled). The uncontrolled MIR calculated for benzene emissions from bulk terminals using this procedure was 5×10^{-5}.

The lifetime risk analysis for bulk plants used a hypothetical layout of a bulk plant complex as input to the ISC model. The configuration was selected to represent a typical complex of bulk plants, all located in one part of a metropolitan area. The bulk plants include each of the four model plant sizes with gasoline throughputs ranging from 11,000 liters/day (3,000 gallons/day to 64,000 liters/day (17,000 gallons/day). (Each of the bulk plants in the complex was assumed to have one loading rack and three storage tanks for gasoline.) The physical dimensions of the sources within the complex were representative of typical sources within a bulk plant. The ISC model was executed to obtain predicted concentrations at an array of receptors. The model was also executed with four different sets of meteorological data representing various parts of the U.S. The maximum concentration always resulted from the same set of meteorological data. The maximum concentration predicted was then used along with the benzene unit risk factor to calculate the MIR for benzene (both controlled and uncontrolled). The uncontrolled MIR for benzene emissions using this methodology for bulk plants was 1×10^{-5}.

The methodology of the lifetime risk analysis for service stations used a hypothetical layout of a service station complex as input to the ISC model. This complex configuration was developed to represent a grouping of service stations at an urban exit from an interstate highway. The complex was assumed to be comprised of eight service stations, which include at least one of each of the five model stations with gasoline throughputs ranging from 19,000 liters/month (5,000 gallons/month) to 700,000 liters/month (185,000 gallons/month). The entire complex was comprised of 14 refueling islands and 8 underground storage tank vents. The physical dimensions of the sources within the complex are representative of typical sources at service stations. The ISC model was executed with varying model plant-specific uncontrolled emission rates (based on baseline throughput). The model was also executed with three different sets of meteorological data representing various parts of the U.S. The maximum concentrations again always resulted from the same set of meteorological data. The maximum concentration predicted was then used along with the unit risk factor to calculate the MIR for benzene. Using this methodology, a MIR for benzene emissions from service stations underground tanks was estimated as 5×10^{-6}.

In order to calculate nationwide community exposure to emissions (and the resultant cancer incidences) from bulk terminals and plants, assumptions were made concerning their geographical distribution. The fundamental assumption was that facilities were located in proportion to the gasoline throughput for an area—for example, the largest model plants would be located in large urban areas where throughput (and population density) were highest. Further, each model plant size in each source category (bulk terminals and bulk plants) was distributed over a range of 10 urban area sizes. The largest terminals, for instance, were assumed to be located in cities ranging in size from New York City to Des Moines, Iowa; the smallest terminals were assumed to be located in cities ranging in size from Spokane, Washington to Effingham, Illinois. Estimates were also made of the extent of existing control at these terminals. Most of the terminals in the large cities (likely to be ozone nonattainment areas) were considered controlled in accordance with existing regulations, with proportionally fewer facilities controlled in the smaller areas.

In a similar fashion, model service stations were allocated to 35 localities (multi-county metropolitan areas or single counties), grouped by seven population size ranges. The model plants were selected to be representative of the total national service station distribution. The localities and seven population size ranges were selected to be representative of the total national population distribution.

Ambient concentrations, exposure, and cancer incidence associated with bulk terminals, bulk plants, and service stations were calculated using the HEM. The HEM is a model capable of estimating ambient concentrations and population exposure due to emissions from sources located at any specific point in the contiguous U.S. The results of this model indicated the following cancer incidence estimates associated with benzene emissions: bulk gasoline terminals—0.1 case/year; bulk gasoline plants—0.05 case/year; and service station storage tanks 0.1 case/year.

Tables E–1, E–2, and E–3 present the health risk information for the gasoline marketing system. Shown are baseline risks, and risks associated with different control alternatives for each source category. The control alternatives represent varying combinations and levels of cohtrol for emission points at the sources. Incidence was calculated by projecting model areas to national total. Meaningful risk distribution cannot be calculated. Thus, incidence for risk groups is also not provided.

TABLE E–1.—BULK GASOLINE TERMINALS: RISK INFORMATION

Alternative	Maximum individual lifetime risk	Incidence (case/yr)	Incremental incidence reduction
Baseline	5×10^{-5}	0.1	
1	1×10^{-5}	0.09	0.01
2	1×10^{-5}	0.08	0.01
3	6×10^{-6}	0.08	0

Note: All risk estimates are rounded to one significant figure. Due to independent rounding, figures given in the table may not sum to the value given.

TABLE E–2.—BULK GASOLINE PLANTS: RISK INFORMATION

Alternative	Maximum individual lifetime risk	Incidence (case/yr)	Incremental incidence reduction
Baseline	1×10^{-5}	0.05	
1	2×10^{-6}	0.02	0.03
2	1×10^{-6}	0.01	0.01

Note: All risk estimates are rounded to one significant figure. Due to independent rounding, figures given in the table may not sum to the value given.

TABLE E-3.—SERVICE STATIONS—STAGE I: RISK INFORMATION

Alternative	Maximum individual lifetime risk	Incidence (case/yr)	Incremental incidence reduction
Baseline	5×10^{-6}	0.1	
1	2×10^{-7}	0.06	0.04
2	2×10^{-7}	0.05	0.01

Note: All risk estimates are rounded to one significant figure. Due to independent rounding, figures given in the table may not sum to the value given.

These decisions are based on benzene emissions from Stage I gasoline marketing operations. However, EPA has reported elsewhere preliminary health risk estimates for exposures to gasoline vapors as a whole (see "Draft Regulatory Impact Analysis, Proposed Refueling Emissions Regulations for Gasoline-fueled Vehicles—Volume I). Aside from the fact that benzene is the target pollutant here and that health impacts from exposure to gasoline vapors are a collateral issue, these estimates are not presented here because of uncertainty as to what they actually represent. In addition to the usual uncertainties associated with EPA's health risk estimates, other uncertainty arises in the case of gasoline vapors as a mixture because the unit risk estimate is based solely on limited animal data. Furthermore, a degree of controversy exists as to the method of exposure in the animal studies, and whether or not people would similarly be exposed to the cancer-causing constituents in gasoline vapors under normal conditions. In the animal studies, a sample of gasoline was entirely vaporized and the animals exposed to those vapors. The animals were thus exposed to the more complex hydrocarbon molecules ("heavy ends" compounds with greater than six carbon atoms per molecule) that would not ordinarily vaporize under conditions typical of human exposure. The EPA does not know at this time which fraction (heavy ends or light ends) of the gasoline vapors primarily contains the compounds that induced cancers in the animals. The EPA is still reviewing existing data and gathering data to help resolve this issue. Because of these outstanding questions, EPA does not consider it appropriate to include such estimates in the analysis for these decisions. However, to the extent that gasoline vapors do present an additional human health problem, these standards will minimize that problem.

5. Basis for Proposed Standard

a. *Bulk Gasoline Terminals.—Decision on Acceptable Risk.* As stated earlier, the baseline MIR is about 5×10^{-5} which is below the presumptive acceptable risk of approximately 1×10^{-4}. These risks are not expected to be significantly affected by the colocation of facilities. The baseline annual incidence is about 0.1 case/year. The EPA also considered the noncancer health effects associated with benzene exposure at levels comparable to an MIR level of 5×10^{-5}. Noncancer health effects have been associated with exposure to benzene, but levels of benzene exposure reported to produce noncancer health effects are at least two orders of magnitude above these exposure levels. After considering all these factors, EPA judged that the emission level at baseline represents an acceptable risk.

Decision on Ample Margin of Safety. The EPA considered selecting a level of emissions more stringent than the baseline level which was judged to represent an acceptable risk. Three levels of controls were evaluated. Alternative 1 represented the level of control presently required by CTG for control in ozone nonattainment areas (80 mg VOC/1 gasoline loaded). This level of control would require the installation of vapor collection and processing equipment to reduce tank truck loading emissions to 0.5 mg benzene/1 of gasoline loaded (equivalent to 80 mg/1 VOC with 0.6 percent benzene in vapors), the installation of internal floating roof controls or external floating roof controls with secondary seals for all gasoline storage vessels, and that all gasoline tank trucks loading at bulk terminal pass a vapor-tightness test on an annual basis.

Alternative 2 represented the same level of control as Alternative 1, except that tank loading emissions would be reduced to 0.2 mg benzene/1 gasoline loaded. This level of control is consistent with NSPS requirements for new bulk terminals and storage vessels.

Alternative 3 represented the same level of control as Alternative 2 for storage vessels. However, emissions from tank truck loading would be reduced to 0.1 mg benzene/1 of gasoline loaded and all gasoline tank trucks loading at bulk gasoline terminals would have to pass a vapor-tightness test on a semi-annual basis. This level represents a step beyond the NSPS level of control in an effort to further reduce benzene emissions from vapor processor outlets and tank truck leakage.

Table E-4 shows the estimated control costs and emission reductions achieved through application of these alternatives for bulk gasoline terminals. In comparing these alternatives, EPA considered the reductions in benzene risks, the control costs, the feasibility of achieving the control level of each alternative, and the cobenefits of control such as recovery of gasoline vapors that would be lost to the atmosphere, pollution prevention and any secondary control of urban air toxics. Based on these factors, EPA decided that the level of control reflected by Alternative 2 provides an ample margin of safety. Although the existing emission level and risks are considered acceptable, they can be reduced further at a reasonable cost considering all the benefits of control. The controls associated with Alternative 2 would reduce risks associated with benzene emissions from bulk terminals to 1×10^{-5} and 0.08 case/year. In addition, although EPA was not able to estimate the cancer incidence associated with various risk levels, the incidences for risk levels above 1×10^{-6} would be lower under Alternative 2 than baseline. Benzene concentrations reported to produce noncancer health effects are at least two to three orders of magnitude above the levels expected for baseline and all the control alternatives. Consequently, noncancer health effects did not enter into the decision.

TABLE E-4.—GASOLINE MARKETING: CONTROL OPTION IMPACTS

Sources and control options	Annual cost[a] $MM/Yr (1984)	Emissions reductions[b] (10^{-3} Mg/Yr)		Incremental emission reductions (10^{-3} Mg/Yr)	
		Benzene	VOC	Benzene	VOC
Bulk Gasoline Terminals:					
Baseline					
Alternative 1	51	0.9	140	0.9	140
Alternative 2	48	1.1	170	0.2	30
Alternative 3	120	1.2	190	0.1	20

TABLE E–4.—GASOLINE MARKETING: CONTROL OPTION IMPACTS—Continued

Sources and control options	Annual cost[a] $MM/Yr (1984)	Emissions reductions[b] (10^{-3} Mg/Yr)		Incremental emission reductions (10^{-3} Mg/Yr)	
		Benzene	VOC	Benzene	VOC
Bulk Gasoline Plants:					
Baseline					
Alternative 1	31	0.8	130	0.8	130
Alternative 2	35	0.8	130	0.0	0
Service Station Storage (Stage I):					
Baseline					
Alternative 1	20	1.2	190	1.2	190
Alternative 2	100	1.3	210	0.1	20

[a] $MM is millions of dollars. The dollar year is 1984.
[b] Over baseline.

The EPA concluded that additional control beyond Alternative 2 is not warranted. Alternative 3 provides essentially the same level of protection as Alternative 2. The cost of the additional controls of Alternative 3 is disproportionately high considering the small gains in health protection and cocontrol benefits, such as energy conservation.

In conclusion, the EPA decided that the emission level of Alternative 2 would protect the public health with an ample margin of safety. Therefore, EPA is proposing standards to limit emissions from bulk gasoline terminals as described below.

Summary and Basis for Format of Standard. The format for the standard for bulk gasoline terminals was based upon the existing NSPS requirements for bulk terminal loading racks and storage vessels, since the approach to the standard was to extend NSPS limits to all existing bulk terminals. The benzene emissions limits for bulk terminal loading racks was based upon the NSPS VOC emission rate and the ratio of benzene to VOC in the exhaust from the vapor processor. The benzene to VOC ratio, as discussed earlier, was based upon vapor pressure calculations, average benzene content in the gasoline pool, and source test information on the vapor processor efficiency for benzene. Storage tank and tank truck requirements were identical to those required in the NSPS.

The proposed standard would limit benzene emissions from the outlet of vapor processors to 0.2 mg benzene/l of gasoline loaded into gasoline tank trucks. Many existing vapor processors were installed to meet CTG levels of emission control and the costs were considered prohibitive to require the removal and replacement of these control devices before the end of their useful lives. Most of these existing devices were installed by the end of 1982 to meet State deadlines. Since the equipment was estimated to have a useful life of 10 years, the proposed standard would require that all control devices, new and existing, must meet the 0.2 mg benzene/l standard no later than December 31, 1992.

The storage vessels requirements under this standard are identical to the requirements promulgated in subpart Kb of 40 CFR part 60. The tank truck requirements under this standard are identical to the requirements promulgated in subpart XX of 40 CFR part 60.

b. Bulk Gasoline Plants.—Decision on Acceptable Risk. As stated earlier, the baseline MIR is about 1×10^{-5} which is below the presumptive acceptable risk of approximately 1×10^{-4}. These risks are not expected to be significantly affected by the co-location of facilities. The baseline annual incidence is about 0.05 case/year. The EPA also considered the noncancer health effects associated with benzene exposure at levels comparable to an MIR level of 1×10^{-5}. Noncancer health effects have been associated with exposure to benzene, but levels of benzene exposure reported to produce noncancer health effects are at least two orders of magnitude above the exposures predicted for these sources. After considering all of these factors, the EPA judged that the emission level at baseline represents an acceptable risk.

Decision on Ample Margin of Safety. The EPA considered selecting a level of emissions more stringent than the baseline level which was judged to represent an acceptable risk. Alternative 1 represented extending nationwide the level of control presently recommended by CTG for control in ozone nonattainment areas. This alternative would require all bulk plants to install a vapor balance system between the tank truck delivering gasoline to the bulk plant and the bulk plant storage vessels. As stated earlier, EPA estimates that this system would reduce emissions by 95 percent. This alternative would also require bulk plants with a gasoline throughput of greater than 4,500,000 liters per year (1,200,000 gallons per year) to install a vapor balance system between the bulk plant storage vessels and gasoline tank trucks loaded at the bulk plant loading racks. The EPA estimates that this system would reduce emissions by 90 percent. Tank trucks that will be connected to either vapor balance system would be required to pass an annual vapor-tightness test. For bulk plants with a gasoline throughput less than 4,500,000 liters per year, gasoline tank truck loading would be restricted to submerged fill only.

Alternative 2 represented the same level of control as Alternative 1, except that tank trucks that must connect to a vapor balance system would be required to pass the vapor-tightness test on a semi-annual basis. This additional restriction was considered to reduce tank truck leakage emissions and the associated benzene risk from the loading rack operations.

Table E–4 shows the estimated control costs and emission reductions achieved through applications of the alternatives for bulk gasoline plants. In comparing these two alternatives, EPA considered the reductions in benzene risks, the control costs, the feasibility of achieving the control level of each alternative, and the cobenefits of control such as energy conservation, pollution prevention and secondary control of urban air toxics. Based on these factors, EPA decided that the level of control reflected by Alternative 1 provides an ample margin of safety. Although the existing emission level and risks are considered acceptable, they can be reduced further at a reasonable cost considering all the benefits of control. The controls associated with Alternative 1 are estimated to reduce benzene risks to 2×10^{-6} and 0.02 case/year. In addition, although EPA was not able to estimate the cancer incidences associated with various risk levels, the incidences for

risk levels above 1×10^{-6} would be lower under Alternative 2 than baseline. Benzene concentrations reported to produce noncancer health effects are at least two to three orders of magnitude above the levels expected for baseline and all the control alternatives. Consequently, noncancer health effects did not enter into the decision.

The EPA concluded that additional control beyond Alternative 1 is not warranted. Alternative 2 provides essentially the same level of protection as Alternative 1. The cost of the additional controls of Alternative 2 is disproportionately high considering the small gains in health protection and cocontrol benefits, such as energy conservation.

In conclusion, the EPA decided that the emission level of Alternative 1 would protect the public health with an ample margin of safety. Therefore, EPA is proposing standards to limit emissions from bulk gasoline plants as described below.

Summary and Basis for Format of Standard. The bulk gasoline plant standard would require the installation of vapor balance equipment to capture and transfer emissions between storage vessels and gasoline tank trucks. The format of the standard is, therefore, an equipment standard, rather than a mass emission or percent reduction standard. This format was selected as the basis for the standard since the testing of both inlet and outlet vapor balance systems was considered very difficult and costly.

The proposed standard would require all bulk plants to install a vapor balance system between the gasoline tank truck and the gasoline storage vessel to capture and control emissions that occur during storage vessel filling. The proposed standard would also require that all hose connections, pressure-vacuum valves, and gauge or sampling wells be vapor-tight during the gasoline transfer. It would be the bulk plant owner/operator's responsibility to ensure that the vapor return lines are attached during transfers and that the truck hatch covers are closed.

The proposed standard would require all bulk plants with an annual gasoline throughput of greater than or equal to 4,500,000 liters (1,200,000 gallons) to install a vapor balance system between the gasoline storage vessel and the gasoline tank truck to capture emissions from the loading of gasoline tank trucks. The vapor balance system would be required to be equipped with connections that are vapor-tight during transfer and seal upon disconnect to ensure vapors are not lost to the atmosphere when the system is not in use. As before, it would be the bulk plant owner/operator's responsibility to ensure that all vapor lines are connected and that hatch covers on the tank truck are closed during gasoline transfers.

The proposed standards would require the bulk plant owner/operator to assure that any gasoline tank truck at a bulk plant, that is connected to a vapor balance system, has passed a vapor-tightness test within the last year. In addition, the vapor balance system would have to be designed so that the back pressure in the tank truck does not exceed the limits of the vapor-tightness test (450 mm of water pressure and 150 mm of water vacuum).

For bulk gasoline plants with an annual gasoline throughput less than 4,500,000 liters (1,200,000 gallons), the proposed standard would require submerged loading for outgoing gasoline tank trucks, but not the use of a vapor balance system. This exception is to relieve the economic burden on the small bulk gasoline plants. However, these plants would be required to keep records of gasoline throughput at the facility so that an inspector can verify that only submerged loading is required.

c. Storage Vessels at Service Stations.—Decision on Acceptable Risk. As stated earlier, the baseline MIR is about 5×10^{-6} which is below the presumptive acceptable risk of approximately 1×10^{-4}. These risks were estimated considering typical colocation of service stations. The baseline annual incidence is about 0.1 case/year. The EPA also considered the noncancer health effects associated with benzene exposures at levels comparable to an MIR level of 5×10^{-6}. Noncancer health effects have been associated with exposure to benzene, but levels of benzene exposure reported to produce noncancer health effects are at least three orders of magnitude above the exposures predicted for these sources. After considering all of these factors, the EPA judged that emission levels at baseline represents an acceptable risk.

Decision on Ample Margin of Safety. The EPA considered selecting a level of emissions more stringent than the baseline level which was judged to represent an acceptable risk. Alternative 1 represented the extension nationwide of the level of control presently recommended by CTG for control in ozone nonattainment areas. This level of control would require all service stations with a gasoline throughput greater than 450,000 liters per year (120,000 gallons per year) to install a vapor balance system between the gasoline delivery truck and the service station storage vessel. As stated earlier, EPA estimates that this vapor balance system can reduce storage vessel filling emissions by 95 percent. In addition, all loadings of service station storage vessels would be restricted to submerged filling.

Alternative 2 represented the same level of control as Alternative 1, except that vapor balance systems and submerged loading would be required on all service stations with no exceptions for small service stations.

Table E–4 shows the estimated costs and emission reductions achieved through the applications of the two alternatives for service stations. In comparing these alternatives, EPA considered the reductions in benzene risks, the control costs, the feasibility of achieving the control level of each alternative, and the cobenefits of control such as energy conservation, pollution prevention and secondary control of urban air toxics. Based on these factors, EPA decided that the level of control reflected by Alternative 1 provides an ample margin of safety. Although the existing emission level and risks are considered acceptable, they can be reduced further at a reasonable cost considering all the benefits of control. Application of the controls associated with Alternative 1 is estimated to reduce benzene risks to 2×10^{-7} and 0.06 case/year. In addition, although EPA was not able to estimate the cancer incidences associated with various risk levels, the incidences for risk levels above 1×10^{-6} would be lower under Alternative 2 than baseline. Benzene concentrations reported to produce noncancer health effects are at least two to three orders of magnitude above the levels expected for baseline and all the control alternatives. Consequently, noncancer health effects did not enter into the decision.

The EPA concluded that additional control beyond Alternative 1 is not warranted. Alternative 2 provides essentially the same level of protection as Alternative 1. The cost of the additional controls of Alternative 2 is disproportionately high considering the small gains in health protection and cocontrol benefits, such as energy conservation.

In conclusion, EPA decided that the emission level of Alternative 1 would protect the public health with an ample margin of safety. Therefore, EPA is proposing standards to limit emissions from underground storage tanks at service stations as described below.

Summary and Basis for Format of Standard. As with bulk gasoline plants, the proposed standard would require the installation of equipment for vapor balance and submerged filling. The standard is, therefore, in the format of an equipment standard. This format was

selected as the basis for the standard since the testing of this vapor balance system was considered both difficult and costly. In addition, the approach selected for regulating service stations was to extend the CTG recommendations nationwide, and these recommendations were in the form of an equipment standard.

The proposed standard would require all service stations with an annual gasoline throughput greater than 450,000 liters (120,000 gallons) to install submerged loading for the storage vessels. Service stations are defined as any facility, public or private, that refuels motor vehicles, and includes conventional service stations, convenience stores, private fleet operations (taxis, buses, government vehicles) and parking garages. The proposed standard would further require the installation of a vapor balance system between the gasoline tank truck and the service station storage vessel to capture and control emissions that occur during storage vessel filling. The proposed standard would require a restriction device on the vent of the gasoline storage vessel to enhance system efficiency. Also, all hose connections would be required to be vapor-tight during the gasoline transfer.

It would be the service station owner/operator's responsibility to ensure that the vapor line is connected during gasoline delivery. The standard suggests two methods to meet the intent of these requirements. These are an interlock which prevents gasoline unloading unless the vapor hose is connected, such as a bracket to which the product and vapor hose are permanently attached so that neither hose can be connected separately, and a closure in the vapor hose which remains closed unless the hose is attached to the vapor fitting on the truck. (Comments are specifically solicited regarding these methods.) It would also be the service station owner/operator's responsibility to ensure that all gasoline delivery tank trucks have documentation that they have passed a vapor-tightness test within the previous year. The owner/operator of the service station also would have the responsibility to ensure that tank truck hatches remain closed during the gasoline transfer.

Service stations with an annual gasoline throughput less than 450,000 liters (120,000 gallons) would not be required to install equipment. This exception was included to relieve the economic burden on small facilities. However, these service stations would be required to keep records of gasoline throughput at the facility so that an inspector can verify that no equipment installation is required.

6. Impacts of Proposed Standards

a. Bulk Gasoline Terminals—The proposed regulation would result in a reduction of both baseline benzene and VOC emissions. Benzene emissions would decline from a baseline level of 1,900 Mg/yr to 800 Mg/yr, a reduction of 58 percent. Emissions of VOC would decline from a baseline level of 300,000 Mg/yr to 130,000 Mg/yr, a reduction of 57 percent. The estimated baseline incidence of leukemia from bulk gasoline terminals emitting benzene would be reduced from 0.12 to 0.08 case/year. The maximum individual lifetime risk would be reduced from 5×10^{-5} at the baseline level to 1×10^{-5} after implementation of this standard.

Potential environmental impacts of this standard depend on the vapor processor selected by each facility to attain compliance. Thermal oxidizers and flares are not expected to produce any wastewater or solid waste impacts. However, if carbon adsorbers are used, some minor wastewater and solid waste impacts can be expected from desorption of the carbon beds with steam, and from the final disposal of spent carbon. If refrigeration type recovery units are used, some minor wastewater impacts can be expected in conjunction with water disposal following gasoline/water separation. Because it is not known how many bulk gasoline terminals will employ carbon adsorbers or refrigeration type recovery units to comply with the standard, the wastewater and solid waste impacts of this standard cannot be quantified.

The total nationwide capital cost of the proposed regulation for bulk gasoline terminals is estimated to be $630 million (1984 dollars), primarily for purchase and installation of vapor collection and processing systems. The total annualized cost is estimated to be $48 million (1984 dollars). Approximately 900 (60 percent) of the 1,500 existing bulk gasoline terminals would have to install new vapor processing equipment and are expected to incur the majority of these costs.

b. Bulk Gasoline Plants—The proposed regulation would result in a reduction of both baseline benzene and VOC emissions. Benzene emissions would decline from a baseline level of 1,200 Mg/yr to 400 Mg/yr, a reduction of 67 percent. Emissions of VOC would decline from a baseline level of 200,000 Mg/yr to 70,000 Mg/yr, a reduction of 65 percent. The estimated baseline incidence of leukemia from bulk gasoline plants emitting benzene would be reduced from 0.05 to 0.02 case/year. The maximum individual lifetime risk would be reduced from 1×10^{-5} at the baseline level to 2×10^{-6} after implementation of this standard.

The total nationwide capital cost of the proposed regulation for bulk gasoline plants is estimated to be $200 million (1984 dollars), primarily for purchase and installation of vapor balance systems. The total annualized cost is estimated to be $31 million (1984 dollars). Approximately 8,000 (53 percent) of the 15,000 existing bulk gasoline plants would have to install new vapor collection systems and are expected to incur the majority of these costs.

c. Storage Vessels at Service Stations—The proposed regulation would result in a reduction of both baseline benzene and VOC emissions. Benzene emissions would decline from a baseline level of 1,700 Mg/yr to 500 Mg/yr, a reduction of 71 percent. Emissions of VOC would decline from a baseline level of 280,000 Mg/yr to 90,000 Mg/yr, a reduction of 68 percent. The estimated baseline incidence of leukemia from service stations emitting benzene would be reduced from 0.13 to 0.06 case/year. The maximum individual lifetime risk would be reduced from 5×10^{-6} at the baseline level at 2×10^{-7} after implementation of this standard.

The total nationwide capital cost of the proposed regulation for service stations is estimated to be $100 million (1984 dollars), primarily for the purchase and installation of vapor balance and submerged filling equipment. The total annualized cost is estimated to be $20 million (1984 dollars). Approximately 77,000 (20 percent) of the 390,000 existing service stations would have to install the vapor balance and submerged filling equipment and are expected to incur the majority of these costs.

7. Request for Comments

The EPA solicits comments on the following aspects of today's proposed regulation of the gasoline marketing system. In estimating benzene exposure, EPA relied on model plants and air dispersion modeling. The EPA requests comments on whether the model plants accurately represent the existing population of bulk gasoline terminals, bulk gasoline plants, and underground storage tanks at service stations. The EPA also solicits comments on other available control alternatives, their costs, and their expected emission reductions.

In decisions on control levels to provide an ample margin of safety, EPA includes consideration of the appropriate balance among the benefits

of control of hazardous air pollutants, cocontrol of other pollutants, cost and technical feasibility. A significant factor in the judgments on these three gasoline marketing categories was the cocontrol of VOC achieved by the alternatives in addition to the primary benefit of reducing benzene emissions. Environmental benefits of this VOC control include savings from recovery of gasoline vapors that would otherwise be lost to the atmosphere, reductions in deterioration of air quality in areas that are marginally in attainment with the ozone standard, and reductions in air toxics in smaller urban areas. Since a significant effect of these NESHAP is to reduce VOC emissions in ozone attainment areas, EPA is interested in comment on the value of and need for extending these control requirements nationwide. The EPA is also interested in comment on the potential for conflict between State, local, and private sector resource needs to implement the gasoline marketing NESHAP and the resource needs to bring many areas into attainment for ozone.

VII. Administrative Requirements

A. Paperwork Reduction Act

The information collection provisions associated with the proposed rules have been submitted for approval to OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. Information Collection Request documents have been prepared by EPA (ICR Nos. 1154, 1155, 1412, and 1541) and copies may be obtained from the Information Policy Branch (PM–223), EPA, 401 M Street SW., Washington, DC 20460. The public reporting burden for each collection of information, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information, is estimated as follows: the source category of benzene transfer operations is estimated to average 379 hours annually per response; the source category of industrial solvent use are estimated to average 268 hours annually per response; the source categories of benzene waste operations is estimated to average 172 hours annually per response; the source categories of gasoline marketing are estimated to average 4 hours annually per response (175 hours if a performance test is conducted) per bulk terminal, 1 hour annually per response for bulk plants, and 1 hour annually per response for service stations.

Send comments regarding the burden estimates or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch (PM–223), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rules will respond to any OMB or public comments on the information collection requirements contained in this proposal.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires EPA to consider potential impacts of proposed regulations on small business "entities." If a preliminary analysis indicates that a proposed regulation would have a significant economic impact on 20 percent or more of small entities, then a regulatory flexibility analysis must be prepared.

Present Regulatory Flexibility Act guidelines indicate that an economic impact should be considered significant if it meets one of the following criteria: (1) compliance increases annual production costs by more than 5 percent, assuming costs are passed on to consumers; (2) compliance costs as a percentage of sales for small entities are at least 10 percent more than compliance costs as a percentage of sales for large entities; (3) capital costs of compliance represent a "significant" portion of capital available to small entities, considering internal cash flow plus external financial capabilities; and (4) regulatory requirements are likely to result in closures of small entities.

1. Benzene Emissions from Chemical Manufacturing Process Vents

The source category of chemical manufacturing process vents is not being regulated. Therefore, there is no impact on these sources and a regulatory flexibility analysis is not required.

2. Benzene Transfer Operations

The source category of benzene transfer operations includes benzene production facilities and bulk terminals at which benzene is loaded into tank trucks, railcars, or marine vessels. Tank trucks, railcars, and marine vessels are included in SIC 44, 4742, 4212, 4213, and 4214. Because of the uncertainty concerning the actual cost distribution for tank trucks, railcars, and marine vessels, assessment of the likelihood of significant economic impact on small entities is difficult. However, the entities involved in benzene transfer operations are expected to constitute less than 20 percent of all the small entities involved in SIC 44, 4742, 4212, 4213, and 4214. Therefore, since a substantial number of small entities are not being regulated, a regulatory flexibility analysis is not required.

In regard to benzene producers and bulk terminals, less than five percent of benzene storage facilities are owned by independent bulk storage terminal operators. The rest are owned by benzene producers and consumers which are generally large chemical companies. The standard exempts facilities with an annual throughput of less than 0.3 million gallons or those loading material of less than 70 percent by weight of benzene. These exemptions allow facilities that only load benzene periodically throughout the year and those loading other products such as gasoline that are not predominately benzene to not be required to install additional control. The annualized capital costs for the smallest bulk terminal not exempted would only be $222/year. Volatility of benzene supply has lead to price swings as dramatic as that of $0.80 to $2.50 a gallon between 1986 and 1987 without significant changes in the quantity of benzene used. Therefore, the less than two percent anticipated increase in the cost of producing benzene is expected to be passed through as an increase in the price of benzene. Because the impacts are not expected to be significant, a regulatory flexibility analysis is not required.

3. Benzene Waste Operations

Because of the uncertainty concerning the actual cost distribution, assessment of the likelihood of significant economic impact on substantial numbers of small entities is difficult. However, several factors combine to make it unlikely that a regulatory flexibility analysis is needed. First, the definition of small entities in SIC 28 (Chemicals and Allied Products) ranges from 500 to 1000 employees as an upper bound for an entity to be considered small. Similarly, the upper bound for employees in SIC 29 (Petroleum Refining and Related Industries) is 1,500. The regulated facilities are unlikely to be owned by small entities for two reasons. First, there are few small entities in these two industries. Second, there is a cutoff for sources generating small quantities of benzene waste, measured as the total annual quantity of benzene in the waste. Facilities subject to the cutoff are required only to keep records and make reports to verify their exemption. The average economic impact is also unlikely to be significant. Therefore, since the proposed regulation is unlikely

to impose a significant economic impact on a substantial number of small entities, a regulatory flexibility analysis is not required.

4. Industrial Solvent Use

The industrial solvent use source category includes benzene solvent use in the manufacture of rubber tires and pharmaceuticals. No small entities in either rubber tire manufacturing (SIC 3011) or pharmaceutical manufacturing (SIC 2834) have been identified that would be affected by the proposed regulation. Therefore, no regulatory flexibility analysis is required.

5. Gasoline Marketing System

This group of source categories includes bulk gasoline terminals, bulk plants, and gasoline service stations. With regard to bulk terminals (SIC 5171), the definition of a small business is an entity with less than 500 employees. Probably more than 20 percent of the bulk terminal industry can be considered as small businesses according to this criterion. Almost two-thirds of the facilities, however, are already controlled to the required level. Control requirements result in a percentage cost increase of less than 0.2 percent and is not expected to cause significant impacts. Therefore, a regulatory flexibility analysis is not required.

Since bulk plants average less than 10 employees, many of the entities owning bulk terminal plants are expected to be small businesses. Almost half of the facilities are already controlled to the required level. The smaller bulk plants (less than 4,000 gallons/day) have much lower control requirements. The percentage cost increase is less than 0.2 percent for the more stringent control requirements and is not expected to cause significant impacts. Therefore, a regulatory flexibility analysis is not required.

For gasoline service stations, the definition of small business (SIC 5541) is an entity with less than $4.5 million in sales. The definition of a small business for convenience stores (SIC 5399, 5499, and 5999), is an entity with less than $3.5 million in sales. More than 20 percent of service stations are expected to be considered small by these criteria. Almost half of the facilities, however, are already controlled to the required level. The percentage costs increase for the ones requiring control is less than 0.2 percent and is not expected to cause significant impacts. The smaller service stations (less than 10,000 gallons/month) are exempted from control requirements. Therefore, a regulatory flexibility analysis is not required.

Pursuant to the provisions of 5 U.S.C 605(b), I hereby certify that these proposed rules, if promulgated, will not have a significant economic impact on a substantial number of small business entities.

C. Public Hearing

A public hearing will be held, if requested, to discuss the proposed actions in accordance with Sections 112(b)(1)(B) and 307(d)(5) of the CAA. Persons wishing to make oral presentations should contact EPA at the address given in the **ADDRESSES** section of this preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement before, during, or within 30 days after the hearing. Written statements should be addressed to the Air Docket Section address given in the **ADDRESSES** section of this preamble and should refer to the applicable Docket No. (see **ADDRESSES** section for Docket No. for each source category).

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at the EPA's Air Docket Section in Washington, DC (see **ADDRESSES** section of this preamble).

D. Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered by EPA in the development of this proposed rulemaking. The principal purposes of the docket are: (1) To allow interested parties to identify and locate documents so that they can participate effectively in the rulemaking process; and (2) to serve as the record in case of judicial review (except for interagency review materials [307(d)(7)(A)]).

E. Executive Order 12291

Under Executive Order 12291, EPA is required to judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. The criteria set forth in Section 1 of the Order for determining whether a regulation is a major rule are as follows: (1) is likely to have an annual effect on the economy of $100 million or more; (2) is likely to cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local governments, or geographic regions; or (3) is likely to result in 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.

None of the regulations being proposed are major because: (1) nationwide annual compliance costs are below the threshold of $100 million; (2) the proposed regulations do not significantly increase prices or production costs; and (3) the proposed regulations do not result in significant adverse effects on domestic competition, employment, investment, productivity, innovation, or competition in foreign markets.

All of the proposed regulations presented in this notice were submitted to OMB for review as required by Executive Order 12291. Any written comments from OMB to EPA and any written EPA response to those comments will be included in the dockets listed at the beginning of today's notice under **ADDRESSES**. These dockets are available for public inspection at the EPA's Air Docket Section, which is listed in the **ADDRESSES** section of this preamble.

F. Miscellaneous

As prescribed by Section 112 of the CAA, as amended, establishment of today's proposed national emissions standards was preceded by the Administrator's listing of benzene as a hazardous air pollutant on June 8, 1977 (42 FR 29332).

In accordance with Section 117 of the Act, publication of these actions on benzene was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies to the maximum extent practical.

G. Request for Comments

Throughout this notice, comments and information are requested on specific areas. Major areas on which the EPA requests public comment include:

1. Are the methods specified in Subpart BB for determining vapor tightness of marine vessels appropriate? Because there is limited experience in this, EPA is interested in comment on the suitability and comparability of the alternative proposed methods.

2. How should EPA consider cocontrol of other pollutants in judgments on control levels that provide an ample margin of safety? For several source categories considered in this notice, EPA considered reductions in VOC emissions in the balancing of costs and the additional health benefits. This question is particularly relevant where the risks and risk reduction are small.

3. In the ample margin of safety decisions, how should EPA make a reasonable cost determination when VOC emissions are cocontrolled in

ozone nonattainment areas? And ozone attainment areas? This question is of particular relevance to the ample margin of safety decisions for the three gasoline marketing source categories.

4. Information on alternative control technologies not considered in the various analyses.

5. Additional information on the control techniques considered in the various alternatives. The EPA is especially interested in the control alternatives that were selected to provide an acceptable risk and an ample margin of safety.

6. Furthermore, since a significant effect of the gasoline NESHAP is to reduce gasoline vapor emissions (which include benzene) in ozone attainment areas, EPA is interested in comment on the value of extending these controls nationwide. The EPA is also interested in comment on possible conflicts between State, local, and private sector resources needed to implement these standards and the resource needs to bring many areas into attainment for ozone.

7. In estimating benzene emissions from waste operations, EPA has relied on limited information from several existing emission sources. The following additional information is needed to reduce uncertainties in the estimates:

a. The EPA procedures for estimating emissions and any actual quantification of benzene emissions from waste operations.

b. The types of operations and wastes that would require accumulation, and the maximum accumulation periods being analyzed by EPA.

c. Alternative methods or approaches that would demonstrate that the treatment process is being operated as designed to reduce benzene emissions.

List of Subjects in 40 CFR Part 61

Asbestos, Benzene, Beryllium, Coke oven emissions, Hazardous substances, Incorporation by reference, Inorganic arsenic, Intergovernmental relations, Mercury, Radionuclides, Reporting and recordkeeping requirements, Vinyl chloride, Volatile hazardous air pollutants.

Dated: August 31, 1989.

F. Henry Habicht,

Acting Administrator.

It is proposed to amend 40 CFR Part 61 by adding paragraph (c) to § 61.18 and by adding Subpart AA, Subpart BB, Subpart CC, Subpart DD, Subpart EE, Subpart FF, and Subpart GG as follows:

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

Authority: Secs. 101, 112, 114, 116, 301 of the Clean Air Act, as amended (42 U.S.C. 7401, 7412, 7414, 7416, 7601).

2. Section 61.18 is amended by adding paragraph (c) as follows:

§ 61.18 Incorporations by reference.

* * * * *

(c) The following material is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

(1) SW–846, Test Methods for Evaluating Solid Waste, third edition, Order Number 955–001–00000–1:

(i) Method 8020, Aromatic Volatile Organics (to be approved at promulgation) for § 61.355(c)(3)(i).

(ii) Method 8021, Determination of Volatile Organic Compounds by Capillary Column Gas Chromatography with Photoionization and Electrolytic Conductivity Detection (to be approved at promulgation) for § 61.355(c)(3)(ii).

(iii) Method 8240, Gas Chromatography Mass Spectrometry for Volatile Organics (to be approved at promulgation) for §§ 61.355(c)(3)(iii).

(iv) Method 8260, Gas Chromatography/Mass Spectrometry for Volatile Organics: Capillary Column Technique (to be approved at promulgation) for 61.355(c)(3)(iv).

3. Subpart AA is added as follows:

Subpart AA—National Emission Standard for Benzene Emissions From Industrial Solvent Use at Pharmaceutical Manufacturing Facilities

Sec.

61.290 Applicability and designation of affected facility.
61.291 Definitions.
61.292 Standards.
61.293 Monitoring requirements.
61.294 Test methods and procedures.
61.295 Reporting and recordkeeping.
61.296 Delegation of authority.

Subpart AA—National Emission Standard for Benzene Emissions From Industrial Solvent Use at Pharmaceutical Manufacturing Facilities

§ 61.290 Applicability and designation of affected facility.

(a) The provisions of this subpart apply to all process vents from a pharmaceutical manufacturing process unit where benzene is used as a solvent.

§ 61.291 Definitions.

As used in this subpart, all terms not defined herein shall have the meaning given to them in the Act, or in Subpart A or Subpart V of Part 61.

"Batch cycle" means the time period from reactant introduction into any noncontinuous process or operation, which is not characterized by steady-state conditions and in which reactions are not added and products are not removed simultaneously, until product removal.

"Benzene" means any liquid material containing benzene except benzene-laden waste [covered under Subpart FF of Part 61].

"Benzene used as a solvent" means benzene which is utilized for its ability to dissolve another solvent to form a uniformly dispersed mixture.

"Process unit" means any components of an affected facility that are assembled and connected by pipes or ducts to produce a product. A process unit can operate independently if supplied with sufficient feed or raw materials and sufficient product storage facilities.

"Process vent stream" means any gas discharged to the atmosphere from a process unit. This term does not include relief valve discharges and equipment leaks (including, but not limited to, leaks from pumps, compressors, sample connectors, and valves.)

§ 61.292 Standards.

(a) Each owner or operator of a facility subject to the provisions of this subpart shall comply with paragraphs (a)(1) or (a)(2) of this section. Each owner or operator shall:

(1) Route each process stream that emits benzene to a control device or a combination of control devices that achieve a total emission reduction of at least 95 weight percent. If a boiler or process heater is used to comply with this paragraph, the vent stream shall be introduced into the flame zone of the boiler or process heater.

(2) Maintain benzene emissions below 1 Mg per year.

§ 61.293 Monitoring requirements.

(a) Each owner or operator of an affected facility that uses a carbon adsorber to comply with the requirements of § 61.292(a) shall comply with the monitoring provisions of paragraph (a)(1) of this section and either paragraph (a)(2) or (a)(3) of this section, as appropriate.

(1) Install, calibrate, maintain, and operate according to manufacturer's specifications, a flow indicator that provides a record of vent stream flow to the carbon adsorber during the entire batch cycle. The owner or operator shall install the flow indicator in the vent stream at the point closest to the inlet to each carbon adsorber.

(2) 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 benzene 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 benzene is used as the basis for reporting, as described in § 61.295(a)(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 § 61.295(a)(1)(ii).

(3) 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 benzene in the outlet gas stream for a minimum of one complete adsorption cycle per day for each adsorber vessel. The owner or operator of an affected facility may also monitor and record the concentration level of benzene 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 benzene is used as the basis for reporting, as described in § 61.295(a)(1)(i). In this case, the owner or operator of an affected facility 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 § 61.295(a)(1)(ii). In this case, the owner or operator of an affected facility shall compute daily a 3-day rolling average efficiency for each individual adsorber vessel.

(b) Each owner or operator of an affected facility that uses an incinerator to seek to comply with the percent reduction requirement specified under § 61.292(a)(1) shall install, calibrate, maintain, and operate the following equipment according to the manufacturer's specifications:

(1) A temperature monitoring device equipped with a continuous recorder and having an accuracy of ±1 percent of the temperature being measured expressed in degrees Celsius or ±0.5°C, whichever is greater.

(i) Where an incinerator other than a catalytic incinerator is used, a temperature monitoring device shall be installed in the firebox.

(ii) Where a catalytic incinerator is used, temperature monitoring devices shall be installed in the gas stream immediately before and after the catalyst bed.

(2) A flow indicator installed, calibrated, maintained, and operated according to manufacturer's specifications that provides a record of vent stream flow to the incinerator during the entire batch cycle. The flow indicator shall be installed in each vent stream at a point closest to the inlet of each incinerator.

(c) An owner or operator of an affected facility seeking to demonstrate compliance with the standards specified under § 61.292(a) with control or recovery devices other than a carbon adsorber or incinerator shall provide the Administrator with information describing the operation of the control device and the process parameter(s) that would indicate proper operation and maintenance of the device. The Administrator may request further information and then shall specify appropriate monitoring procedures or requirements.

§ 61.294 Test methods and procedures.

(a) The following test procedures shall be used for determining compliance with § 61.292(a).

(1) For continuous vents or processes, performance testing shall be conducted when the facility is at full operating conditions and flowrates. For batch processes, performance testing must be conducted for at least three emission events. During each emission event, the process vent flowrate and benzene concentration shall be determined by continuous integrated sampling.

(2) The time period for a performance test shall be as follows:

(i) For carbon adsorption systems with a common exhaust stack for all the individual adsorber vessels, the test shall consist of at least three separate runs. Each run shall coincide with a complete adsorption cycle of an individual adsorber vessel such that an adsorption cycle for each vessel is included in at least one run.

(ii) For carbon adsorption systems with individual exhaust stacks, each adsorber vessel shall be tested individually. Each test shall coincide with a complete adsorption cycle.

(iii) For incinerators and any other control devices applied to batch processes, performance testing shall be conducted during at least three batch cycles. For incinerators and any other control devices applied to continuous processes, each test shall consist of three runs.

(3) The owner or operator of an affected facility shall use the following test methods contained in Appendix A of 40 CFR part 60 to determine values for use in the equations in paragraph (a)(4) of this section:

(i) Method 1 or 1A for determination of sample and velocity traverses, as applicable.

(ii) Method 2, 2A, 2C, or 2D for determination of velocity and volumetric flow rates, as applicable.

(iii) Method 18 for determination of benzene concentration at the inlet and outlet of the control device.

(4) The percent reduction of the control device shall be calculated as follows:

(i) The mass emitted during each testing cycle shall be calculated as follows (equation 1):

Equation 1:

$$M_{ei} = KV_sCL$$

Where:

M_{ei} = Mass of benzene emitted during testing cycle i, kg.

V_s = Volume of air-vapor mixture exhausted, m^3 at standard conditions.

C = Benzene concentration as measured by Method 18 at the exhaust vent, ppmv.

K = Density of calibration gas, (kg/m^3), at standard conditions.

K = 3.25 for benzene.

L = Conversion factor, (m^3 benzene/m^3 air) (1/ppmv).

$= 10^{-6}$

s = Standard conditions, 20°C and 760 mm Hg.

(ii) The benzene mass emission rates before and after the control device shall be calculated as follows (equation 2):

Equation 2:

$$E = \frac{\sum_{i=1}^{n} M_{ei}}{T}$$

Where:

E=Mass flow rate of benzene emitted, kg/hr.

M_{ei}=Mass of benzene entering the control device or emitted during testing cycle i, kg.

T=Total time of all testing cycles, hr.

n=Number of testing cycles.

(iii) The percent reduction across the control device shall be calculated as follows for each test cycle (equation 3):

Equation 3:

$$R = \frac{E_b - E_a}{E_b} * 100$$

Where:

R = Control efficiency of control device for test cycle i, %.
E_b = Mass flow rate of benzene prior to control device (from Equation (2)), kg/hr.
E_a = Mass flow rate of benzene after the control device (from Equation (2)), kg/hr.

(iv) The average percent reduction across the control device shall be calculated as follows (equation 4):

Equation 4:

$$P_a = \frac{\sum_{i=1}^{n} R_i}{n}$$

Where:

P_a = Average control efficiency of control device, %.
R_i = Control efficiency of control device for test cycle i (from Equation (3), %.
n = Number of test cycles.

(b) Any owner or operator of an affected facility that seeks to comply with the percent reduction requirement in § 61.292(a)(1) with a device other than a carbon adsorber or incinerator shall apply to the Administrator for approval of an alternative procedure for demonstrating compliance.

(c) Any owner or operator of an affected facility that seeks to comply with § 61.292(a)(2) shall calculate the annual benzene emission rate in the process vent stream as follows:

$A = EH\ (1/1000)$

Where:

A = Annual emission rate in Mg/yr.
E = Mass flow rate of benzene emitted, kg/hr (refer to equation (2) in paragraph (a)(4) of this section for the calculation procedure).
H = Hours per year gases are released to the atmosphere through the vent.
$1/1000$ = conversion from kg/yr to Mg/yr.

§ 61.295 Reporting and recordkeeping.

(a) Each owner or operator of an affected facility subject to the provisions of this subpart shall keep an up-to-date, readily accessible record of the following data measured during each performance test, and also include the following data in the report of the initial performance test required under § 61.13.

(1) Where an owner or operator of an affected facility demonstrates compliance with § 61.292 (a)(1) or (a)(2) through the use of a carbon adsorption system, the data listed below shall be recorded.

(i) For those affected facilities monitoring only the carbon adsorption system outlet concentration level of benzene, the data specified in paragraph (a)(1)(i)(A) or (a)(1)(i)(B) of this section.

(A) For carbon adsorption systems with a common exhaust stack for all the individual adsorber vessels, the average benzene concentration level measured during three consecutive system rotations through the adsorption cycles of all the individual adsorber vessels.

(B) For carbon adsorption systems with individual exhaust stacks for each adsorber vessel, the average benzene concentration level measured on a 3-day rolling average for each adsorber vessel.

(ii) For those affected facilities monitoring both the carbon adsorption system inlet and outlet concentration of benzene, the data specified in paragraphs (a)(1)(ii)(A) or paragraphs (a)(1)(ii)(B) of this section.

(A) For carbon adsorption systems with a common exhaust stack for all the individual adsorber vessels, the average control efficiency measured during three consecutive adsorption cycles.

(B) For carbon adsorption systems with individual exhaust stacks for each adsorber vessel, the average control efficiency measured on a 3-day rolling average.

(2) Where an owner or operator of an affected facility demonstrates compliance with § 61.292(a)(1) through the use of an incinerator:

(i) The average firebox temperature of the incinerator (or the average temperature upstream and downstream of the catalyst bed), measured at least every 10 minutes during a batch cycle if the total time period of the batch cycle is less than 3 hours and every 15 minutes if the total time period of the batch cycle is equal to or greater than 3 hours. The measured temperature shall be averaged over the batch cycle.

(ii) The percent reduction of benzene determined as specified in § 61.294(a)(3) achieved by the incinerator.

(3) Where an owner or operator subject to the provisions of this subpart demonstrates compliance with § 61.292(a)(2), all emission test measurements and calculations of annual emission rate shall be recorded.

(4) Where an owner or operator of an affected facility demonstrates compliance with § 61.292 (a)(1) or (a)(2) through use of a device other than a carbon adsorber or an incinerator, those data specified in 61.293(c) that would indicate proper operation and maintenance of the device shall be recorded.

(b) Each owner or operator of an affected facility shall keep up-to-date, readily accessible continuous records of the equipment operating parameters specified to be monitored under § 61.293(a) as well as up-to-date, readily accessible records of periods of operation during which the parameter boundaries established during the most recent performance test are exceeded. The Administrator may at any time require a report of these data. Periods of operation during which the parameter boundaries established during the most recent performance tests are exceeded are defined as follows:

(1) For carbon adsorption systems, the data specified below, shall be recorded.

(i) For those affected facilities monitoring only the carbon adsorption system outlet concentration levels of benzene, the periods specified in (b)(1)(i)(A) or (b)(1)(i)(B) of this section, as applicable.

(A) 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 cycle of all the individual adsorber vessels during which the average benzene concentration 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.

(B) For carbon adsorption systems with individual exhaust stacks for each adsorber vessel, all 3-day rolling averages for each adsorber vessel when the benzene concentration level 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.

(ii) For those affected facilities monitoring the carbon adsorption system inlet and outlet concentration of benzene, the data specified in (b)(1)(ii)(A) or (b)(1)(ii)(B) of this section, as applicable.

(A) For carbon adsorption systems with a common exhaust stack for all the individual adsorber vessels, all periods of three consecutive adsorption cycles during which the average system control efficiency is below 95 percent.

(B) For carbon adsorption systems with individual exhaust stacks for each adsorber vessel, all 3-day rolling averages for each adsorber vessel when the system control efficiency is below 95 percent.

(2) For thermal incinerators, all loading cycles during which the average combustion temperature was more than 28 °C (50 °F) below the average

combustion temperature during the most recent performance test at which compliance with § 61.292(a) was determined.

(3) For catalytic incinerators, all loading cycles during which the average temperature of the vent stream immediately before the catalyst bed is more than 28 °C (50 °F) below the average temperature of the process vent stream during the most recent performance test at which compliance with § 61.292(a) was determined.

(4) For devices other than carbon adsorbers and incinerators, the parameter boundaries shall be specified by the Administrator.

(c) Each owner or operator of an affected facility shall keep up-to-date, readily accessible continuous records of the indication of flow specified under §§ 61.293(a)(1) and 61.293(b)(2), as well as up-to-date, readily accessible records of all periods when the vent stream is diverted from the control device during the batch cycle.

(d) Each owner or operator subject to the requirements of § 61.292 shall submit to the Administrator the initial report within 90 days after the effective date of this subpart or 90 days after startup for a source that has an initial startup date after the effective date. The owner or operator shall also submit to the Administrator quarterly reports of the following information.

(1) Exceedances of monitored parameters recorded under § 61.295(b).

(2) All periods recorded under § 61.295(c) when the vent stream is diverted from the control device.

§ 61.296 Delegation of authority.

(a) In delegating implementation and enforcement to a State under section 112(d) 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 which will not be delegated to States: No restrictions.

4. Subpart BB is added as follows:

Subpart BB—National Emission Standard for Benzene Emissions from Benzene Transfer Operations

Sec.

61.300 Applicability.
61.301 Definitions.
61.302 Standards.
61.303 Monitoring requirements.
61.304 Test methods and procedures.
61.305 Reporting and recordkeeping.
61.306 Delegation of authority.

Subpart BB—National Emission Standard for Benzene Emissions From Benzene Transfer Operations

§ 61.300 Applicability.

(a) The affected facility to which this subpart applies is the total of all loading racks at which benzene is loaded into tank trucks, railcars, or marine vessels at each benzene production facility and each bulk terminal.

(b) Any affected facility under paragraph (a) of this section which loads only material containing less than 70 weight percent benzene is exempt from the requirements of this subpart, except for the recordkeeping and reporting requirements in § 61.305(j).

(c) Any affected facility under paragraph (a) of this section whose annual benzene loading is less than 1.3 million liters is exempt from the requirements of this subpart, except for the recordkeeping and reporting requirements in § 61.305(j).

(d) The owner or operator of an affected facility, as defined in § 61.300(a) that loads a marine vessel shall be in compliance with the railcar, the marine vessel loading racks shall be in compliance with the provisions of this subpart on and after February 1, 1991, while the tank truck loading racks and the railcar loading racks shall be in compliance as required by § 61.12.

§ 61.301 Definitions.

As used in this subpart, all terms not defined herein shall have the meaning given them in the Act, or in subpart A or subpart V of part 61.

"Benzene" means any liquid material containing benzene except benzene-laden waste [covered under subpart FF of part 61], gasoline [service station storage covered under 40 CFR part 61, subpart CC, bulk gasoline terminals and plants covered under subparts DD and EE, respectively], or benzene-laden liquid from coke by-product recovery plants.

"Bulk terminal" means any facility which receives liquid product containing benzene by pipeline, marine vessel, tank trucks, or rail cars, and loads the product for further distribution into tank trucks, rail cars, or marine vessels.

"Control device" means all equipment used for recovering or oxidizing benzene vapors displaced from the affected facility.

"Incinerator" means any enclosed combustion device that is used for destroying organic compounds and that does not extract energy in the form of steam or process heat.

"Leak" means any instrument reading of 10,000 ppmv or greater using Method 21 of 40 CFR part 60, Appendix A.

"Loading cycle" means the time period from the beginning of filling a tank truck, railcar, or marine vessel until flow to the control device ceases, as measured by the flow indicator.

"Loading rack" means the loading arms, pumps, meters, shutoff valves, relief valves, and other piping and valves necessary to fill tank trucks, railcars, or marine vessels.

"Marine vessel" means any tankship or tankbarge which transports liquid product such as benzene.

"Nonvapor tight" means any tank truck, railcar, or marine vessel that does not pass the required vapor tightness test.

"Process heater" means a device that transfers heat liberated by burning fuel to fluids contained in tubes, except water that is heated to produce steam.

"Steam generating unit" means any enclosed combustion device that uses fuel energy in the form of steam.

"Vapor collection system" means any equipment located at the affected facility used for containing benzene vapors displaced during the loading of tank trucks, railcars, or marine vessels. This does not include the vapor collection system that is part of any tank truck, railcar, or marine vessel vapor collection manifold system.

"Vapor-tight marine vessel" means a marine vessel with a benzene product tank that has been demonstrated within the preceding 12 months to have no leaks. This demonstration shall be made using Method 21 of part 60, Appendix A during the last 20 percent of loading and during a period when the vessel is being loaded at its maximum loading rate. A reading of greater than 10,000 ppm as methane shall constitute a leak. As an alternative, a marine vessel owner or operator may use the vapor tightness test described in § 61.304(h) to demonstrate vapor-tightness. A marine vessel operated at negative pressure is assumed to be vapor-tight for the purpose of this standard.

"Vapor-tight tank truck" or "vapor tight railcar" means a tank truck or railcar for which it has been demonstrated within the preceding 12 months that its product tank will sustain a pressure change of not more than 750 pascals within 5 minutes after it is pressurized to 4,500 pascals. This capability is to be demonstrated using the pressure test procedure specified in Method 27 of part 60, Appendix A.

"Waste" means any material resulting from industrial, commercial, mining, or agricultural operations, or from community activities that is discarded or is being accumulated, stored, or physically, chemically, thermally, or

biologically treated prior to being discarded, discharged, or recycled.

§ 61.302 Standards.

(a) The owner or operator of an affected facility shall equip each loading rack with a vapor collection system that is:

(1) Designed to collect all benzene vapors displaced from tank trucks, railcars, or marine vessels during loading, and

(2) Designed to prevent any benzene vapors collected at one loading rack from passing through another loading rack to the atmosphere.

(b) The owner or operator of an affected facility shall install a control device and reduce benzene emissions routed to the atmosphere through the control device by 98 weight-percent. If a boiler or process heater is used to comply with the percent reduction requirement, then the vent stream shall be introduced into the flame zone of such a device.

(c) The owner or operator of an affected facility shall operate any flare used to comply with paragraph (b) of this section in accordance with the requirements of § 60.18 except for § 60.18 (c)(4)(ii), (c)(4)(iii), (c)(5), (f)(5), and (f)(6). In lieu of complying with these sections, owners or operators shall comply with § 61.304(c) of this subpart.

(d) The owner or operator of an affected facility shall limit loading of benzene into vapor-tight tank trucks and vapor-tight railcars using the following procedures:

(1) The owner or operator shall obtain the vapor tightness documentation described in § 61.305(h) for each tank truck or railcar loaded at the affected facility. The test date in the documentation must be within the preceding 12 months. The vapor tightness test to be used for tank trucks and railcars is Method 27 of part 60, Appendix A.

(2) The owner or operator shall cross-check the identification number for each tank truck or railcar to be loaded with the file of vapor tightness documentation before the corresponding tank truck or railcar is loaded. If no documentation is on file, the owner or operator shall obtain a copy of the information from the tank truck or railcar operator before the tank truck or railcar is loaded.

(3) Alternate procedures to those described in (d) (1) and (2) of this section may be used upon application to, and approval by, the Administrator.

(e) The owner or operator of an affected facility shall limit the loading of marine vessels to those vessels that are vapor-tight as determined by either paragraph (e)(1), (e)(2), (e)(3) or (e)(4) of this section.

(1) The owner or operator of an affected facility shall ensure that each marine vessel is loaded with the benzene product tank below atmospheric pressure (i.e., at negative pressure). If the pressure is measured at the interface between the shoreside vapor collection pipe and the marine vessel vapor line, the pressure measured according to the procedures in § 61.303(f) must be between 0 psig and 0.3 psig below atmospheric pressure.

(2) The owner or operator of an affected facility shall use the following procedure to obtain the vapor tightness documentation described in § 61.305(h). The vapor tightness test for marine vessels is Method 21 of part 60, Appendix A. A reading of 10,000 ppmv or greater as methane shall constitute a leak.

(i) The owner or operator of an affected facility shall obtain the leak test documentation described in § 61.305(h) for each marine vessel prior to loading, if available. The date of the test listed in the documentation must be within the 12 preceding months.

(ii) If no test has been conducted on the marine vessel in the preceding 12 months, the owner or operator of an affected facility shall require that a leak test of the marine vessel be conducted during the final 20 percent of loading of the marine vessel. The test shall be conducted when the marine vessel is being loaded at the maximum allowable loading rate.

(A) If no leak is detected, the owner or operator of an affected facility shall require that the documentation described in § 61.305(h) is completed. The owner or operator of the affected facility shall retain a copy of the vapor tightness documentation on file.

(B) If any leak is detected, the owner or operator of an affected facility shall require that the vapor-tightness failure be documented for the marine vessel owner or operator.

(iii) If the marine vessel has failed one vapor-tightness test in the preceding 12 months as described in § 61.302(e)(2)(ii), the owner or operator of the affected facility shall require that the owner or operator of the nonvapor-tight marine vessel provide documentation that the leaks detected during the previous vapor-tightness test have been repaired. Once the repair documentation has been provided, the owner or operator may load the marine vessel. The owner or operator shall require that the vapor-tightness test described in § 61.302(e)(2)(ii) be conducted during loading.

(iv) If the marine vessel has failed more than one vapor-tightness test described in § 61.302(e)(2)(ii) in the preceding 12 months, the owner or operator of the affected facility shall not allow the marine vessel to be loaded until the marine vessel owner or operator provides proof of vapor-tightness test described in § 61.304(h).

(3) The owner or operator of an affected facility shall obtain a copy of the marine vessel's vapor tightness documentation described in § 61.305(h) for a test conducted within the preceding 12 months in accordance with § 61.304(h).

(4) Alternate procedures to those described in (e)(1), (e)(2) and (e)(3) of this section may be used upon application to, and approval by, the Administrator.

(f) The owner or operator of an affected facility shall limit loading of benzene to tank trucks, railcars, and marine vessels equipped with vapor collection equipment that is compatible with the affected facility's vapor collection system.

(g) The owner or operator of an affected facility shall limit loading of tank trucks, railcars, and marine vessels to tank trucks, railcars, and marine vessels whose collection systems are connected to the affected facilities vapor collection systems.

(h) The owner or operator of an affected facility shall ensure that the vapor collection and benzene loading equipment of tank trucks and railcars shall be designed and operated to prevent gauge pressure in the tank truck or railcar tank from exceeding 4,500 pascals during loading. This level is not to be exceeded when measured by the procedures specified in § 61.304(d).

(i) The owner or operator of an affected facility shall ensure that no pressure-vacuum vent in the affected facility's vapor collection system for tank trucks and railcars shall begin to open at a system pressure less than 4,500 pascals.

(j) The owner or operator of an affected facility shall ensure that the maximum normal operating pressure of the marine vessel's vapor collection equipment shall not exceed 0.5 times the relief set pressure of the pressure-vacuum vents. This level is not to be exceeded when measured by the procedures specified in § 61.304(e).

(k) Each calendar month, the owner or operator of an affected facility shall inspect the vapor collection system and the control device during the loading of tank trucks, railcars, or marine vessels for benzene leaks using Method 21 as described in § 61.304(g). A reading of

10,000 ppm or greater as methane shall constitute a leak. The owner or operator of the affected facility shall record each leak on the inspection form and repair the source of the leak within 15 calendar days after it is detected.

(l) Any owner or operator of an affected facility subject to this section may apply to the Administrator for a determination of an alternative means of emission limitation that achieves the reduction required by § 61.302(b).

§ 61.303 Monitoring requirements.

(a) Each owner or operator of an affected facility that uses an incinerator to comply with the percent reduction requirement specified under § 61.302(b) shall install, calibrate, maintain, and operate the following equipment according to manufacturer's specifications:

(1) A temperature monitoring device equipped with a continuous recorder and having an accuracy of ±1 percent of the combustion temperature being measured expressed in degrees Celsius or ±0.5 °C, whichever is greater.

(i) Where an incinerator other than a catalytic incinerator is used, the owner or operator of the affected facility shall install a temperature monitoring device in the firebox.

(ii) Where a catalytic incinerator is used, the owner or operator shall install temperature monitoring devices in the gas stream immediately before and after the catalyst bed.

(2) A flow indicator installed, calibrated, maintained, and operated according to manufacturer's specifications that provides a record of vent stream flow to the incinerator during the entire loading cycle. The owner or operator shall install the flow indicator in each vent stream at a point closest to the inlet of each incinerator.

(b) Each owner or operator of an affected facility that uses a flare to comply with § 61.302(b) shall install, calibrate, maintain, and operate the following equipment according to manufacturer's specifications:

(1) A heat sensing device, such as an ultraviolet beam sensor or thermocouple, at the pilot light to indicate the presence of a flame during the entire loading cycle.

(2) A flow indicator that provides a record of vent stream flow to the flare during the entire loading cycle. The owner or operator shall install the flow indicator in the vent stream at a point closest to the inlet of each flare.

(c) Each owner or operator of an affected facility that uses a steam generating unit or process heater to comply with § 61.302(b) shall comply with the following requirements. Where a steam generating unit or process heater with a design heat input capacity of 44 MW or greater is used to comply with § 61.302(b), the owner or operator of an affected facility shall comply with paragraphs (c)(1) and (c)(3). Where a steam generating unit with a design heat input capacity of less than 44 MW is used to comply with § 61.302(b), the owner or operator of an affected facility shall comply with paragraphs (c)(1) and (c)(2).

(1) Install, calibrate, maintain, and operate according to the manufacturer's specifications, a flow indicator that provides a record of vent stream flow to the steam generating unit or process heater during the entire loading cycle. The owner or operator shall install the flow indicator in the vent stream at a point closest to the inlet to each steam generating unit or process heater.

(2) Install in the firebox, calibrate, maintain, and operate according to manufacturer's specifications a temperature monitoring device equipped with a continuous recorder and having an accuracy of ±1 percent of the temperature being measured expressed in degrees Celsius or ±0.5 °C, whichever is greater, for steam generating units or process heaters of less than 44 MW design heat input capacity.

(3) Monitor and record the periods of operation of the steam generating units or process heater if the design heat input capacity of the steam generating unit or process heater is 44 MW or greater. The records must be readily available for inspection.

(d) Each owner or operator of an affected facility that uses a carbon adsorption system to comply with the percent reduction requirement specified under § 61.302(b) shall carry out the monitoring provisions of paragraph (d)(1) of this section and either paragraph (d)(2) or (d)(3) of this section, as appropriate.

(1) Install, calibrate, maintain, and operate according to the manufacturer's specifications, a flow indicator that provides a record of vent stream flow to the carbon adsorber during the entire loading cycle. The owner or operator shall install the flow indicator in the vent stream at the point closest to the inlet to each carbon adsorber.

(2) 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 benzene 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 benzene is used as the basis for reporting, as described in § 61.305(b)(5). 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 § 61.305(b)(6).

(3) 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 indicates and records the concentration level of benzene 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 benzene 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 benzene is used as the basis for reporting, described in § 61.305(b)(5). In this case, the owner or operator of an affected facility shall compute daily a 3-day rolling average concentration level of benzene 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 § 61.305(b)(6). In this case, the owner or operator shall compute daily a 3-day rolling average efficiency for each individual adsorber vessel.

(e) The owner or operator of an affected facility seeking to demonstrate compliance with the standards specified under § 61.302(b) with control devices other than an incinerator, steam generating unit, process heater, carbon adsorber, or flare shall provide the Administrator with information describing the operation of the control device and the process parameter(s) that would indicate proper operation and maintenance of the device. The Administrator may request further information and will specify appropriate monitoring procedures or requirements.

(f) Each owner or operator of an affected facility seeking to comply with § 61.302(e)(1) shall install, calibrate, maintain, and operate a recording pressure measurement device (magnehelic gauge or equivalent device) and an audible and visible alarm system that is activiated where the pressure vacuum specified in § 61.302(e)(1) is not attained. The owner or operator shall place the alarm system so that it can be

seen and heard where cargo transfer is controlled and on the open deck.

§ 61.304 Test methods and procedures.

(a) The procedures for determining compliance with § 61.302(b) for all control devices other than flares is as follows:

(1) All testing equipment shall be prepared and installed as specified in the appropriate test methods.

(2) The time period for a performance test shall be not less than 6 hours, during which at least 300,000 liters of benzene are loaded. If the throughput criterion is not met during the initial 6 hours, the test may be either continued until the throughput criterion is met, or resumed the next day with at least another 6 complete hours of testing.

(3) For intermittent control devices:

(i) The vapor holder level of the intermittent control device shall be recorded at the start of the performance test. The end of the performance test shall coincide with the time when the vapor holder is at its original level.

(ii) At least two startups and shutdowns of the control device shall occur during the performance test. If this does not occur under automatically controlled operation, the system shall be manually controlled.

(4) An emission testing interval shall consist of each 5-minute period during the performance test. For each interval:

(i) The reading from each measurement instrument shall be recorded.

(ii) Method 1 or 1A of part 60, Appendix A, as appropriate, shall be used for selection of the sampling site.

(iii) The volume exhausted shall be determined using Method 2, 2A, 2C, or 2D of part 60, Appendix A, as appropriate.

(iv) The average benzene concentration upstream and downstream of the control device in the vent shall be determined using Method 25A or Method 25B of part 60, Appendix A using benzene as the calibration gas. The average benzene concentration shall correspond to the volume measurement by taking into account the sampling system response time.

(5) The mass emitted during each testing interval shall be calculated as follows:

$$M_i = FKV_sC$$

Where:

M_i = Mass of benzene emitted during testing interval i, kg.
V_s = Volume of air-vapor mixture exhausted, m^3 at standard conditions.
C = Benzene concentration (as measured) at the exhaust vent, ppmv.
K = Density, (kg/m^3 benzene), standard conditions.
= 3.25 for benzene.
F = Conversion factor, (m^3 benzene/m^3 air)(1/ppmv).
$= 10^{-6}$.
s = Standard conditions, 20°C and 760 mm Hg.

(6) the benzene mass emission rates before and after the control device shall be calculated as follows:

$$E = \frac{\sum_{i=1}^{n} M_i}{T}$$

Where:

E = Mass flow rate of benzene emitted, kg/hr.
M_i = Mass of benzene emitted during testing interval i, kg.
T = Total time of all testing intervals, hr.
n = Number of testing intervals.

(7) The percent reduction across the control device shall be calculated as follows:

$$R = \frac{E_b - E_a}{E_b}(100)$$

Where:

R = Control efficiency of control device, %.
E_b = Mass flow rate of benzene prior to control device, kg/hr.
E_a = Mass flow rate of benzene after control device, kg/hr.

(b) When a flare is used to comply with § 61.302(b), a performance test according to Method 22 of part 60, Appendix A, shall be performed to determine visible emissions. The observation period shall be at least 2 hours and shall be conducted according to Method 22. Performance testing must be conducted during at least three complete loading cycles with a separate test run for each loading cycle. The observation period for detecting visible emissions should encompass each loading cycle. Integrated sampling to measure process vent stream flow rate should be performed continuously during each loading cycle.

(c) The maximum permitted velocity for flares complying with § 61.302(b) shall be 18.3 m/sec.

(d) For the purpose of determining compliance with § 61.302(h), the following procedures shall be used:

(1) Calibrate and install a pressure measurement device (liquid manometer, magnehelic gauge, or equivalent instrument), capable of measuring up to 500 mm of water with a precision of ±2.5 mm H_2O.

(2) Connect the pressure measurement device to a pressure tap in the affected facility's vapor collection system, located as close as possible to the connection with the tank truck or railcar.

(3) During the performance test, record the pressure every five minutes while a tank truck or railcar is being loaded, and record the highest instantaneous pressure that occurs during each loading cycle. Every loading rack must be tested at least once during the performance test.

(4) If more than one loading rack is used simultaneously, then the performance test should be conducted simultaneously to represent the maximum capacity.

(e) For the purpose of determining compliance with § 61.302(j), the following procedures shall be used:

(1) Calibrate and install a pressure measurement device (liquid manometer, magnehelic gauge, or equivalent instrument), capable of measuring up to the relief set pressure of the pressure-vacuum vents.

(2) Connect the pressure measurement device to a pressure tap in the affected facility's vapor collection system, located as close as possible to the connection with the marine vessel.

(3) During the performance test, record the pressure every five minutes while a marine vessel is being loaded, and record the highest instantaneous pressure that occurs during each loading cycle.

(f) Immediately prior to a performance test required for determination of compliance with § 61.302(b) all potential sources of vapor leakage in the affected facility's vapor collection system equipment shall be monitored for leaks using Method 21 as described in § 61.304(g). The monitoring shall be conducted only while a vapor tight tank truck, railcar, or marine vessel is being loaded. All identified leaks in the terminal's vapor collection system shall be repaired prior to conducting the performance test.

(g) Monitoring, as required in § 61.302(k), shall be conducted in accordance with the following requirements:

(1) Monitoring shall comply with Method 21 of 40 CFR Part 60, Appendix A.

(2) The detection instrument shall meet the performance criteria of Method 21.

(3) The instrument shall be calibrated before use on each day of its use by the procedures specified in Method 21.

(4) The calibration gas shall be methane.

(5) The instrument probe shall be traversed around all potential leak interfaces as close as possible to the interface as described in Method 21.

(h) The following test method shall be used to comply with the marine vessel vapor-tightness requirements of § 61.302(e)(3):

(1) Each benzene product tank shall be pressurized with dry air or inert gas to not less than 1.0 psig and not more than the pressure of the lowest relief valve setting.

(2) Once the pressure is obtained, the dry air or inert gas source shall be shut off.

(3) At the end of one-half hour, the pressure in the benzene product tank and piping shall be measured. The change in pressure shall be calculated using the following formula:

$$\Delta P = P_i - P_f$$

Where:

ΔP = Change in pressure, inches of water.

P_i = Pressure in tank when air/gas source is shut off, inches of water.

P_f = Pressure in tank at the end of one-half hour after air/gas source is shut off, inches of water.

(4) The change in pressure, ΔP, shall be compared to the pressure drop calculated using the following formula:

$$\Delta PM = 0.861\ P_{ia}\ L/V$$

Where:

ΔPM = Maximum allowable pressure change, inches of water.

P_{ia} = Pressure in tank when air/gas source is shut off, inches of water, absolute.

L = Maximum permitted loading rate of vessel, barrels per hour.

V = Total volume of product tank, barrels.

(5) If $\Delta P < \Delta PM$, the vessel is vapor tight.

(6) If $\Delta P > \Delta PM$, the vessel is nonvapor tight and the source of the leak must be identified and repaired prior to retesting.

§ 61.305 Reporting and recordkeeping.

(a) Each owner or operator of an affected facility subject to the provisions of this subpart shall keep an up-to-date, readily accessible record of the following data measured during each performance test, and also include the following data in the report of the initial performance test required under § 61.13. Where a steam generating unit or process heater with a design heat input capacity of 44 MW or greater is used to comply with § 61.302(b), a report containing performance test data need not be submitted, but a report containing the information in § 61.305(a)(3)(i) is required.

(1) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with § 61.302(b) through use of an incinerator:

(i) The average firebox temperature of the incinerator (or the average temperature upstream and downstream of the catalyst bed), measured at least every 2 minutes during a loading cycle if the total time period of the loading cycle is less than 3 hours and every 15 minutes if the total time period of the loading cycle is equal to or greater than 3 hours. The measured temperature shall be averaged over the loading cycle.

(ii) The percent reduction of benzene determined as specified in § 61.304(a) achieved by the incinerator.

(2) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with § 61.302(b) through use of a smokeless flare or flare design (i.e., steam-assisted, air-assisted or nonassisted), all visible emission readings, heat content determination, flowrate measurements, and exit velocity determinations made during the performance test, continuous records of the flare pilot flame monitoring measured continuously during the loading cycle and records of all loading cycles during which the pilot flame is absent for each vent stream.

(3) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with § 61.302(b) through the use of a steam generating unit or process heater:

(i) A description of the location at which the vent stream is introduced into the steam generating unit or process heater, and

(ii) The average combustion temperature of the steam generating unit or process heater with a design heat input capacity of less than 44 MW measured at least every 2 minutes during a loading cycle if the total time period of the loading cycle is less than 3 hours and every 15 minutes if the total time period of the loading cycle is equal to or greater than 3 hours. The measured temperature shall be averaged over the loading cycle.

(4) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with § 61.302(b) through the use of a carbon adsorption system, the data listed under paragraphs (a)(4)(i) or (a)(4)(ii), as appropriate.

(i) For those affected facilities monitoring only the carbon adsorption system outlet concentration level of benzene the data specified in (a)(4)(i)(A) or (B), as applicable.

(A) For carbon adsorption systems with a common exhaust stack for all the individual adsorber vessels, the average benzene concentration level measured during three consecutive system rotations through the adsorption cycles of all the individual adsorber vessels.

(B) For carbon adsorption systems with individual exhaust stacks for each adsorber vessel, the average benzene concentration level measured on a 3-day rolling average for each adsorber vessel.

(ii) For those affected facilities monitoring both the carbon adsorption system inlet and outlet concentration level of benzene, the data specified in (a)(4)(ii) (A) or (B), as applicable.

(A) For carbon adsorption systems with a common exhaust stack for all the individual adsorber vessels, the average control efficiency measured during three consecutive adsorption cycles.

(B) For carbon adsorption systems with individual exhaust stacks for each adsorber vessel, the average control efficiency measured on a 3-day rolling average.

(b) Each owner or operator subject to the provisions of this subpart shall keep up-to-date, readily accessible continuous records of the equipment operating parameters specified to be monitored under § 61.303 (a), (c), and (d) as well as up-to-date, readily accessible records of periods of operation during which the parameter boundaries established during the most recent performance test are exceeded. The Administrator may at any time require a report of these data. Periods of operation during which the parameter boundaries established during the most recent performance tests are exceeded are defined as follows:

(1) For thermal incinerators, all loading cycles during which the average combustion temperature was more than 28 °C below the average combustion temperature during the most recent performance test at which compliance with § 61.302(b) was determined.

(2) For catalytic incinerators, all loading cycles during which the average temperature of the vent stream immediately before the catalyst bed is more than 28 °C below the average temperature of the process vent stream during the most recent performance test at which compliance with § 61.302(b) was determined.

(3) All loading cycles during which the average combustion temperature was more than 28 °C below the average combustion temperature during the most recent performance test at which compliance with § 61.302(b) was determined for steam generating units or process heaters with a design heat input capacity of less than 44 MW.

(4) For steam generating units or process heaters, whenever there is a change in the location at which the vent stream is introduced into the flame zone as required under § 61.302(b).

(5) For those affected facilities monitoring only the carbon adsorption system outlet concentration levels of benzene, the periods specified in paragraph (b)(5) (i) or (ii), 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 cycle of all the individual adsorber vessels during which the average benzene concentration 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 benzene concentration level 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.

(6) For those affected facilities monitoring the carbon adsorption system inlet and outlet concentration level of benzene, the data specified in paragraph (b)(6) (i) or (ii), 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 during which the average system control efficiency is below 95 percent.

(ii) For carbon adsorption systems with individual exhaust stacks for each adsorber vessel, all 3-day rolling averages for each adsorber vessel when the system control efficiency is below 95 percent.

(c) Each owner or operator of an affected facility subject to the provisions of this subpart shall keep up-to-date, readily accessible records of the indication of flow specified under §§ 61.303 (a)(2), (b)(2), (c)(1), and (d)(1), as well as up-to-date, readily accessible records of all periods when the vent stream is diverted from the control device during the loading cycle.

(d) Each owner or operator of an affected facility subject to the provisions of this subpart who uses a steam generating unit or process heater with a design heat input capacity of 44 MW or greater to comply with § 61.302(b) shall keep an up-to-date, readily accessible record of all periods of operation of the steam generating unit or process heater. Examples of such records could include records of steam use, fuel use, or monitoring data collected pursuant to other State or Federal regulatory requirements.

(e) Each owner or operator of an affected facility subject to the provisions of this subpart shall keep up-to-date, readily accessible records of the flare pilot flame monitoring specified under § 61.303(b), as well as up-to-date, readily accessible records of any absence of the pilot flame during a loading cycle.

(f) Each owner or operator of an affected facility subject to the requirements of § 61.302 shall submit to the Administrator quarterly reports of the following information. The owner or operator shall submit the initial report within 90 days after the effective date of this subpart or 90 days after startup for a source that has an initial startup date after the effective date. If none of the following information is recorded for a quarter, no report for that quarter is required.

(1) Exceedances of monitored parameters recorded under § 61.305(b).

(2) All periods recorded under § 61.305(c) when the vent stream is diverted from the control device.

(3) All periods recorded under § 61.305(d) when the steam generating unit or process heater was not operating.

(4) All periods recorded under § 61.305(e) in which the pilot flame of the flare was absent.

(g) The owner or operator of an affected facility shall keep the vapor tightness documentation required under § 61.302 (d) and (e) on file at the affected facility in a permanent form available for inspection.

(h) The owner or operator of an affected facility shall update the documentation file required under § 61.302 (d) and (e) for each tank truck, railcar, or marine vessel at least once per year to reflect current test results as determined by the appropriate method. The owner or operator shall include, as a minimum, the following information in this documentation:

(1) Test title.

(2) Tank truck, railcar, or marine vessel owner and address.

(3) Tank truck, railcar, or marine vessel identification number.

(4) Testing location.

(5) Date of test.

(6) Tester name and signature.

(7) Witnessing inspector: name, signature, and affiliation.

(8) Test results.

(i) The owner or operator of an affected facility shall keep a record of each monthly leak inspection using Method 21 as required under § 61.304(g) on file at the affected facility for at least 2 years. The owner or operator shall include, as a minimum, the following information on each inspection record:

(1) Date of inspection.

(2) Findings (may indicate no leaks discovered; or location, nature and severity, i.e., Method 21 results of each leak).

(3) Corrective action taken (date each leak repaired, reasons for any repair interval in excess of 15 days).

(4) Inspector name and signature.

(j) Each owner or operator of an affected facility seeking to comply with § 61.300(b) or § 61.300(c) shall record the following information. The first year after promulgation, the owner or operator shall submit a report containing the requested information to the Director of the Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711. After the first year, the owner or operator shall continue to record; however, no reporting is required. The information shall be made available if requested. The information shall include, as a minimum:

(1) The affected facility's name and address.

(2) The weight percent of the benzene loaded.

(3) The type of vessel loaded (i.e., tank truck, railcar, or marine vessel).

(4) The annual amount of benzene loaded into each type of vessel.

§ 61.306 Delegation of authority.

(a) In delegating implementation and enforcement authority to a State under § 112(d) 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 which will not be delegated to States: § 61.302(1).

5. Subpart CC is added as follows:

Subpart CC—National Emission Standard for Benzene Emissions From Gasoline Storage Vessels at Service Stations

Sec.

61.310 Applicability.
61.311 Definitions.
61.312 Standards.
61.313 Reporting and recordkeeping.
61.314 Delegation of authority.

Subpart CC—National Emission Standard for Benzene Emissions From Gasoline Storage Vessels at Service Stations

§ 61.310 Applicability.

(a) All gasoline storage vessels at service stations where the total annual throughput of the station is greater than or equal to 454,200 liters of gasoline are subject to all provisions of this subpart, except § 61.313(b).

(b) Gasoline storage vessels located at service stations where the total annual throughput of the station is less than 454,200 liters are exempt from the requirements of this subpart, except for the requirements of § 61.313.

§ 61.311 Definitions.

Terms used in this subpart are defined in the Clean Air Act, in Subpart A of this part, or in this section as follows:

"Gasoline" means any petroleum distillate or petroleum distillate/alcohol blend having a Reid vapor pressure of 27.6 kilopascals or greater which is used as a fuel for internal combustion engines.

"Gasoline storage vessel" means each tank, reservoir, or container used for the storage of gasoline but does not include:

(a) Frames, housing, auxiliary supports, or other components that are not directly involved in the containment of liquids or vapors, or

(b) Subsurface caverns or porous rock reservoirs.

"Gasoline tank truck" means a delivery tank truck used at a service station for the purpose of unloading gasoline.

"Service station" means any site where gasoline is dispensed to motor vehicle fuel tanks from stationary storage vessels, including retail facilities, fleet operations (i.e., rental car agencies, private companies, governmental agencies), parking garages, and bus operations.

"Submerged fill" means the method of filling a tank truck or storage vessel where product enters within 150 mm of the bottom of the tank truck or vessel. Bottom filling of tank trucks or storage vessels is included in this definition.

"Vapor balance system" means the equipment necessary to transfer vapors, displaced during the delivery of gasoline to storage vessels at service stations, back into the gasoline tank truck.

"Vapor-tight" means equipment that allows no loss of vapors. Compliance with vapor-tight requirements can be determined by checking to ensure that the concentration at a potential leak source is not equal to or greater than 100 percent of the Lower Explosive Limit (LEL) when measured with a combustible gas detector, calibrated with propane, at a distance 2.54 cm from the source.

"Vapor-tight gasoline tank truck" means a gasoline tank truck that has demonstrated within the 12 preceding months that its product delivery tank will sustain a pressure change of not more than 75 mm of water within 5 minutes after it is pressurized to 450 mm of water and evacuated to 150 mm of water. This capability is to be demonstrated using the test procedures specified in Reference Method 27 of Appendix A of 40 CFR part 60.

§ 61.312 Standards.

(a) Each owner or operator of a service station with a total annual throughput equal to or greater than 4,542,000 liters shall be in compliance with the provisions of this section no later than [one year from date promulgated in **Federal Register**]. Owners or operators of service stations with annual throughputs less than 4,542,000 liters and greater than 454,200 liters shall be in compliance with the provisions of this section no later than [two years from date promulgated in the **Federal Register**].

(b) Each owner or operator of a service station, described in § 61.310(a), shall comply with the following requirements.

(1) All gasoline storage vessels at service stations shall be loaded by submerged fill.

(2) Vapor line closures that seal upon disconnect are required to assure transfer of displaced vapors to the gasoline tank truck and to prevent ground level emissions caused by improperly connecting the vapor return line to the gasoline storage vessel. Concentric couplers without closures that seal upon disconnect are required to have such closures on the vapor line connection to the coupler itself.

(3) A vapor balance system shall be installed with a vapor tight line from the gasoline storage tank to the gasoline tank truck. The system shall be designed such that the back pressure in the gasoline tank truck does not exceed 450 mm of water pressure or 150 mm of water vacuum.

(4) If a gauge well separate from the fill tube is used, it must be provided with a submerged drop tube that extends to within 150 mm of the gasoline storage vessel bottom.

(5) Vapor tight caps are required for the liquid fill connection for all systems. A positive closure utilizing a gasket or other similar sealing surface is necessary to prevent vapors from being emitted at ground level.

(6) A device which restricts vapor flow from the vent pipe must be installed. Acceptable devices are:

(i) An orifice of 13mm to 19mm, or

(ii) A pressure-vacuum relief valve set to open at no less than 450 mm of water or greater pressure and 150mm of water or greater vacuum.

(c) The owner or operator of the service station shall not allow the unloading of a gasoline tank truck to a gasoline storage vessel unless the following conditions are met.

(1) All hoses in the vapor balance system are properly connected. Acceptable means of providing this assurance include:

(i) An interlock which prevents gasoline unloading unless the vapor hose is connected, such as a bracket to which the product and vapor hose are permanently attached so that neither hose can be connected separately, or

(ii) A closure in the vapor hose which remains closed unless the hose is attached to the vapor fitting on the truck.

(2) All hatches on the gasoline tank truck are closed and securely fastened.

(3) The filling of storage vessels at service stations shall be limited to unloading by vapor-tight gasoline tank trucks. The owner or operator of the service station shall check the vapor tightness documentation for each gasoline tank truck prior to unloading at the facility. This documentation should show that the delivery truck has met the specifications of Method 27.

§ 61.313 Reporting and recordkeeping.

(a) All owners and operators of service stations subject to the provisions of this subpart shall comply with paragraphs (a) (1), (2), and (6) of § 61.10 of the general provisions of this part. No other provisions of § 61.10 are applicable to this subpart.

(b) All service stations described in § 61.310(b) shall maintain records showing the quantity of all gasoline delivered to the site. These records shall be retained for at least 2 years.

§ 61.314 Delegation of authority.

(a) In delegating implementation and enforcement authority to a State under Section 112(d) 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 which will not be delegated to States: No restrictions.

6. Subpart DD is added as follows:

Subpart DD—National Emission Standard for Benzene Emissions From Bulk Gasoline Terminals

Sec.

61.320 Applicability.
61.321 Definitions.
61.322 Standards: Loading racks at bulk gasoline terminals.
61.323 Standards: Gasoline storage vessels at bulk gasoline terminals.
61.324 Test methods and procedures.
61.325 Alternative means of emission limitation for gasoline storage vessels.
61.326 Monitoring of operations.
61.327 Reporting and recordkeeping requirements.
61.328 Delegation of authority.

Subpart DD—National Emission Standard for Benzene Emissions From Bulk Gasoline Terminals

§ 61.320 Applicability.

The provisions of this subpart apply to all loading racks at bulk gasoline terminals which deliver liquid product into gasoline tank trucks and all gasoline storage vessels at bulk gasoline terminals.

§ 61.321 Definitions.

As used in this subpart, all terms shall have the meaning given them in the Clean Air Act; in Subpart A, Subparts Kb and XX of part 60; or in Subpart A of this part. Terms defined in both Subpart A of part 60 and Subpart A of this part shall have the meaning given in Subpart A of this part. For purposes of this subpart, terms defined in this section supercede definitions used in other subparts.

"Existing vapor processing system" means a vapor processing system capable of achieving emissions to the atmosphere no greater than 80 milligrams of total organic compounds per liter of gasoline loaded, the construction or refurbishment of which was commenced before September 14, 1989, and which was not constructed or refurbished after that date.

"Fill" means the introduction of gasoline into a gasoline storage vessel but not necessarily to complete capacity.

"Gasoline storage vessel" means each tank, reservoir, or container used for the storage of gasoline but does not include: (a) Frames, housing, auxiliary supports, or other components that are not directly involved in the containment of liquids or vapors, or (b) Subsurface caverns or porous rock reservoirs.

"Volatile organic liquid (VOL)", for the purposes of this subpart, means gasoline.

§ 61.322 Standards: Loading racks at bulk gasoline terminals.

(a) Each owner or operator of loading racks at bulk gasoline terminals shall comply with the Standard for Volatile Organic Compound Emissions from Bulk Gasoline Terminals contained in 40 CFR 60.502, except paragraphs (b) and (c) of that section. For purposes of this section, the term "affected facility" used in § 60.502 shall mean the loading racks at bulk gasoline terminals referred to in § 61.320.

(b) The emissions to the atmosphere from the vapor collection system due to the loading of liquid product into gasoline tank trucks shall not exceed 0.2 milligrams of benzene per liter of gasoline loaded. Each owner or operator of loading racks at bulk gasoline terminals shall comply with these limits no later than [one year from date promulgated in **Federal Register**], except as noted in paragraph (c) of this section.

(c) Each source equipped with an existing vapor processing system shall comply with the requirements of paragraph (b) of this section no later than December 31, 1992.

§ 61.323 Standards: Gasoline storage vessels at bulk gasoline terminals.

The owner or operator of each gasoline storage vessel at bulk gasoline terminals shall comply with the requirements of 40 CFR 60.112B no later than [one year from date promulgated in the **Federal Register**].

§ 61.324 Test methods and procedures.

(a) In conducting the performance tests required in § 61.13, the owner or operator shall use the test methods in Appendix A of 40 CFR Part 60 or other methods and procedures as specified in this section, except as provided in § 61.13. If a flare is used as a control device, the provisions of § 61.18(b) apply.

(b) Immediately before the performance test required to determine compliance with § 61.322 the owner or operator shall use Method 21 to monitor for leakage of vapor all potential sources in the terminal's vapor collection system equipment while a gasoline tank truck is being loaded. The owner or operator shall repair all leaks with readings of 10,000 ppm (as methane) or greater before conducting the performance test.

(c) The owner or operator shall determine compliance with the standards in § 61.322 as follows:

(1) The performance test shall be 6 hours long during which at least 300,000 liters of gasoline are loaded. If this is not possible, the test may be continued the same day until 300,000 liters of gasoline are loaded or the test may be resumed the next day with another complete 6-hour period. In the latter case, the 300,000-liter criterion need not be met. To the extent possible, testing shall be conducted during the 6-hour period in which the highest throughput normally occurs.

(2) If the vapor processing system is intermittent in operation, the performance test shall begin at a reference vapor holder level and shall end at the same reference point. The test shall include at least two startups and shutdowns of the vapor processor. If this does not occur under automatically controlled operations, the system shall be manually controlled.

(3) The emissions rate (E) of benzene shall be computed using the following equation:

$$E = K\,(V_E\,C_B)/(L_G\,10^6)$$

Where:

E = Emission rate of benzene, mg of benzene/liter of gasoline loaded.

V_E = Volume of air-vapor mixture exhausted, scm.

C_B = Concentration of benzene in the integrated bag, ppm.

L_G = Total volume of gasoline loaded, liters.

K = Density of calibration gas (3.24×10^6 mg/scm for benzene).

(4) The sample shall be collected as specified in paragraph (6) of this section into one integrated bag for the entire test period. From this bag the benzene concentration (C_B) shall be determined.

(5) The following methods shall be used to determine the volume (V) of air-vapor mixture exhausted at each interval:

(i) Method 2B shall be used for combustion vapor processing systems.

(ii) Method 2A shall be used for all other vapor processing systems.

(6) Method 18 shall be used for determining the benzene concentration (C_B). Follow Section 7.1 of Method 18 for the integrated bag sampling procedures, except use an initial flow rate of 0.2 liter/minute. Take particular care to keep the sampling rate at a constant proportion to the stack velocity or flow rate. Stop the sample pump whenever there is no stack flow. To determine benzene concentration, use a separation column constructed of stainless steel, 1.83m by 3.2mm, containing 10 percent 1,2,3-tris (2-cyanoethoxy) propane (TECP) on 80/100 mesh Chromosorb P AW. Set the column temperature at 80 °C and the detector temperature at 225 °C. A flow rate of approximately 20 mL/min should produce adequate separations. The analyst may use other columns, provided that the precision and accuracy of the analysis of benzene standards are not impaired, and the analyst has available for review information confirming that there is adequate resolution of the benzene peak. Adequate resolution is defined as an area overlap of not more than 10 percent of benzene peak by an inteferent peak. Calculation of area overlap is explained in Part 61, Appendix C, Procedure 1: "Determination of Adequate Chromatographic Peak Resolution". In lieu of preparation of benzene standards as described in Section 5 of Method 18, use commercially prepared benzene standards that are commensurate with the calibration gases specified in Part

61, Appendix B, Method 106, Section 5.2.3.

(7) To determine the volume (L_G) of gasoline dispensed during the performance test period at all loading racks whose benzene emissions are controlled by the processing system being tested, terminal records or readings from gasoline dispensing meters at each loading rack shall be used.

(d) The owner or operator shall determine compliance with the back pressure requirements of § 61.322 as follows:

(1) A pressure measurement device (liquid manometer, magnehelic gauge, or equivalent instrument), capable of measuring up to 500 mm of water gauge pressure with ± 2.5 mm of water precision, shall be calibrated and installed on the terminal's vapor collection system at a pressure tap located as close as possible to the connection with the gasoline tank truck.

(2) During the performance test, the pressure shall be recorded every 5 minutes while a gasoline truck is being loaded; the highest instantaneous pressure that occurs during each loading shall also be recorded. Every loading position shall be tested at least once during the performance test.

(e) The owner or operator of each gasoline storage vessel located at a bulk gasoline terminal subject to § 61.323 shall meet the requirements of 40 CFR 60.113b.

§ 61.325 Alternative means of emission limitation for gasoline storage vessels.

For determining the acceptance of alternative means of emission limitation, the provisions of 40 CFR 60.146 shall apply.

§ 61.326 Monitoring of operations.

The owners or operators of storage vessels at bulk gasoline terminals subject to the provisions of this subpart shall comply with the monitoring of operations requirements set forth in 40 CFR 60.116b.

§ 61.327 Reporting and recordkeeping requirements.

(a) In addition to the reporting requirements in the general provisions of this part, all owners or operators shall provide written notification to the Administrator stating the intention to refurbish an existing control device or install a new control device no later than 30 days prior to the refurbishment or installation of such device. Once the refurbishment or installation is complete, emission test notification procedures described in the general provisions shall apply.

(b) All owners and operators of sources subject to the provisions of this subpart shall comply with paragraphs (a)(1), (2), (6) and (b) of § 61.10 of the general provisions of this part. No other provisions of § 60.10 are applicable to this subpart.

(c) All owners and operators of loading racks at bulk gasoline terminals subject to the provisions of this subpart shall keep records and furnish reports as specified in 40 CFR 60.505.

(d) All owners or operators of gasoline storage vessels subject to the provisions of this subpart shall keep records and furnish reports as specified in 40 CFR 60.115b.

§ 61.328 Delegation of authority.

(a) In delegating implementation and enforcement authority to a State under section 112(d) 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 which will not be delegated to States: § 61.325 Alternative means of emission limitation for gasoline storage vessels.

7. Subpart EE is added as follows:

Subpart EE—National Emission Standard for Benzene Emissions From Unloading, Loading, and Storage Operations at Bulk Gasoline Plants

Sec.

61.330 Applicability.
61.331 Definitions.
61.332 Standards.
61.333 Reporting and recordkeeping.
61.334 Delegation and authority.

Subpart EE—National Emission Standard for Benzene Emissions From Unloading, Loading, and Storage Operations at Bulk Gasoline Plants

§ 61.330 Applicability.

The provisions of this subpart apply to all unloading, loading, and storage operations at bulk gasoline plants.

§ 61.331 Definitions.

As used in this subpart, all terms shall have the meaning given them in the Clean Air Act, in Subpart A or Subpart XX of 40 CFR Part 60, or in Subpart A of this part. Terms defined in both Subpart A of Part 60 and Subpart A of this part shall have the meaning given in Subpart A of this part. Terms defined in this section supercede definitions used in other subparts.

"Bulk gasoline plant" means any gasoline distribution facility that is used for the storage and distribution of gasoline by gasoline tank truck and has a gasoline throughput less than or equal to 76,000 liters per day. Gasoline throughput shall be the maximum calculated design throughput as may be limited by compliance with an enforceable condition under Federal requirement, State or local law, and discoverable by the Administrator or any other person.

"Gasoline tank truck" means a delivery tank truck used at bulk gasoline plants which is loading gasoline or which has loaded gasoline on the immediately previous load.

"Submerged fill" means the method of filling a tank truck or storage vessel where product enters within 150 mm of the bottom of the tank truck or vessel. Bottom filling of tank trucks or storage vessels is included in this definition.

"Vapor balance system" means a closed system which will allow the balancing of vapors between the storage vessel and the gasoline tank truck during loading or unloading of gasoline.

"Vapor-tight" means equipment that allows no loss of vapors. Compliance with vapor-tight requirements can be determined by checking to ensure that the concentration is not equal to or greater than 100 percent of the Lower Explosive Limit (LEL) when measured with a combustible gas detector, calibrated with propane, at a distance 2.54 cm from the source.

§ 61.332 Standards.

(a) Each bulk plant shall be equipped with a vapor balance system between the gasoline storage vessel and the incoming gasoline tank truck, designed to capture vapors displaced during filling of the gasoline storage vessel. These lines shall be equipped with fittings which are vapor tight and automatically and immediately close upon disconnection.

(b) For bulk gasoline plants with an annual gasoline tank truck loading throughput greater than or equal to 4,542,000 liters, each bulk plant shall be equipped with a vapor balance system between the gasoline storage vessel and the outgoing gasoline tank truck designed to capture vapors displaced during the loading of the gasoline tank truck. This vapor balance system shall be designed to prevent any vapors collected at one loading rack from passing to another loading rack.

(c) For bulk gasoline plants with an annual gasoline tank truck loading throughput less than 4,542,000 liters, loading of outgoing gasoline tank trucks shall be restricted to the use of submerged fill.

(d) Owners or operators of bulk plants required to meet the provisions of paragraphs (a) and (b) of this section must comply by [one year from date of

promulgation in **Federal Register**]. Owners or operators of bulk plants required to meet the provisions of paragraphs (a) and (c) of this section must comply by [two years from date of promulgation in **Federal Register**].

(e) The bulk plant owner or operator shall act to assure that the vapor balance system, required by paragraphs (a) and (b) of this section, shall be connected between the tank truck and the storage vessel during gasoline transfer operations.

(f) All storage vessel openings, including inspection hatches and gauging and sampling devices, shall be vapor tight when not being used.

(g) The gasoline tank truck compartment hatch covers shall not be opened during the gasoline transfer, except as allowed by paragraph (c).

(h) All vapor balance systems at bulk plants shall be designed and operated at all times to prevent gauge pressure in the gasoline tank truck from exceeding 450 mm of water and vacuum from exceeding 150 mm of water during product transfers.

(i) A pressure measurement device (liquid manometer, magnehelic gauge, or equivalent instrument), capable of measuring 500 mm of water gauge pressure with a ±2.5 mm of water precision, shall be calibrated and installed on the bulk plant vapor balance system at a pressure tap, located as close as possible to the connection with the gasoline tank truck, to allow determination of compliance with paragraph (h) of this section.

(j) Each calendar month, the vapor balance systems described in § 61.332 (a) and (b), and each loading rack handling gasoline shall be inspected for liquid or vapor leaks during gasoline transfer operations. For purposes of this paragraph, detection methods incorporating sight, sound, or smell are acceptable. Each detection of a leak shall warrant the repair of the leak within 15 calendar days after it is detected.

(k) Filling of storage vessels shall be restricted to the use of submerged fill.

(l) No pressure-vacuum relief valve in the bulk plant vapor balance system shall begin to open at a system pressure less than 450 mm of water, or at a vacuum of 150 mm of water.

(m) The bulk plant owner/operator shall assure that all product transfers involving gasoline tank trucks at bulk plants, equipped with a vapor balance system required by paragraphs (a) and (b) of this section, shall be limited to vapor-tight gasoline tank trucks.

§ 61.333 Reporting and recordkeeping.

(a) All owners and operators of bulk gasoline plants subject to the provisions of this subpart shall comply with paragraphs (a) (1), (2), and (6) of § 61.10 of the general provisions of this part. No other provisions of § 61.10 are applicable to this subpart.

(b) All bulk plants that comply with the requirements described in § 61.332(c) shall maintain records showing the quantity of all gasoline loaded into gasoline tank trucks. These records shall be kept on file for 2 years.

(c) A record of each monthly leak inspection required under § 61.332(j) shall be kept on file at the plant for at least 2 years. Inspection records shall include, as a minimum, the following information:

(1) Date of Inspection.

(2) Findings (may indicate no leaks discovered; or location, nature, and severity of each leak).

(3) Leak determination method.

(4) Corrective Action (date each leak repaired; reasons for any repair interval in excess of 15 days).

(5) Inspector Name and Signature.

§ 61.334 Delegation of authority.

(a) In delegating implementation and enforcement authority to a State under section 112(d) 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 which will not be delegated to States: No restrictions.

8. Subpart FF is added as follows:

Subpart FF—National Emission Standard for Benzene Waste Operations

Sec.

61.340 Applicability.
61.341 Definitions.
61.342 Standards: General.
61.343 Standards: Tanks.
61.344 Standards: Surface impoundments.
61.345 Standards: Containers.
61.346 Standards: Individual drain systems.
61.347 Standards: Oil-water separators.
61.348 Standards: Treatment processes.
61.349 Standards: Closed vent systems and control devices.
61.350 Standards: Delay of repair.
61.351 Alternative standards for tanks.
61.352 Alternative standards for oil-water separators.
61.353 Alternative means of emission limitation.
61.354 Monitoring of operations.
61.355 Test methods, procedures, and compliance provisions.
61.356 Recordkeeping requirements.
61.357 Reporting requirements.
61.358 Delegation of authority.

Subpart FF—National Emission Standard for Benzene Waste Operations

§ 61.340 Applicability.

(a) The provisions of this subpart apply to each facility that generates, treats, stores, or disposes of waste that contains benzene.

§ 61.341 Definitions.

"Benzene concentration" means the fraction by weight of benzene in a waste as measured by one of the test methods identified in § 61.355.

"Closed vent system" means a system that is not open to the atmosphere and is composed of piping, connections, and, if necessary, flow inducing devices that transport gas or vapor from an emission source to a control device.

"Completely closed drain system" means an individual drain system that is equipped and operated with a closed vent system and control device complying with the requirements of § 61.349.

"Container" means any portable waste management unit in which a material is stored, transported, treated, or otherwise handled. Examples of containers are drums, barrels, tank trucks, barges, dumpsters, tank cars, dump trucks, and ships.

"Control device" means an enclosed combustion device, vapor recovery system, or flare.

"Cover" means an enclosure that is applied to an open area of a waste management unit to enclose and seal the waste surface in the management unit to form a closed system to contain air emissions. A cover may contain openings such as hatches and sample and gauge wells that are also sealed to contain emissions. Examples of covers include a fixed roof applied to a tank, an air supported enclosure installed over a surface impoundment, and a lid placed on a drum or dumpster.

"External floating roof" means a pontoon-type or double-deck type cover with certain rim sealing mechanisms that rests on the liquid surface in a waste management unit with no fixed roof.

"Facility" means all waste management units within a stationary source that are used for treatment, storage, or disposal of waste that contains benzene.

"Fixed roof" means a cover that is mounted on a waste management unit in a stationary manner and that does not move with fluctuations in liquid level.

"Floating roof" means a cover with certain rim sealing mechanisms consisting of a double deck, pontoon

single deck, internal floating cover or covered floating roof, which rests upon and is supported by the liquid being contained, and is equipped with a closure seal or seals to close the space between the roof edge and unit wall.

"Individual drain system" means all process drains together with their associated sewer lines and junction boxes down to a waste management unit.

"Internal floating roof" means a roof that rests or floats on the liquid surface inside a waste management unit that has a fixed roof.

"Liquid-mounted seal" means a foam or liquid-filled primary seal mounted in contact with the liquid between the waste management unit wall and the floating roof continuously around the circumference.

"Loading" means the introduction of waste into a waste management unit but not necessarily to complete capacity (also referred to as filling).

"No detectable emissions" means less than 500 parts per million by volume (ppmv) above background levels, as measured by a detection instrument in accordance with Method 21 in Appendix A of 40 CFR part 60.

"Oil-water separator" means a waste management unit used to separate oil from water consisting of a separation tank, which also includes the forebay and other separator basins, skimmers, weirs, grit chambers, and sludge hoppers.

"Sewer line" means a lateral, trunk line, branch line, ditch, channel, or other conduit used to convey waste to a downstream waste management unit.

"Submerged fill" means the loading of waste into a container by positioning the end of the fill pipe within two fill-pipe diameters of the bottom of the container or beneath the surface of the material in the container to avoid splashing.

"Surface impoundment" means a waste management unit which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), which is designed to hold an accumulation of liquid wastes or waste containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

"Tank" means a stationary waste management unit designed to contain an accumulation of waste which is constructed primarily of non-earthen materials (e.g., wood, concrete, steel, plastic) which provide structural support.

"Treatment process" means a steam stripper, thin-film evaporator, or waste incinerator.

"Vapor-mounted seal" means a foam-filled primary seal mounted continuously around the perimeter of a waste management unit so there is an annular vapor space underneath the seal. The annular vapor space is bounded by the bottom of the primary seal, the unit wall, the liquid surface, and the floating roof.

"Waste" means any material resulting from industrial, commercial, mining or agricultural operations, or from community activities that is discarded or is being accumulated, stored, or physically, chemically, thermally, or biologically treated prior to being discarded, recycled, or discharged.

"Waste management unit" means a piece of equipment, structure, or transport mechanism used in the handling, storage, treatment, or disposal of waste. Examples of waste management units include each tank, surface impoundment, container, oil-water separator, individual drain system, and treatment process.

"Waste stream" means waste generated by a particular process or piece of equipment.

§ 61.342 Standards: General.

(a) To comply with the provisions of this subpart, the owner or operator shall comply with the provisions of paragraphs (b) and (c) of this section unless the owner or operator seeks to qualify for an exemption from the control requirements in §§ 61.342 through 61.353 by one of the following:

(1) A determination using the procedures in § 61.355(b) that the total quantity of waste that contains benzene generated or managed at the facility is less than 10 Mg/yr. For these facilities, the owner or operator shall comply with the recordkeeping requirements of § 61.356.

(2) A determination using the procedures in § 61.355(c) that the total annual quantity of benzene in the waste managed at the facility is less than 10 Mg/yr. For these facilities, except as provided in paragraph (a)(3) of this section, the owner or operator shall comply with the recordkeeping and reporting requirements in §§ 61.356 and 61.357 and shall repeat the determination of total annual quantity of benzene in the waste at the frequency specified in § 61.355(k).

(3) A determination using the procedures in § 61.355(c) that the total annual quantity of benzene in the waste is less than 1 Mg/yr. For these facilities, the owner or operator shall comply with the recordkeeping requirements of § 61.356 and shall repeat the determination of total annual quantity of benzene in the waste when there is a change in the process that generates the waste, if that change could cause an increase in the total annual quantity of benzene in the waste.

(4) Where the total annual quantity of benzene in the waste at a facility is 10 Mg/yr or more, a determination that an individual waste stream has a benzene concentration less than 10 parts per million by weight (ppmw) as determined by the procedures in § 61.355(d). For these waste streams, the owner or operator shall comply with the recordkeeping and reporting requirements in §§ 61.356 and 61.357 and repeat the determination of benzene concentration at the frequency specified in § 61.355(d).

(b) Except as provided in paragraph (c) of this section, if an owner or operator elects not to seek an exemption from the control requirements of §§ 61.342 through 61.353, or where the total annual quantity of benzene in the waste at the facility is determined to be 10 Mg/yr or more and the benzene concentration of a waste stream is 10 ppmw or more, the owner or operator shall comply with the following:

(1) The owner or operator shall install and operate a steam stripper thin-film evaporator, or waste incinerator to reduce, remove or destroy benzene in the waste stream and shall comply with requirements of § 61.348.

(2) As an alternative to paragraph (b)(1) of this section, an owner or operator may elect to demonstrate that an alternative control device(s) or treatment process(s) achieves a mass emission reduction of 99 percent for benzene in the waste stream and shall comply with the requirements of § 61.353.

(3) Except as provided in §§ 61.351 through 61.353, the owner or operator shall comply with the requirements in §§ 61.342 through 61.350 for each new and existing waste management unit located upstream of the treatment process.

(4) All recovered materials containing benzene shall be collected, stored, recycled, reused, or disposed of in a closed system. Each waste management unit used to handle the recovered material shall comply with the requirements in §§ 61.342 through 61.353. Once the recovered material is returned back to a process unit, it is no longer within the scope of this subpart.

(5) Any waste management unit located downstream of the treatment process required in paragraph (b)(1) of this section or downstream from an

equivalent alternative in paragraph (b)(2) of this section shall be exempt from the requirements of this subpart.

(c) If waste is shipped offsite for treatment or disposal, owners and operators shall comply with the following:

(1) Each owner or operator shall comply with the requirements in §§ 61.343 to 61.347 and § 61.349 for all waste management units handling waste that contains benzene.

(2) The owner or operator shall provide written notification to the offsite treatment or disposal facility that the waste is required to meet the provisions of this subpart.

(3) The owner or operator shall maintain documentation showing the name and location of the facility to which the waste is shipped and a copy of the written notification to the offsite treatment or disposal facility.

(d) Each owner or operator who treats a waste to comply with the requirements of paragraph (b)(1) or (b)(2) of this section, shall complete the waste treatment within 6 months from the time the waste is generated, or shall demonstrate to the Administrator why the waste treatment could not be completed within that time period.

(e) Compliance with this subpart will be determined by review of records and performance test results, and inspection using methods and procedures specified in § 61.355.

(f) Permission to use an alternative means of compliance to meet the requirements of §§ 61.342 through 61.352 may be granted as provided in § 61.353.

§ 61.343 Standards: Tanks.

(a) Except as provided in § 61.351, each tank subject to the requirements of this subpart shall be equipped and operated with a fixed roof and closed vent system that routes the vented stream to a control device that meets the requirements of § 61.349.

(b) The fixed roof shall enclose and seal the waste surface in the tank to form a closed system to contain the emissions.

(c) If the fixed roof has any openings (e.g., access doors, hatches, etc.), all such openings shall be sealed (e.g., gasketed, latched, etc.) and kept closed at all times when any wastes are in the tank, except during inspection and maintenance.

(d) The fixed roof and all openings shall be designed and operated with no detectable emissions, as indicated by an instrument reading of less than 500 ppmv above background, as determined during initial and quarterly inspections by the methods specified in § 61.355.

(e) Roof seals, access doors and other openings shall be checked by visual inspection initially and quarterly thereafter to ensure that no cracks or gaps occur between the roof and tank wall and that access doors and other openings are closed and gasketed properly.

(f) Except as provided in § 61.350, when a broken seal or gasket or other problem is identified, or when detectable emissions are measured, first efforts at repair shall be made as soon as practicable, but not later than 15 calendar days after identification.

§ 61.344 Standards: Surface impoundments.

(a) Each surface impoundment subject to the requirements of this subpart shall be equipped and operated with one of the following:

(1) An air-supported enclosure and closed vent system that routes the vented stream to a control device that meets the requirements of § 61.349; or

(2) A rigid enclosure and closed vent system that routes the vented stream to a control device that meets the requirements of § 61.349.

(b) The enclosure shall enclose and seal the waste surface in the impoundment to form a closed system to contain emissions.

(c) If the enclosure has any openings, all such openings shall be sealed and kept closed at all times when any wastes are in the surface impoundment, except during inspection and maintenance or when it is necessary to dredge the impoundment.

(d) The enclosure and all openings shall be designed and operated with no detectable emissions, as indicated by an instrument reading of less than 500 ppmv above background, as determined during initial and quarterly inspections by the methods specified in § 61.355.

(e) Enclosure seals, access doors, and other openings shall be checked by visual inspection initially and quarterly thereafter to ensure that no cracks or gaps occur and that access doors and other openings are closed and gasketed properly.

(f) Except as provided in § 61.350, when a broken seal or gasket or other problem is identified, or when detectable emissions are measured, first efforts at repair shall be made as soon as practicable, but not later than 15 calendar days after identification.

§ 61.345 Standards: Containers.

(a) Each container subject to the requirements of this subpart shall be equipped and operated with a cover, except as provided in paragraph (b) of this section.

(1) Covers on containers shall be closed at all times except when it is necessary to add or remove waste and during inspection and maintenance.

(2) The cover shall enclose and seal the waste in the container to form a closed system to contain air emissions.

(3) All openings (e.g., bungs, hatches, etc.) shall be kept in a closed position and sealed at all times, except when it is necessary to add or remove waste and during inspection and maintenance.

(4) Loading of waste into a container shall be by submerged fill.

(i) The submerged fill pipe outlet shall extend to within two fill-pipe diameters of the bottom of the container or shall be kept beneath the surface of the waste in the container while the container is being loaded.

(ii) When a container is being loaded, only the area required for the loading inlet shall be open to the atmosphere.

(b) Any container used for treatment, including aeration, thermal or other treatment, shall be equipped with a closure device completely covering the container and a closed vent system that routes the vented stream to a control device that meets the requirements of § 61.349, or the container shall be placed inside an enclosure that is vented to a control device that meets the requirements of § 61.349.

(1) The cover or enclosure shall enclose and seal the waste surface in the container to form a closed system to contain emissions.

(2) If the cover or enclosure has any openings, they shall be sealed and kept closed at all times when any wastes are in the container, except during inspection and maintenance.

(3) The cover or enclosure and all openings shall be designed and operated with no detectable emissions, as indicated by an instrument reading of less than 500 ppmv above background, as determined during initial and quarterly inspections by the methods specified in § 61.355.

(c) Covers or enclosures and all openings shall be visually inspected initially and quarterly thereafter to ensure that they are closed and gasketed properly.

(d) Except as provided in § 61.350, when a broken seal or gasket or other problem is identified, first efforts at repair shall be made as soon as practicable, but not later than 15 calendar days after identification.

§ 61.346 Standards: Individual drain systems.

(a) Each individual drain system shall be operated as a completely closed drain system.

(b) Each completely closed drain system shall be equipped and operated with a closed vent system and control device complying with the requirements of § 61.349.

(c) Individual drain systems shall not be open to the atmosphere and shall be covered or enclosed with no visual gaps or cracks in joints, or seals.

(d) Each individual drain system shall be designed and operated with no detectable emissions, as indicated by an instrument reading of less than 500 ppmv above background, as determined during initial and quarterly inspections by the methods specified in § 61.355.

(e) Each individual drain system shall be visually inspected initially and quarterly thereafter for indication of cracks, gaps, or other problems that could result in benzene emissions.

(f) Except as provided in § 61.350, whenever cracks, gaps, or other problems are identified, or when detectable emissions are measured, repairs shall be made as soon as practicable, but not later than 15 calendar days after identification.

§ 61.347 Standards: Oil-water separators.

(a) Except as provided in § 61.352, each oil-water separator shall be equipped and operated with a fixed roof and closed vent system that routes the vented stream to a control device which meets the requirements of § 61.349.

(b) The fixed roof shall enclose and seal the waste surface in the oil-water separator to form a closed system to contain the emissions.

(c) If the fixed roof has any openings (e.g., access doors, hatches, etc.), all such openings shall be sealed (e.g., gasketed, latched, etc.) and kept closed at all times when any wastes are in the oil-water separator, except during inspection and maintenance.

(d) The fixed roof and all openings shall be designed and operated with no detectable emissions, as indicated by an instrument reading of less than 500 ppmv above background, as determined during initial and quarterly inspections by the methods specified in § 61.355.

(e) Roof seals, access doors and other openings shall be checked by visual inspection initially and quarterly thereafter to ensure that no cracks or gaps occur between the roof and the wall of the separator and that access doors and other openings are closed and gasketed properly.

(f) Except as provided in § 61.350, when a broken seal or gasket or other problem is identified, or when detectable emissions are measured, first efforts at repair shall be made as soon as practicable, but not later than 15 calendar days after identification.

§ 61.348 Standards: Treatment processes.

(a) Each steam stripper and thin-film evaporator shall comply with the following:

(1) Shall be installed and operated with a closed vent system and control device meeting the requirements of § 61.349.

(2) Shall be designed and operated to reduce the benzene concentration in the waste stream to less than 10 ppmw without the use of dilution as determined by the procedures in § 61.355.

(3) If compliance with § 61.342(b)(1) is achieved by multiple treatment processes in series, the benzene concentration in the waste stream exiting the last treatment process shall be reduced to less than 10 ppmw without the use of dilution as determined by the procedures in § 61.355.

(b) An owner or operator who elects to install and operate a waste incinerator will be considered in compliance with this section if the incinerator is subject to and operated in compliance with 40 CFR part 264, Subpart O.

(c)(1) An owner or operator who elects to install and operate a waste incinerator that is not subject to or in compliance with 40 CFR part 264, Subpart O, shall demonstrate by a performance test, initially and at other times as requested by the Administrator, using the procedures specified in § 61.355, that the incinerator achieves a destruction efficiency of 99 percent or greater.

(2) The owner or operator shall identify a process parameter (or parameters) for monitoring that is indicative of proper operation of the incinerator and must document the criteria for selection of that parameter(s) and the range of parameter(s) values that indicate that the required efficiency is being achieved.

(d) If the treatment process has any openings (e.g., access doors, hatches, etc.), all such openings shall be sealed (e.g., gasketed, latched, etc.) and kept closed at all times when waste is being processed, except during inspection and maintenance.

(e) Seals, access doors, and other openings shall be checked by visual inspections initially and quarterly thereafter to ensure that no cracks or gaps occur and that openings are closed and gasketed properly.

(f) Except as provided in § 61.350, when a broken seal or gasket or other problem is identified, first efforts at repair shall be made as soon as practicable, but not later than 15 calendar days after identification.

§ 61.349 Standards: Closed vent systems and control devices.

(a) Enclosed combustion devices (e.g., vapor incinerators, boilers, or process heaters) shall be designed and operated to reduce benzene emissions vented to them with an efficiency of 95 percent or greater or to provide a minimum residence time of 0.75 seconds at a minimum temperature of 816 °C.

(b) Vapor recovery systems (for example, condensers and adsorbers) shall be designed and operated to recover benzene emissions vented to them with an efficiency of 95 percent or greater.

(c) Flares used to comply with this subpart shall comply with the requirements of 40 CFR 60.18.

(d) Closed vent systems and control devices used to comply with the provisions of this subpart shall be operated at all times when emissions may be vented to them.

(e)(1) Closed vent systems shall be designed and operated with no detectable emissions, as indicated by an instrument reading of less than 500 ppmv above background, as determined during the initial and quarterly inspections by the methods specified in § 61.355.

(2) A flow indicator shall be installed on a vent stream to the control device to ensure that the vapors are being routed to the device. The flow indicator shall be installed in the vent stream at the nearest feasible point to the control device inlet but before being combined with other vent streams.

(3) All gauging and sampling devices shall be gas-tight except when gauging or sampling is taking place.

(4) Closed vent systems and control devices shall be visually inspected initially and quarterly thereafter. The visual inspection shall include inspection of ductwork and piping and connections to covers and control devices for evidence of visible defects such as holes in ductwork or piping and loose connections.

(5) Except as provided in § 61.350, if visible defects are observed during an inspection, or if other problems are identified, or if detectable emissions are measured, a first effort to repair the closed vent system and control device shall be made within 5 calendar days of detection. Repair shall be completed no later than 15 calendar days after the emissions are detected or the visible defect is observed.

(6) Owners and operators of control devices that are used to comply with the provisions of this section shall monitor the devices in accordance with § 61.354.

§ 61.350 Standards: Delay of repair.

(a) Delay of repair of facilities or units that are subject to the provisions of this subpart will be allowed if the repair is technically impossible without a complete or partial facility or unit shutdown.

(b) Repair of such equipment shall occur before the end of the next facility or unit shutdown.

§ 61.351 Alternative standards for tanks.

(a) As an alternative to the requirements in § 61.343 for tanks, an owner or operator may elect to comply with one of the following:

(1) A fixed roof and internal floating roof meeting the requirements in 40 CFR 60.112b(a)(1),

(2) An external floating roof meeting the requirements of 40 CFR 60.112b(a)(2), or

(3) An alternative means of emission limitation as described in 40 CFR 60.114b.

(b) If an owner or operator elects to comply with the provisions of this section, then the owner or operator is exempt from the provisions of § 61.343 applicable to the same facilities.

§ 61.352 Alternative standards for oil-water separators.

(a) As an alternative to the requirements in § 61.347 for oil-water separators, an owner or operator may elect to comply with one of the following:

(1) A floating roof meeting the requirements in 40 CFR 60.693–2(a),

(2) An alternative means of emission limitation as described in 40 CFR 60.694.

(b) For portions of the oil-water separator where it is infeasible to construct and operate a floating roof, such as over the weir mechanism, a fixed roof vented to a vapor control device that meets the requirements in §§ 61.347 and 61.349 shall be installed and operated.

(c) Except as provided in paragraph (b) of this section, if an owner or operator elects to comply with the provisions of this section, then the owner or operator is exempt from the provisions in § 61.347 applicable to the same facilities.

§ 61.353 Alternative means of emission limitation.

(a) If, in the Administrator's judgment, an alternative means of emission limitation will achieve a reduction in benzene emissions at least equivalent to the reduction in benzene emissions achieved by the applicable requirements in §§ 61.342 through 61.349, the Administrator will publish in the **Federal Register** a notice permitting the use of the alternative means for purposes of compliance with that requirement. The notice may condition the permission on requirements related to the operation and maintenance of the alternative means.

(b) Any notice under paragraph (a) of this section shall be published only after notice and an opportunity for a hearing.

(c) Any person seeking permission under this section shall collect, verify, and submit to the Administrator information showing that the alternative means achieves equivalent emission reductions.

§ 61.354 Monitoring of operations.

(a) Each owner or operator subject to the requirements in § 61.349 shall install, calibrate, maintain, and operate according to the manufacturer's specifications a device to continuously monitor the control device operation as specified in the following paragraphs, unless alternative monitoring procedures or requirements are approved for that facility by the Administrator.

(1) For thermal vapor incinerators, a temperature monitoring device equipped with a continuous recorder. The device shall have an accuracy of 1 percent of the temperature being monitored in °C or ±0.5 °C, whichever is greater. The temperature sensor shall be installed in the combustion zone.

(2) For boilers and process heaters having a design heat input capacity greater than or equal to 44 megawatts, a monitoring device equipped with a continuous recorder to measure a parameter(s) that indicates good combustion operating practices are being used.

(3) For catalytic vapor incinerators, a temperature monitoring device equipped with a continuous recorder. The device shall be capable of monitoring temperature at two locations, and have an accuracy of 1 percent of the temperature being monitored in °C or ±0.5 °C, whichever is greater. One temperature sensor shall be installed in the vent stream at the nearest feasible point to the catalyst bed inlet and a second temperature sensor shall be installed in the vent stream at the nearest feasible point to the catalyst bed outlet.

(4) For flares, the owner or operator shall comply with the monitoring requirements of 40 CFR 60.18(f)(2).

(5) Except as provided in paragraph (a)(6) of this section, where a carbon adsorber or other vapor recovery device is used for benzene emissions reduction, a monitoring device that continuously indicates and records the concentration of organics in the inlet and outlet gas stream shall be used.

(6) Where a carbon adsorber system is used that does not regenerate the carbon bed directly on site in the control device (e.g., a carbon canister), the carbon in the control device shall be replaced with fresh carbon on a regular basis by using one of the following procedures:

(i) The concentration level of the organic compounds in the exhaust vent stream from the carbon adsorption system shall be monitored on a regular schedule, and the existing carbon shall be replaced with fresh carbon immediately when carbon breakthrough is indicated. The device shall be monitored on a daily basis or at intervals no greater than 20 percent of the design carbon replacement interval, whichever is greater.

(ii) The carbon shall be replaced with fresh carbon at a regular predetermined time interval that is less than the maximum design carbon replacement interval.

(b) An alternative operational or process parameter may be monitored if it can be demonstrated that another parameter will ensure that the control device is operated in conformance with these standards and the control device's design specifications.

(c) For waste incinerators not subject to or in compliance with the requirements of Subpart O of 40 CFR Part 264 used to comply with the requirement of § 61.348(c), a monitoring device shall be used that continuously indicates and records the value of the parameter(s) monitored to indicate proper operation and conformance with these standards.

§ 61.355 Test methods, procedures, and compliance provisions.

(a) Each owner or operator who elects to seek an exemption from the emission control requirements in §§ 61.342 through 61.353 shall comply with the provisions of paragraphs (b) through (f) of this section, as applicable.

(b) Each owner or operator shall make an initial determination of the annual quantity of waste managed in each waste stream that contains benzene by one of the following methods:

(1) By selecting the highest annual quantity of waste managed from historical records representing the most recent 5 years of operation or, if the facility has been in service for less than 5 years but at least 1 year, from historical records representing the total operating life of the facility, or

(2) Using the maximum design capacity of the waste management unit, or

(3) By measurements representative of maximum waste generation rates.

(c) Each owner or operator shall make an initial determination of the benzene concentration of each waste stream that contains benzene by collecting a minimum of four representative samples from each such waste stream at a time when the benzene concentration is at its highest expected level using the following procedures:

(1) Where feasible, samples shall be taken from an enclosed pipe prior to the waste being exposed to the atmosphere. When multiple samples are taken, they shall be collected over a short time period to minimize the effects of process variations. For waste in enclosed pipes, the following procedures shall be used:

(i) Samples shall be collected as close as practical to the point of waste generation in order to minimize the loss of benzene prior to sampling.

(ii) A static mixer shall be installed in the process line or in a bypass line.

(iii) The sampling tap shall be located within two pipe diameters of the static mixer outlet.

(iv) Prior to the initiation of sampling, sample lines and cooling coil shall be purged with at least four volumes of waste.

(v) After purging, the sample flow shall be directed to a sample container and the tip of the sampling tube shall be kept below the surface of the waste during sampling to minimize contact with the atmosphere.

(vi) Samples shall be collected at a flow rate such that the cooling coil is able to maintain a waste temperature less than 10 °C.

(vii) After filling, the sample container shall be capped immediately (within 5 seconds) to leave a minimum headspace in the container.

(viii) The sample containers shall immediately be cooled and maintained at a temperature below 10 °C for transfer to the laboratory.

(2) When sampling from an enclosed pipe is not feasible, samples shall be collected in a manner to minimize exposure to the atmosphere and loss of volatiles prior to sampling.

(3) Each waste sample shall be analyzed using one of the following test methods for determining the benzene concentration in a waste stream:

(i) Method 8020, Aromatic Volatile Organics, or

(ii) Method 8021, Determination of Volatile Organic Compounds by Capillary Column Gas Chromatography with Photoionization and Electrolytic Conductivity Detection, or

(iii) Method 8240, Gas Chromatography/Mass Spectrometry for Volatile Organics, or

(iv) Method 8260, Gas Chromatography/Mass Spectrometry for Volatile Organics: Capillary Column Technique, or

(v) Method 602, Purgeable Aromatics, as described in 40 CFR 136, Appendix A, Test Procedures for Analysis of Organic Pollutants, for wastewaters for which this is an approved EPA method, or

(vi) Method 624, Purgeables, as described in 40 CFR 136, Appendix A, Test Procedures for Analysis of Organic Pollutants, for wastewaters for which this is an approved EPA method.

(4) The mean benzene concentration shall be calculated by averaging the results of the sample analyses as follows:

$$\bar{Y} = \sum_{j=1}^{n} Y_j/n$$

Where:

$\bar{Y}$ = The mean benzene concentration of a waste in ppmw.

Y_j = The measured values of benzene concentration for each waste sample, j, in ppmw.

n = The number of waste samples taken (at least 4).

(5) Each owner or operator shall determine the total annual quantity of benzene in the waste by calculating the product of the mean measured benzene concentration and annual waste quantity, as determined in paragraph (b) of this section, for each individual waste stream that contains benzene and summing the results across all waste streams.

(d) Each owner or operator of a facility where the total annual quantity of benzene in the waste is 10 Mg/yr or more who elects to make a determination that the benzene concentration of an individual waste stream is less than 10 ppmw shall comply with the following:

(1) Use the results of the initial waste sampling and analyses required in paragraph (c) of this section and the t-test procedures in paragraph (e) of this section.

(2) Repeat the determination of benzene concentration in each such waste stream on a monthly basis, except as provided in paragraph (f) of this section for reduced sampling frequency. The repeat determinations shall include collection and analysis of a minimum of one waste sample each month using the sample collection and analysis procedures in paragraph (c) of this section and the t-test procedures in paragraph (e) of this section.

(e) Beginning with the initial waste samples (i.e., at sampling period 0) and thereafter for the samples collected at each subsequent sampling period, i (where i=1, 2, 3, etc.), each owner or operator shall conduct a t-test using the following procedures:

(1) Determine the measured value of the benzene concentration of each waste sample collected at sampling period i using one of the analytical methods in paragraph (c) of this section.

(2) Determine the natural logarithm of the measured benzene concentration for each sample collected at sampling period i.

(3) For each sampling period, i, where more than 1 sample is taken, each owner or operator shall:

(i) Calculate the mean of the natural logarithms of the measurement results as follows:

$$\bar{X}_i = \sum_{j=1}^{n_i} X_{ij}/n_i$$

Where:

n_i = Number of waste samples taken at sampling period i.

X_{ij} = Natural logarithm of the measured benzene concentration of waste sample j ($j=1$ to n_i) taken at sample period i.

$\bar{X}_i$ = The mean of the natural logarithms, X_{ij}, at sampling period i.

(ii) Calculate the standard deviation of the natural logarithms of the waste analysis test results as follows:

$$s_i = \sqrt{\frac{\sum_{j=1}^{n_i} X_{ij}^2 - \left[\left(\sum_{j=1}^{n_i} X_{ij}\right)^2/n_i\right]}{n_i - 1}}$$

Where:

s_i = the standard deviation of X_{ij} at sampling period i.

(4) For each sampling period, i, where only 1 sample is taken, $j=1$, $\bar{X}=X_{ij}$, and $s_i=0$.

(5) Calculate the degrees of freedom, K_i, to be used in the t-test as follows:

(i) For the initial sample period ($i=0$): $K_0=n_0-1$.

(ii) For subsequent sample periods ($i>0$): $K_i=K_{i-1}+(n_i-1)$.

(6) Calculate the pooled estimate of standard deviation, S_i, as follows:

(i) For the initial sample period (i=0): $S_0^2 = s_0^2$

(ii) For subsequent sample periods (i>0):

$$S_i = \sqrt{\frac{(K_{i-1})(S_{i-1}^2) + (n_i - 1)s_i^2}{K_i}}$$

(7) Select the value of t_i in Table 1 that corresponds to the calculated degrees of freedom, K_i.

(8) Perform a t-test as follows:

$$\left[\bar{X}_i + \frac{(t_i)(S_i)}{\sqrt{n_i}}\right] < \ln (10) \text{ ppmw}$$

If the condition is true, the waste stream is accepted as having a benzene concentration less than 10 ppmw. If the condition is not true, the waste stream must be managed in units that meet the emission control requirements in §§ 61.342 through 61.353 of this subpart.

TABLE 1.—t-VALUES

Degrees of freedom (K_i)	t-values for 90 percent confidence level (t_i)	t-values for 95 percent confidence level (t_i)
1	3.078	6.314
2	1.886	2.920
3	1.638	2.353
4	1.533	2.132
5	1.476	2.015
6	1.440	1.943
7	1.415	1.895
8	1.397	1.860
9	1.383	1.833
10	1.372	1.812
11	1.363	1.796
12	1.356	1.782
13	1.350	1.771
14	1.345	1.761
15	1.341	1.753

(f) Each owner or operator of a facility where the total annual quantity of benzene in the waste is 10 Mg/yr or more and where an individual waste stream has a benzene concentration less than 10 ppmw may repeat the determination of benzene concentration in each such waste stream on a semiannual basis instead of a monthly basis if the test results show a benzene concentration that is consistently below 10 ppmw for 12 consecutive sample periods using the following procedures:

(1) Conduct a t-test for each individual waste sample result taken during the 12 most recent sample periods as follows:

(i) Select the value of t_i' corresponding to the most recently calculated value of K_i (calculated during the most recent test) from Table 1.

(ii) Perform a t-test on each individual sample result using the most recent pooled estimate of S_i, and the following equation:

$\bar{X}_u + (t_i')(S_i) < \ln (10)$ ppmw

(2) If the condition is true for each sample result derived over the 12 most recent sample periods, the owner or operator may switch to or continue using semiannual sampling. Documentation showing the waste sampling and t-test results over the 12 most recent sample periods shall be provided to the Administrator. If the condition is not true, the owner or operator shall switch to or continue using monthly sampling.

(g) Each owner or operator of a facility required to comply with § 61.348(a) to reduce the benzene concentration, shall determine the benzene concentration of the waste stream exiting the treatment device as follows:

(1) An initial determination of the benzene concentration in the treated waste shall be made by collecting and analyzing a minimum of four samples of the waste stream as it exits the treatment device using the procedures in paragraph (c) of this section.

(2) An initial demonstration that the benzene concentration of the treated waste is less than 10 ppmw shall be made by conducting a t-test as described in paragraph (e) of this section.

(3) If the condition in paragraph (e)(8) of this section is true, the treatment device is accepted as operating as designed. If the condition is not true, the treatment device is not in compliance with the requirements of this subpart.

(h)(1) Except as provided in paragraph (i) of this section, the determination of benzene concentration in the treated waste shall be repeated on a daily basis by collecting and analyzing one or more samples each day using the procedures in paragraph (c) of this section and then conducting a t-test following the procedures in paragraph (e) of this section.

(2) If the condition in paragraph (e)(8) of this section is true, the treatment device is accepted as operating as designed. If the condition is not true, the treatment device is not in compliance with the requirements of this subpart.

(i) In lieu of measuring the benzene concentration from a treatment process on a daily basis, as required in paragraph (h) of this section, the owner or operator may elect to demonstrate compliance with § 61.348(a) by monitoring an operational or process parameter (or parameters) on the treatment process that is indicative of proper system operation and a benzene concentration less than 10 ppmw in the exit stream from the treatment process.

(j) For each waste stream that has been treated to reduce the benzene concentration, as required in § 61.342(b), the owner or operator shall demonstrate that the benzene concentration in the waste stream exiting the treatment process was not achieved by dilution. No dilution is presumed to occur if the treated waste meets one of the following conditions:

(1) The benzene concentration of the outlet stream is less than 10 ppmw when all waste streams entering the treatment process have a benzene concentration of 10 ppmw or greater and the quantity of waste exiting the process is no greater than the quantity of waste entering the process.

(2) The benzene concentration in the outlet stream is less than or equal to the concentration of the most dilute waste stream entering the treatment process when one or more of the entering waste streams have a benzene concentration less than 10 ppmw and the quantity of waste exiting the treatment process is not greater than the quantity of waste entering the process.

(3) The benzene concentration of the waste exiting the treatment process is less than the value of C as calculated in the following equation:

$$C = \frac{\sum_{j=1}^{m} (Qa_j \times 10 \text{ ppmw}) + \sum_{i=1}^{n} (Qb_i \times Cb_i)}{\sum_{j=1}^{m} Qa_j + \sum_{i=1}^{n} Qb_i}$$

Where:

C=Benzene concentration (ppmw).

Q_{aj}=Quantity of each waste stream (j) to be treated that has a benzene concentration greater than or equal to 10 ppmw.

Q_{bi}=Quantity of each waste stream (i) to be treated that has a benzene concentration less than 10 ppmw.

C_{bi}=The benzene concentration of each waste stream (i) to be treated that is less than 10 ppmw.

m=The number of waste streams with benzene concentrations greater than or equal to 10 ppmw.

n=The number of waste streams with benzene concentrations less than 10 ppmw.

(k) Except as provided in paragraphs (l) and (m) of this section, each owner or operator of a facility where the total annual quantity of benzene in the waste

is less than 10 Mg/yr shall repeat the determination of total annual quantity of benzene in the waste on a monthly basis using the procedures in paragraph (c) of this section.

(l) If the monthly determinations of the annual quantity of benzene in the waste are consistently less than 10 Mg/yr for a period of 1 year, the owner or operator may switch to semiannual determinations. Documentation showing that the calculation of annual quantity of benzene in the waste is consistently less than 10 Mg/yr for each monthly determination shall be provided to the Administrator.

(m) Each owner or operator of a facility where the total annual quantity of benzene in the waste is less than 1 Mg/yr shall repeat the determination of annual quanity of benzene in the waste at any time there is a change in the process that generates the waste if that change could cause an increase in the total annual quantity of benzene in the waste.

(n) Each owner or operator of each waste management unit that is equipped with a closed vent system and control device (other than flares) as required in §§ 61.343 through 61.348 and § 61.352 shall use Method 21 to measure the emission concentrations, using 500 ppmv as the no detectable emission limit. The instrument shall be calibrated each day before using. The calibration gases shall be:

(1) Zero air (less than 10 ppmv of hydrocarbon in air), and

(2) A mixture of either methane or n-hexane and air at a concentration of approximately, but less than, 10,000 ppm methane or n-hexane.

(o) The owner or operator of a source equipped with a flare shall conduct a performance test initially, and at other times as requested by the Administrator, using the test methods and procedures in § 61.18(f).

(p) Each owner or operator of a facility that treats a waste by waste incineration in a unit that does not comply with the requirements of Subpart O of 40 CFR part 264 shall conduct a performance test initially, and at other times as requested by the Administrator, as follows:

(1) All testing equipment shall be prepared and installed as specified in the appropriate test methods.

(2) The mass flowrate of benzene entering the incinerator shall be determined by computing the product of the flow rate of the waste stream entering the control device, as determined by the inlet flow meter, and the benzene concentration of the waste stream, as determined using the sampling procedures in paragraph (c) of this section. Three grab samples of the waste shall be taken at equally spaced time intervals over a 1-hour period. Each 1-hour period constitutes a run, and the performance test shall consist of a minimum of 3 runs conducted over a 3-hour period. The mass flowrate of benzene into the incinerator is calculated as follows:

$$E_b = \frac{K}{n \times 10^6} \left(\sum_{i=1}^{n} V_i C_i \right)$$

Where:

E_b = The mass flowrate of benzene into the incinerator, kg/hour.

K = The density of the waste stream, kg/m³.

V_i = The average volume flowrate of waste entering the incinerator during each run, i, m³/hour.

C_i = The average concentration of benzene in the waste stream entering the incinerator during each run, i, ppmw.

n = The number of runs.

(3) The mass flowrate of benzene leaving the incinerator exhaust stack shall be determined as follows:

(i) The time period for the test shall not be less than 3 hours during which at least 3 stack gas samples are collected. Each sample shall be collected over a 1-hour period (e.g., in a tedlar bag) to represent a time-integrated composite sample and each 1-hour period shall correspond to the periods when the waste feed is sampled.

(ii) A run shall consist of a 1-hour period during the test. For each run:

(A) The reading from each measurement shall be recorded,

(B) The volume exhausted shall be determined using EPA Method 2, 2A, 2C, or 2D from Appendix A of 40 CFR part 60, as appropriate.

(C) The average benzene concentration in the exhaust downstream of the incinerator shall be determined using EPA Method 18.

(iii) The mass of benzene emitted during each run shall be calculated as follows:

$M_i = KVC(10^{-9})$

Where:

M_i = The mass of benzene emitted during run i, kg.

V = The volume of air-vapor mixture exhausted, m³, at standard conditions.

C = The measured concentration of benzene in the exhaust, ppmv.

K = Conversion factor, kg/m³.

K = 3.24 for benzene.

(iv) The benzene mass emission rate in the exhaust shall be calculated as follows:

$$E_a = \left(\sum_{i=1}^{n} M_i \right) / T$$

Where:

E_a = Mass flowrate of benzene emitted, kg/hour.

M_i = Mass of benzene emitted during run i, kg.

T = Total time of all runs, hour.

n = Number of runs.

(v) The percent reduction across the incinerator shall be calculated as follows:

$$R = \frac{E_b - E_a}{E_b} \times 100$$

Where:

R = Control efficiency of the incinerator, percent.

E_b = Mass flowrate of benzene into the incinerator, kg/hour.

E_a = Mass flowrate of benzene from the incinerator, kg/hour.

§ 61.356 Recordkeeping requirements.

(a) Each owner or operator of a facility subject to the provisions of this subpart shall comply with the recordkeeping requirements of this section. All records shall be retained for a period of 2 years after being recorded unless otherwise noted.

(b)(1) Results of all measurements and determinations of annual waste quantity and benzene concentrations, as specified in § 61.342, shall be recorded.

(2) For facilities that handle less than 10 Mg/yr of waste that contains benzene, as determined using the procedures in § 61.355(b), and facilities that handle less than 1 Mg/yr of benzene in the waste, as determined using the procedures in § 61.355(c), records of the initial determination of waste quantity or total quantity of benzene in the waste shall be retained for as long as the waste is generated.

(c) If waste is shipped offsite for treatment or disposal, the name and location of the treatment or disposal facility and the date the waste was shipped shall be recorded, and a copy of the written notification provided to the offsite treatment or disposal facility that the waste is required to meet the provisions of this subpart shall be retained.

(d) The location, date, and corrective action shall be recorded for each visual inspection required by §§ 61.342 through 61.352 when a problem (such as a broken seal, gap or other problem) is

identified that could result in benzene emissions.

(e) For closed vent systems and control devices required by § 61.343 to 61.352, the location, date, and corrective action shall be recorded for inspections during which detectable emissions are measured.

(f) The date of successful repair or corrective action shall be recorded.

(g) For each treatment process complying with the requirements in § 61.348(a), results of the daily measurements of benzene concentration in waste discharged from the treatment process shall be recorded, or records of continuous monitoring of the operational or process parameter(s), as allowed in § 61.354(i), shall be retained.

(h) For waste incinerators, the following records shall be kept:

(1) Documentation of compliance with 40 CFR part 264, Subpart O, shall be kept for the life of the equipment, or

(2)(i) Documentation of a performance test demonstrating that the incinerator will achieve the required control efficiency during maximum loading conditions. This documentation shall include a general description of the waste that is incinerated, the flowrate of waste into the incinerator, the concentration of benzene in the waste, the mass flowrate of benzene into the incinerator, the measured benzene emissions from the incinerator, and the calculated destruction efficiency. The documentation shall be kept for the life of the equipment.

(ii) A description of the operating parameter (or parameters) to be monitored to ensure that the incinerator will be operated in conformance with both the requirements in § 61.348 and the incinerator design specifications, an explanation of the criteria used for selection of that parameter (or parameters), and the measured values of the parameter during the initial performance test shall be kept for the life of the equipment.

(iii) Periods when the device is not operated as designed shall be recorded.

(iv) Dates of startup and shutdown shall be recorded.

(i)(1) A copy of the design specifications for all equipment used to comply with the provisions of this subpart shall be kept for the life of the equipment in a readily accessible location.

(2) The following information pertaining to the design specifications shall be kept:

(i) Detailed schematics and piping and instrumentation diagrams.

(ii) The dates and descriptions of any changes in the design specifications.

(3) The following information pertaining to the operation and maintenance of closed vent systems and control devices shall be kept in a readily accessible location for a period of 2 years unless otherwise noted.

(i) Documentation demonstrating that the control device will achieve the required control efficiency during maximum loading conditions shall be kept for the life of the equipment. This documentation is to include a general description of the gas streams that enter the control device, including flowrate and benzene content under varying conditions (dynamic and static) and manufacturer's design specifications for the control device. If an enclosed combustion device with a minimum residence time of 0.75 seconds and a minimum temperature of 816 °C is used to meet the 95-percent requirement, documentation that those conditions exist is sufficient to meet the requirements of this paragraph.

(ii) A description of the operating parameter (or parameters) to be monitored to ensure that the control device will be operated in conformance with these standards and the control device's design specifications and an explanation of the criteria used for selection of that parameter (or parameters) shall be kept for the life of the equipment.

(iii) Periods when the closed vent systems and control devices required in §§61.343 through 61.352 are not operated as designed including periods when a flare pilot does not have a flame shall be recorded.

(iv) Dates of startup and shutdown of the closed vent system and control devices required in §§ 61.343 through 61.352 shall be recorded.

(v) The dates of each measurement of detectable emissions required in §§ 61.343 through 61.352 shall be recorded.

(vi) The background level measured during each detectable emissions measurement shall be recorded.

(vii) The maximum instrument reading measured during each detectable emission measurement shall be recorded.

(viii) Each owner or operator that uses a thermal vapor incinerator shall maintain continuous records of the temperature of the gas stream in the combustion zone of the incinerator and records of all 3-hour periods of operation during which the average temperature of the gas stream in the combustion zone is more than 28 °C below the design combustion zone temperature.

(ix) Each owner or operator that uses a catalytic vapor incinerator shall maintain continuous records of the temperature of the gas stream both upstream and downstream of the catalyst bed of the incinerator, records of all 3-hour periods of operation during which the average temperature measured before the catalyst bed is more than 28 °C below the design gas stream temperature, and records of all 3-hour periods of operation during which the average temperature difference across the catalyst bed is less than 80 percent of the design temperature difference.

(x)(A) Each owner or operator that uses a carbon adsorber or other vapor recovery device shall maintain continuous records of the concentration of organics in the control device inlet and outlet gas stream and records of all 3-hour periods of operation during which the concentration of organics in the exhaust stream is more than 20 percent greater than the design value.

(B) Each owner or operator that uses a carbon adsorber that is not regenerated directly on site in the control device shall maintain records of dates and times when the control device is monitored, when breakthrough is measured, and shall record the date and time when the existing carbon in the control device is replaced with fresh carbon.

(xi) Each owner or operator of a control device where an alternative operational or process parameter is monitored, as allowed in § 61.354(b), shall maintain records of the continuously monitored parameter, including periods when the device is not operated as designed.

(j) Owners and operators who elect to install and operate the control equipment in § 61.351 shall comply with the recordkeeping requirements in 40 CFR 60.115b.

(k) Owners or operators who elect to install and operate the control equipment in § 61.352 shall maintain records of the following:

(1) The date, location, and corrective action for each visual inspection required by 40 CFR 61.693–2, when a problem, such as a broken seal, gap, or other problem is identified that could result in benzene emissions.

(2) Results of the seal gap measurements required by 40 CFR 61.693–2.

§ 61.357 Reporting requirements.

(a) An owner or operator electing to comply with the provisions of §§ 61.351 or 61.352 shall notify the Administrator of the alternative standard selected in the report required under § 61.07 or § 61.10.

(b)(1) Each owner or operator subject to this subpart shall submit to the Administrator within 90 days after the effective date of this subpart, or within 90 days after initial startup for new sources with an initial startup after the effective date, a certification that the equipment necessary to comply with these standards has been installed and that the required initial inspections or tests have been carried out in accordance with these standards. Thereafter, the owner or operator shall submit to the Administrator a quarterly certification that all of the required inspections have been carried out in accordance with the provisions of this subpart.

(2) Each owner or operator required to make repeat determinations of the benzene concentration in a wastestream(s) or the annual quantity of benzene in the waste, shall submit initial and quarterly certification that the determinations have been made and that the results are within the required limits.

(3) Each owner or operator who uses a waste incinerator shall submit to the Administrator in a report required under § 61.13, results of the performance test required under § 61.348(c) including identification of the operational parameter(s) to be monitored for proper operation and the measured values for those parameter(s) during the performance test.

(4) Each owner or operator who uses a flare shall submit to the Administrator in a report required under § 61.13, results of the performance test required under § 61.355(o).

(c) A report that summarizes all inspections required by §§ 61.342 through 61.352 during which detectable emissions are measured or a problem (such as a broken seal, gap or other problem) that could result in benzene emissions is identified, including information about the repairs or corrective action taken, shall be submitted initially and quarterly thereafter to the Administrator.

(d) As applicable, a report shall be submitted quarterly to the Administrator that indicates:

(1) Each 3-hour period of operation during which the average temperature of the gas stream in the combustion zone of a thermal vapor incinerator, as measured by the temperature monitoring device, is more than 28 °C below the design combustion zone temperature.

(2) Each 3-hour period of operation during which the average temperature of the gas stream immediately before the catalyst bed of a catalytic vapor incinerator, as measured by the temperature monitoring device, is more that 28 °C below the design gas stream temperature, and any 3-hour period during which the average temperature difference across the catalyst bed (i.e., the difference between the termperatures of the gas stream immediately before and after the catalyst bed), as measured by the temperature monitoring device, is less than 80 percent of the design temperature difference, or,

(3) Each 3-hour period of operation during which the average concentration of organics in the exhaust gases from a carbon adsorber or other vapor recovery device is more the 20 percent greater that the design exhaust gas concentration level.

(4) All instances when the carbon in a carbon adsorber system that is not regenerated directly on site in the control device is not replaced at the intervals specified in § 61.354(a)(6).

(5) Each period of operation during which the benzene concentration measured in the waste discharged from a treatment process is 10 ppmw or more.

(6) Each 3-hour period of operation during which the average value of the monitored parameter on a waste incinerator is outside the range of acceptable values or during which the incinerator is not operating as designed.

(e) Each owner or operator who elects to install and operate the control equipment in § 61.351 shall comply with the reporting requirements in 40 CFR 60.115b.

(f) Each owner or operator who elects to install and operate the control equipment in § 61.352 shall submit initial and quarterly reports that identify all seal gap measurements, as required in 40 CFR 61.693–2, that are outside the prescribed limits.

§ 61.358 Delegation of authority.

(a) In delegating implementation and enforcement authority to a State under section 112(d) of the Clean Air Act, the authorities contained in paragraph (b) of this section shall be retained by the Administrator and not transferred to a State.

(b) Authorities which will not be delegated to States:

(1) Section 61.342(b)(2), Permission to use alternative treatment process.

(2) Section 61.352, Alternative means of emission limitation.

9. Subpart GG is added as follows:

Subpart GG—National Emission Standard for Benzene Emissions From Industrial Solvent Use at Rubber Tire Manufacturing Facilities

Sec.

61.360 Applicability.
61.361 Definitions.
61.362 Standards.
61.363 Performance test and compliance provisions.
61.364 Monitoring requirements.
61.365 Test methods and procedures.
61.366 Recordkeeping requirements.
61.367 Reporting requirements.
61.368 Delegation of authority.

Subpart GG—National Emission Standard for Benzene Emissions From Industrial Solvent Use at Rubber Tire Manufacturing Facilities

§ 61.360 Applicability.

(a) The provisions of this subpart apply to all rubber tire manufacturing plants, except as provided in paragraph (b) of this section.

(b) Any rubber tire manufacturing plant that uses less than 1,500 kg/yr of benzene as a component of a solvent is exempt from the requirements of this subpart, except for the recordkeeping and reporting requirements in §§ 61.366 and 61.367.

§ 61.361 Definitions.

(a) All terms that are used in this subpart and are not defined below are given the same meaning as in the Act, as in Subpart A of Part 61, or as in Subpart BBB of part 60.

"Benzene used as a component of a solvent" means the use of benzene as a trace component in solvents, cements, and tire sprays.

"Rubber Tire Manufacutring Plant" means any combination of process units, operations, and equipment at one site used to manufacture finished rubber tires.

"Solvent" means any substance capable of dissolving another substance to form a uniformly dispersed mixture.

"Temporary enclosure" means any enclosure constructed only for the duration of a performance test around an area where VOC emissions will occur from the application or drying of a solvent. The purpose of a temporary enclosure is to enable measurement of the VOC emission capture efficiency of any emissions control system; as such, it must have included inside its boundaries all sources and control device sinks of solvent use VOC emissions.

(b) Notations used in this subpart are defined below:

B = Weight percent of benzene present in a solvent, cement, or spray material. Includes small trace quantities.

B_T = Total annual amount of benzene used as a solvent at an affected facility (kilograms per year).

C_v = Concentration of VOC in gas stream in vents after a control device (parts per million by volume).

C_b = Concentration of VOC in gas stream in vents before a control device (parts per million by volume).
C_f = Concentration of VOC in each gas stream vented directly to the atmosphere from an affected facility or from a temporary enclosure around an affected facility (parts per million by volume).
D_c = Density of solvent, cement or spray material (grams per liter).
D_r = Density of VOC recovered by an emission control device (grams per liter).
E = Emission control device efficiency, inlet versus outlet (fraction).
E_T = Total benzene emitted from an affected facility (kilograms per year).
F_c = Capture efficiency, VOC captured and routed to one control device versus total VOC used for an affected facility (fraction).
F_o = Fraction of total mass of VOC used in a month by all facilities served by a common solvent, cement or spray material distribution system that is used by a particular affected facility served by the common distribution system.
L_c = Volume of solvent, cement or spray material used for a month (liters).
L_r = Volume of VOC recovered by an emission control device for a month (liters).
M_o = Total mass of VOC used at an affected facility for a month (grams).
M_r = Mass of VOC recovered by an emission control device for a month (grams).
Q_a = Volumetric flow rate in vents after a control device (dry standard cubic meters per hour).
Q_b = Volumetric flow rate in vents after a control device (dry standard cubic meters per hour).
Q_r = Volumetric flow rate of each stream vented directly to the atmosphere from an affected facility or from a temporary enclosure inside an affected facility (dry standard cubic meters per hour).
R = Overall efficiency of an emission reduction system (fraction).
S = Total mass of a solvent, cement, or spray material used (kilograms).
W_o = Weight fraction of VOC in a solvent, cement or spray material.

§ 61.362 Standards.

(a) Each owner or operator shall discharge into the atmosphere no more than 25 percent of the total benzene used each month as a solvent (75 percent emission reduction, measured as VOC) in the plant, or

(b) Each owner or operator shall discharge into the atmosphere no more than 1,500 kg of benzene from solvent uses per year.

§ 61.363 Performance test and compliance provisions.

(a) The owner or operator of an affected facility shall conduct an initial performance test by the date specified in § 61.13(a). By that date, the owner or operator shall also notify the Administrator whether he or she intends to comply with the requirements of § 61.362 (a) or (b).

(b) The owner or operator of an affected facility who elects to comply with the 75 percent emission reduction standard specified in § 61.362(a) and to use a VOC emission reduction system with an incinerator shall conduct a performance test and determine the reduction efficiency, R, as follows:

(1) During the performance test, for the purpose of capturing fugitive VOC emissions, construct temporary enclosures around the application, drying, and other areas where benzene is used or emitted as a solvent. The enclosures must be maintained at a negative pressure to ensure that all evaporated VOC are measurable. Determine the fraction (F_c) of total VOC used at the facility that enters the control device:

$$F_c = \frac{\sum_{i=1}^{m} C_{b_i} Q_{b_i}}{\sum_{i=1}^{m} C_{b_i} Q_{b_i} + \sum_{i=1}^{n} C_{f_i} Q_{f_i}}$$

Where:
m = The number of vents from the facility to the control device.
n = The number of vents from the facility to the atmosphere and from the temporary enclosures.

(2) Determine the destruction efficiency of the control device (E) by using values of the volumetric flow rate of each of the gas streams and the VOC content (as carbon) of each of the gas streams in and out of the control device:

$$E = \frac{\sum_{i=1}^{m} C_{b_i} Q_{b_i} - \sum_{i=1}^{p} C_{a_i} Q_{a_i}}{\sum_{i=1}^{m} C_{b_i} Q_{b_i}}$$

Where:
m = The number of vents from the facility to the control device.
p = The number of vents after the control device.

(3) Determine the overall reduction efficiency (R):

$R = EF_c$

(c) The owner or operator of a facility who elects to comply with the 75 percent emission reduction standard specified in § 61.362(a) and to use a VOC emission reduction system with a carbon adsorber shall conduct a performance test and determine the reduction efficiency, R, as follows:

(1) Determine the density and weight fraction VOC (including dilution VOC) of each solvent from its formulation or by analysis of the solvent using Method 24. If a dispute arises, the Administrator may require an owner or operator who used formulation data to analyze the solvent using Method 24.

(2) Calculate the total mass of VOC used at the facility for the month (M_o) as:

$$M_o = \sum_{i=1}^{a} L_{c_i} D_{c_i} W_{o_i}$$

Where:
a = The number of different solvents used during the month at the facility.

(3) Calculate the total mass of VOC recovered from the facility for the month (M_r):

$M_r = L_r D_r$

(4) Calculate the overall reduction efficiency for the VOC emission reduction system (R) for the month:

$$R = \frac{M_r}{M_o}$$

(d) The owner or operator of a facility who elects to comply with the 1,500 kg/yr emission standard specified in § 61.362(b), and to use an incinerator as part of an emission reduction system to control some or all of the benzene emissions generated from solvent use in the plant shall:

(1) Conduct a performance test and determine the reduction efficiency, R, of the incinerator by the procedure specified in paragraphs (b)(1), (2), and (3) of this section.

(2) Calculate the total benzene emitted, E_T, as follows:

(i) For facilities where solvents for each operation or process are delivered in batch or via distribution systems where the recordkeeping allows direct determination of how much of each type of solvent is used in each operation or process, determine the total benzene emitted (E_T), as

$$E_T = \left(\sum_{i=1}^{a} \sum_{k=1}^{c} S_{ik} B_{jk} \right) (1 - R) + \sum_{j=1}^{b} \sum_{k=1}^{c} S_{jk} B_{jk}$$

Where:
a = The number of operations or processes in the facility where solvent use emissions are routed through the control device before being emitted.
b = The number of operations or processes in the affected facility where solvent use emissions are not routed through a control device before being emitted.
c = The number of different solvents containing benzene used at the affected facility.

(ii) For facilities where the different operations are served by a common solvent distribution system such that it cannot be determined directly from records how much of which solvent is used by a specific operation or process, determine the total benzene emitted (E_T), as

$$E_T = \sum_{i=1}^{a} S_i B_i (1 - F_o R)$$

Where:
a = The number of different solvents containing benzene used at the facility.
F_o = The fraction of the total benzene-containing solvents used in the facility which is used in those operations or processes from which the emissions are routed to the control device. This fraction F_o shall be determined by comparing the production records and process specifications in those benzene solvent-using operations where the emissions are vented to a control device, to the production records and process specifications for all benzene solvent-using operations in the facility.

(e) The owner or operator of a facility who elects to comply with the 1,500 kg/yr emission standard specified in § 61.362(b), and to use a carbon adsorber as part of an emission reduction system to control some or all of the benzene emissions generated from solvent use in the plant shall:

(1) Conduct a performance test and determine the reduction efficiency, R, of the carbon adsorber by the procedure specified in paragraphs (c) (1), (2), (3), and (4) of this section.

(2) Calculate the total benzene emitted, E_T, by the procedure specified in paragraph (d)(2) (i) or (ii) of this section.

(f) An owner or operator of a facility seeking to demonstrate compliance with the standards specified under § 61.362 with a control device other than an incinerator or carbon adsorber shall provide the Administrator with information describing the operation of the control device and method(s) of determining the reduction efficiency.

§ 61.364 Monitoring requirements.

(a) Each owner or operator of a facility that uses an incinerator to comply with the standards in § 61.362 shall install, calibrate, maintain, and operate according to manufacturer's specifications the following equipment:

(1) A temperature monitoring device equipped with a continuous recorder and having an accuracy of ±1 percent of the temperature being measured expressed in degrees Celsius, or ±0.5 °C, whichever is greater.

(i) Where an incinerator other than a catalytic incinerator is used, a temperature monitoring device shall be installed in the firebox.

(ii) Where a catalytic incinerator is used, temperature monitoring devices shall be installed in the gas stream immediately before and after the catalyst bed.

(2) A flow indicator that provides a record of vent stream flow to the incinerator at least once every hour. The flow indicator shall be installed in each vent stream at a point closest to the inlet of each incinerator.

(b) Each owner or operator of a facility that uses a carbon adsorber to comply with the standards in § 61.362 shall install, calibrate, maintain, and operate according to manufacturer's specifications the following equipment:

(1) A device that continuously indicates and records the concentration level of organic compounds in the outlet gas stream of each carbon adsorber bed.

(2) A flow indicator that provides a record of vent stream flow to the carbon adsorber at least once every hour. The flow indicator shall be installed in each vent stream at a point closest to the inlet of each carbon adsorber.

(c) An owner or operator of a facility seeking to demonstrate compliance with the standards specified under § 61.362 with a control device other than an incinerator or carbon adsorber shall provide the Administrator with information describing the operation of the control device and the process parameter(s) that would indicate proper operation and maintenance of the device. The Administrator may request further information and will specify appropriate monitoring procedures or requirements.

§ 61.365 Test methods and procedures.

(a) The following test methods and procedures in Appendix A to 40 CFR part 60, except as noted in (a)(6) of this section or as provided under § 61.13(h), shall be used to determine compliance with the standards specified under § 61.362.

(1) Method 1 or 1A, as appropriate, for selection of the sampling site. The control device inlet sampling site for determining reduction efficiency shall be prior to the inlet of any control device.

(2) Method 2, 2A, 2C or 2D, as appropriate, for determination of the gas volumetric flow rate(s).

(3) Method 3 for air dilution correction, based on 3 percent oxygen in the emission sample.

(4) Method 24 to determine the density and weight fraction of VOC in a solvent.

(5) Method 25 to determine the VOC concentration at the control device inlet and outlet.

(6) OSHA Laboratory Method No. 12 for Bulk Samples, in Appendix D to 29 CFR Part 1910, to determine the percentage of benzene present in a solvent.

(b) Performance testing for incinerators shall include at least 3 runs, with each run of duration at least one hour. Calculation of F_c and E as given in § 61.363(b) (1) and (2) shall be done using C_b, Q_b, Q_f, C_f, C_a, and Q_a values averaged over the three runs.

(c) The control device operating parameters specified in § 61.364 shall be monitored continuously and recorded every 15 minutes. Rolling 3-hour averages shall be computed from the 15-minute average measurements.

§ 61.366 Recordkeeping requirements.

(a) Each owner or operator of a facility shall keep up-to-date, readily accessible records of all data measured during each performance test, and all calculations and supporting documentation for the determination of R, the control system reduction efficiency.

(b) Each owner or operator of a facility shall keep up-to-date, readily accessible records of the equipment operating parameters specified to be monitored under § 61.364 as well as up-to-date, readily accessible records of periods of operation during which the parameter boundaries established during the most recent performance test are exceeded. The Administrator may at any time require a report of these data. Periods of operation during which the

parameter boundaries established during the most recent performance tests are exceeded are defined as follows:

(1) For thermal incinerators, all 3-hour periods of operation during which the average combustion temperature was more than 28 °C below the average combustion temperature during the most recent performance test at which compliance with § 61.362 was determined.

(2) For catalytic incinerators, all 3-hour periods of operation during which the average temperature of the vent stream immediately before the catalyst bed is more than 28 °C below the average temperature of the process vent stream during the most recent performance test at which compliance with § 61.362 was determined.

(3) For carbon adsorbers, all 3-hour periods of operation during which the average VOC concentration level or reading of organics in the exhaust gases is more than 20 percent greater than the average exhaust gas concentration level or reading measured by the organics monitoring device during the most recent determination of the recovery efficiency of the carbon adsorber that demonstrated that the facility was in compliance.

(c) Each owner or operator of an affected facility shall keep up-to-date, readily accessible continuous records of the indication of flow specified under § 61.364 (a)(2) and (b)(2) as well as up-to-date, readily accessible records of all periods when the vent stream is diverted from the control device.

(d) Each owner or operator of a facility complying with the provisions of § 61.360(b) shall keep up-to-date, readily accessible records of the amount of each solvent containing benzene used each month at the facility, and percentage of benzene in each solvent, as determined from manufacturer's formulation specifications or by the OSHA Laboratory Method No. 12 for Bulk Samples, cited in § 61.365(a)(6). From these data, the amount of benzene used each month shall be calculated and recorded.

§ 61.367 Reporting requirements.

(a) Each owner or operator of a facility complying with the provisions of § 61.360(b) shall submit, within 90 days of the publication of this notice and once a year, every year thereafter, a report showing the facility's total annual use of benzene as a solvent. This report shall include:

(1) Calculation of B_T, the total annual solvent use of benzene, using the equation

$$B_T = \sum_{i=1}^{a} S_i \, B_i$$

Where:

a = The number of different solvents, cements, and tire sprays used during the year in all tire manufacturing operations in the facility.

(2) Supporting documentation and data for the calculation of B_T.

(b) Each owner or operator subject to § 61.362 shall notify the Administrator of the specific provisions of § 61.362 (a) or (b) with which the owner or operator has elected to comply. Notification shall be submitted with the notification of initial start-up required by § 61.09 or with the source report required by § 61.10, as applicable. If an owner or operator elects at a later date to use an alternative provision of § 61.362, then the Administrator shall be notified by the owner or operator 90 days before implementing a change and, upon implementing the change, a performance test shall be performed as specified by § 61.364 within 90 days. If an owner or operator elects at a later date to claim exemption from the requirements of § 61.362 under the provisions of § 61.360(b), then the Administrator shall be notified by the owner or operator 90 days before the exemption is claimed.

(c) The owner or operator of an affected facility shall:

(1) Report the results of each performance test to the Administrator within 30 days of the performance test, including the calculation of "R" and all supporting documentation and data.

(2) Report quarterly:

(i) All periods of operation in that quarter during which the operating parameter boundaries established during the most recent performance test are exceeded. The operating parameters are those specified in § 61.364, and the criteria for exceedance are those specified in § 61.366.

(ii) All periods in that quarter during which the vent stream is diverted from the control device.

(d) The owner or operator of a facility who elects to comply with the 1,500 kg/yr emission standard specified in § 61.362(b) shall, in addition to reporting those items specified in paragraph (c) of this section, report quarterly the calculation of E_T, total benzene emissions, and all supporting documentation and data. The calculation of E_T shall be on a 1-year rolling average basis by an E_T value for each month and the averaging of the monthly values. For the first report for an existing facility, the E_T values for the preceding 6-month period shall be averaged and scaled up proportionally to a year. If the affected facility has been operating for less than a year, then E_T shall be calculated on the basis of those months of operation and then scaled up proportionally to a year.

§ 61.368 Delegation of authority.

(a) In delegating implementation and enforcement authority to a State under section 112(d) 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 which will not be delegated to States: No restrictions.

[FR Doc. 89-21415 Filed 9-7-89; 3:45 pm]
BILLING CODE 6560-M

Federal Register

Thursday
September 14, 1989

Part III

Department of Interior

Fish and Wildlife Service

50 CFR Parts 13 and 21

Migratory Bird Permits: Uniform Rules and Procedures; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 13 and 21

RIN: 1018-AB01

Migratory Bird Permits; Uniform Rules and Procedures

In the matter of Amended Uniform Rules and Procedures for the Application, Issuance, Renewal, Suspension, Revocation, and General Administration of Permits Issued Pursuant to 50 CFR Subchapter B, and Permits for the Taking, Possession, Transportation, Importation, Exportation, Sale, Purchase, Barter, and Banding or Marking of Migratory Birds.

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) amends its rules relating to the application, issuance, renewal, denial, suspension, and revocation of permits found in part 13, Title 50, Code of Federal Regulations. These rules clarify the application procedures and the criteria for issuance of a permit. Factors which disqualify an applicant from eligibility for the issuance of a permit are established. Criteria for suspension and revocation of a permit are clearly stated, and the procedures for appealing the denial, suspension, or revocation of a permit are revised. The schedule of application processing fees is also amended.

The Service also amends 50 CFR part 21, governing permits issued under authority of the Migratory Bird Treaty Act, 16 U.S.C. 703 *et seq.* Some of these changes are technical in nature and deal with the period for which permits are issued. Other changes are more substantive, and involve the falconry and raptor propagation permit regulations. However, these changes are not as substantial as suggested in the proposed rules (52 FR 48948). Changes include eliminating the requirement for banding the more common species of raptors used for falconry. The banding requirement will be retained for three species of raptors, the peregrine falcon (*Falco peregrinus*), the gyrfalcon (*Falco rusticolus*), and the Harris hawk (*Parabuteo unicinctus*). The concept of a joint Federal-State falconry permit has been preserved. In those States in which the State concurs, the Service will continue to allow applicants to submit one application for both State and Federal falconry permits. The acquisition, transfer, or disposition of any raptor must be reported on a Service form to the office that issued the Federal falconry permit. Under the new rules, falconers will be authorized to sell or purchase lawfully acquired, captive-bred raptors that are marked with a numbered, seamless band provided by the Service; however, falconers will be specifically prohibited from engaging in raptor propagation unless they hold a separate raptor propagation permit.

In addition to changes in the falconry permit regulations, the rules governing raptor propagation permits are modified. Changes include clarification of the marking requirement and the requirement that each acquisition, transfer, or disposition of any raptor must be reported on a Service form to the office that issued the permit.

Other changes in part 21 include amending the special purpose permit regulations to allow the sale of captive-bred, migratory game birds other than waterfowl. In addition, the Service has reinstated the requirement for a permit to import and export certain migratory birds.

EFFECTIVE DATE: October 16, 1989.

ADDRESSES: Director, U.S. Fish and Wildlife Service, Division of Law Enforcement, P.O. Box 3247, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Special Agent in Charge Thomas L. Striegler at the above address [703/358-1949 or FTS 921-1949].

SUPPLEMENTARY INFORMATION:

Background

On December 28, 1987, the Fish and Wildlife Service (Service) proposed changes in part 13 of Title 50, Code of Federal Regulations which provide for the general administration of permits issued by the Service (52 FR 48948). This package also contained proposed changes in part 21 of 50 CFR, which establishes regulations for the issuance of migratory bird permits. The original comment period was scheduled to end on February 26, 1988. However, the Service extended the comment period until April 26, 1988. The Service received comments from 1,500 persons and organizations on this proposal. Based upon those comments and re-evaluation of the proposal, the Service is publishing final rules.

Review of Comments

The Service was extremely impressed by the quality of comments received, and wishes to thank all of those who took time to review and comment upon the proposed rule. In addition to the written comments, many interested persons called or met with Service officials to discuss ways to improve the proposed rules. These comments provided a number of excellent recommendations which have been adopted by the Service in this final rule.

Of the 1,500 persons and organizations commenting on the proposed rule, 1,090 identified themselves as members or associates of the North American Falconers Association. In addition, 9 organizations that identified themselves as falconry organizations commented on the proposal. A total of 26 State wildlife conservation agencies submitted comments, as did 20 private organizations. Seventy-two (72) migratory bird breeders, 98 persons interested in the issue of banning the use of pole traps, and 19 businesses submitted comments. Finally, the Service received 165 form letters and 1 petition containing 598 signatures.

Identification of the Issues

The commenters identified a number of issues and concerns about the proposed regulations. The Service has grouped these issues into the following categories: Permit issuance, denial, revocation, and appeal procedures; permit disqualification factors; import/export permits for migratory birds; migratory game bird breeding; falconry testing, facilities, and equipment standards; banding of raptors and the use of the term "sensitive species"; the joint Federal/State falconry permit; and other miscellaneous issues. In addition to the specific issues concerning the proposed regulations, many persons commenting on the proposed changes in the falconry permit regulations expressed concern that the Service was philosophically opposed to the practice of falconry. The following is a discussion of each issue, and the Service's response.

Service Support of the Practice of Falconry

Many commenters expressed concern that the Service's motivation for proposing changes in the falconry permit regulations was based upon a philosophical opposition to the practice of falconry. In response to these concerns, the Service wishes to go on record as supporting falconry as a legitimate and lawful use of the migratory bird resource to the extent it does not adversely affect that resource. Falconry is an ancient sport dating back thousands of years. It has been the Service's experience that the overwhelming majority of falconers practice their sport in full compliance with Federal and State regulations. The Service also recognizes that most falconers are conservationists who have

a deep and abiding love for the migratory bird resource. Further, the Service feels that falconry, raptor propagation, and migratory bird rehabilitation often serve as vital tools for public education about the need for conservation of raptors and other migratory birds in North America.

Almost three-fourths of the comments received on the proposed rules were submitted by falconers and their organizations. In addition, many falconers called or met with Service officials to discuss ways to improve the Service's proposal. The Service appreciates this participation in the rulemaking process, and the thoughtful concern of those falconers who took the time to submit comments. The Service believes that this type of public participation in the rulemaking process is essential and would like to express its appreciation to all who participated in this endeavor.

Permit Issuance, Denial, Revocation, and Appeal Procedures

The Service proposed a number of changes in its procedures for issuing, denying, suspending, and revoking permits. The Service also proposed changes to clarify the rights and procedures for persons who wish to appeal these decisions. The Service proposed to charge an application fee of $25.00 to process most migratory bird applications and proposed certain technical changes relating to the title of the issuing officer.

The primary issue raised by a substantial number of the commenters involved the difference between the response times allowed the Government and the applicant in the appeal procedures. The Service has reviewed its proposal and the final regulations provide that both the applicant and the Government have the same response requirements. In no case is an applicant given less than 45 calendar days to respond to a Service action concerning denials, revocations, or appeals.

A number of commenters objected to the Service's proposed criteria for revocation of permits. Those who objected believed that the criteria were too strict. The Service has addressed these concerns, while maintaining clearly defined guidelines under which a permit may be revoked. The Service has rewritten the section authorizing permit revocation based upon the conviction of a criminal violation or assessment of a civil penalty to require that the violation directly relate to a condition of the permit or to the permitted activity. For example, a falconry permit could be revoked if the permittee were convicted of illegally selling a raptor held under the permit. However, a falconer who was convicted of violating the hunting regulations while using a raptor to hunt would not necessarily be subject to permit revocation on that basis alone.

The Service chose not to apply the narrower criteria used for permit denial to the revocation of a permit after its issuance. Thus, a permit may be revoked upon a criminal conviction or assessment of a civil penalty against a permittee for violation of any term or condition of a permit or the laws and regulations governing the permitted activity, whereas an original application may be rejected on the basis of a conviction *only* if it involves a felony violation of specific federal wildlife statutes.

The Service has clarified those criteria for permit revocation based upon changes in either laws and regulations or on changes in wildlife or plant populations. This proposal was intended to apply if a change in the law or regulations restricted the Service from continuing to issue a certain type of permit. The Service would be able to revoke those permits that were no longer authorized under the new law or regulation. Similarly, if an animal or plant population declined to the point that the activities authorized by a permit would be detrimental to the population, the Service could revoke a permit.

The final rules retain the provision that the Service may revoke a permit if the permittee becomes disqualified under one of the disqualification factors established in § 13.21.

Several commenters stated that permit revocation should be left to the courts. However, the Migratory Bird Treaty Act establishes the Secretary (and hence the Service) as its primary licensing authority, and the courts have generally held that the administration of permits issued by agencies of the Executive Branch of Government are outside the jurisdiction of the court until a permittee has exhausted all administrative appeals within the agency. Of course, once the agency has issued its final decision on a permit matter, that decision may be challenged in court.

The Service views permit revocation as a solution of last resort in handling permit problems, and intends to make full use of the broad discretion built into the review process. The Service is not creating a situation in which it may arbitrarily revoke permits. Rather, the Service believes that it has established reasonable guidelines that insure the protection of due proces for all permittees. Historically, the Service has revoked very few permits. The Service does not intend that these regulations be interpreted as change in its policy on permit revocation. Rather, the Service wants to clarify its current policy so the public can clearly understand that policy.

Permit Disqualification Factors

The Service proposed the establishment of certain disqualifying factors. Any applicant who met one of these criteria would be disqualified from receiving a permit from the Service for the time specified by regulations. Under these disqualifying factors, any person who had been convicted of or pleaded guilty or nolo contendere to a *felony* violation of wildlife conservation laws of the United States or of any State would be disqualified for life from receiving any permit from the Service.

The conviction, entry of a plea of guilty or nolo contendere, or the assessment of a civil penalty for any violation of any statute or regulation relating to the permitted activity would have disqualified the applicant for a period of five years. An applicant whose previous permit was revoked would have been disqualified from receiving a permit for a period of five years from the date of revocation. Finally, failure to pay any fees, assessed costs, or penalties would disqualify an applicant until such fees are paid.

Those who commented on this issue raised several valid concerns. First, even though a convicted felon generally loses the right to vote, to carry firearms, and other rights normally enjoyed by citizens of this country, those rights can be reinstated in certain circumstances. Secondly, while conviction of a felony is a very serious matter, the definition of felony offenses is not consistent among the States. Under Federal law a felony is defined as any crime that carries a maximum jail term of more than one year.

In response to these concerns, the Service has modified this disqualification factor in the final rule. The Service limits the felonies that would disqualify an applicant to those involving specific Federal wildlife laws. There are only three (3) Federal wildlife statutes which have felony provisions. The sale of migratory birds and the taking of migratory birds for sale are felonies under the Migratory Bird Treaty Act, 16 U.S.C. 703–712. A violation of the Lacey Act (16 U.S.C. 3371–3378) that involves the importation or exportation of wildlife or the sale of wildlife valued at more than $350 is a felony. Finally, a second conviction of a violation of 16 U.S.C. 668–668c, the Bald and Golden Eagle Protection Act, is a felony. Conviction of a felony offense generally

requires that the Government prove that a person knew that he or she was engaging in criminal activity. Because the Service recognizes that there may be mitigating circumstances, it has provided that the Director may waive an applicant's disqualification under this factor.

The second concern raised by many commenters involved the Service's proposal to disqualify any person convicted of a misdemeanor or assessed a civil penalty. Many falconers raised the hypothetical situation in which a falconer hunting migratory game birds with a falcon violated a game law, such as taking a non-game bird or exceeding the daily bag limit. As they interpreted the proposed rule, this would be grounds for revocation of the falconer's permit. These commenters argued that a hunter using a shotgun who committed the same violation would be subject to a fine but would not lose the privilege to hunt.

The Service never intended this disqualification factor to apply to falconers or others who committed hunting violations. To do so would unfairly penalize one class of hunter because of the particular instrument used, a falcon, even though the instrument itself is perfectly legal. Hunting violations committed while using a falcon should be handled in the same manner as any other hunting violation.

Another objection raised to this factor argued that no provision was provided for discretion on the part of the Service. It was pointed out that under the laws and regulations administered by the Service, there is a broad range of potential violations that could cause disqualification. Not all of these are equally serious. Finally, the factor was written in a manner that provided no review or appeal procedure.

Because of the many concerns raised by the comments, the Service has deleted this disqualification factor from the final rule.

The Service has retained the proposed disqualification factor based upon revocation of a permit. However, the Service has clarified this factor. A person whose permit has been revoked may be disqualified from holding a similar permit for a period of five (5) years from date of final agency action on the revocation. However, disqualification is only authorized if the permit was revoked because of a conviction or assessment of a civil penalty, or because the permittee failed to correct deficiencies that were the cause of a permit suspension. Revocation based upon a change in the law or regulation, or because of a change in wildlife or plant populations would not be cause for disqualification.

Import/Export Permits for Migratory Birds

The Service proposed to reinstate the requirement that a permit be obtained prior to importing or exporting certain migratory birds. Such a requirement was historically part of the Service's permit scheme but was eliminated in 1981. However, the Service now believes that this was inconsistent with the general scope of its permit regulations. Throughout its regulatory scheme, the Service requires permits prior to the importation or exportation of wildlife protected by laws which generally prohibit such activity. Under the proposal, the Service would not have required import permits for migratory game birds lawfully taken by sport hunters and imported in accordance with Subpart G or Part 20 of 50 CFR. Also exempt from this permit requirement would have been properly marked captive bred waterfowl.

Several commenters suggested that properly marked, captive bred migratory game birds and raptors held under authority of a falconry permit be granted some sort of exemption to the import/export permit requirements for migratory birds. The Service agrees with these suggestions and has drafted the final rule accordingly.

Migratory Game Bird Breeding

The Service proposed to amend the special permit regulations found in § 21.27 to permit the sale of properly marked, captive bred migratory game birds, other than waterfowl. Currently, a number of persons have special purpose permits authorizing the captive breeding of migratory game birds other than waterfowl, especially doves and cranes. Since current regulations permit the sale of properly marked, captive bred waterfowl and raptors, it seemed inconsistent to prohibit the sale of other captive bred migratory game birds. Marking and reporting requirements similar to those for the sale of captive bred waterfowl and raptors will be mandated.

Generally, the comments relating to the Service's proposal to allow sale of captive bred migratory game birds under § 21.27 were favorable. Commenters suggested that the Service adopt the marking requirements found in § 21.13(b), relating to captive bred waterfowl. The Service agrees and has incorporated this change in the final rule.

Some commenters suggested that the Service expand its proposal to allow the sale of any legally held migratory bird. The Service does not believe that this would be in the best interests of the migratory bird resource. The Service believes that to permit the sale of migratory non-game birds would encourage unlawful taking from the wild, and could create an illegal market for wild birds.

Falconry Testing, Facilities, and Equipment Standards

Under its proposal, the Service would no longer have required States to establish minimum standards for facilities and equipment, nor to administer an examination as a requirement for issuing a falconry permit. The service does not generally impose such conditions on other types of permits under which a person may possess live wildlife and believed it might be perceived as inconsistent to do so for falconry permits. The States would have been free to independently impose minimum standards or administer an examination to prospective falconers.

However, most of the commenters who addressed the proposed changes in the falconry permit regulations objected to the removal of the testing requirement and the facilities and equipment specifications from the Federal falconry standards. The Service concurs, believing that the importance of maintaining national standards for the practice of falconry overrides the possibility of inconsistency in permit regulations. Therefore, the current standards have been retained in the final rule.

Banding of Raptors and use of the Term "Sensitive Species"

The Service's proposal identified certain raptor species that it believed were in need of special control either because of biological or law enforcement considerations. These species were included in the definition of a new term, "sensitive raptors." Under the proposal, sensitive raptors would have included the peregrine falcon (*Falco peregrinus*), the gyrfalcon (*Falco rusticolus*), the Harris hawk (*Parabuteo unicinctus*), and the prairie falcon (*Falco mexicanus*). The peregrine falcon was included because most of the North American subspecies are listed as either endangered or threatened. The gyrfalcon was listed as a sensitive raptor because of its inclusion on Appendix I to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The Harris hawk was listed because biological indications point to a declining population in the United

States. Finally, the prairie falcon was included because the Service believed its popularity in falconry has often made it a target for illegal taking from the wild.

Comments focused on two issues. First, most commenters objected to the use of the term "sensitive species." The Service intended this term to be a term of art that would make drafting the rule simpler. Rather than having to write the name of each species every time it was referred to in the regulations, the Service could use the simpler term "sensitive species." However, because the majority of the commenters objected to the use of the term, the Service has deleted it from the final rule.

The second issue raised by the commenters involved which species should be banded. Opinions ranged from the belief that all raptors should be banded to the belief that none should. After reviewing all information submitted by the public, discussions with several raptor biologists, and a review of the Final Environmental Assessment prepared by the Service's Office of Migratory Bird Management, the Service has decided to require banding of the peregrine falcon (*Falco peregrinus*), the gyrfalcon (*Falco rusticolus*) and the Harris hawk (*Parabuteo unicinctus*). The reasons for requiring the banding of these species are the same as stated above. Based on a review of all available information, no valid justification was found to support banding prairie falcons.

It should be noted that this new rule is a relaxation of the current regulations that require *all* raptors held for falconry purposes to be banded.

Joint Federal/State Permits

The Service proposed to eliminate the concept of a joint Federal/State falconry permit. This program has allowed an applicant to submit one application for a joint falconry permit issued by both the State and the Service. The program was started prior to the Service's development of a computerized permit issuance system, and was designed to save both the State and the Service administrative costs. Under the Service's computerized system each falconry application is entered into the computer and a permit under obtained. A permit file is maintained in the issuing Regional office. An actual falconry permit may or may not be printed by the computer, depending upon the particular procedures adopted between the Regional office and a State. State procedures for processing the permit application vary from State to State.

Based on the comments received, it is apparent many falconry permittees do not realize that their falconry permit is both a State permit and a Federal permit issued by the Service. Many commenters objected to the Service imposing a new requirement for a Federal falconry permit. In fact, the Service currently requires a Federal falconry permit. However, under the joint permit program both State and Federal permits are issued concurrently on a single piece of paper.

Many commenters stated that the implementation of a separate permit would increase the administrative burden on the Government. Many also objected to the implementation of a separate Federal permit because they would then have to submit a separate application to each agency. The Service understands the reluctance on the part of permittees to prepare and file additional paperwork with the Government.

In an effort to accommodate as many of the concerns of the public as possible and to achieve its own goals, the Service will retain the concept of a joint State and Federal falconry permit. Under this cooperative Federal/State permit program, if a State chooses to participate, applicants may continue to submit one application to the appropriate State agency for both State and Federal falconry permits. The participating State will use the application to process the joint Federal/State falconry permit.

The Service also proposed to extend the term of the falconry permit from two to three years. Since all States currently issue a two year permit, the Service would not be able to issue three year permits under the jont program unless each State also changed its rules accordingly. Such a change would reduce the administrative work of managing permits by one-third for the Service, the States, and the permittees.

Miscellaneous Issues

A number of other miscellaneous issues were addressed by commenters. None of these issues received a significant number of comments except the use of pole traps, which was addressed by 100 respondents. The following is a brief discussion of this issue.

Use of pole traps. In 1987, the Service was petitioned by the Wildlife Information Center, Inc., Allentown, Pennsylvania, to amend its regulations to prohibit all uses of pole traps in the United States. This petition was based upon data that indicated pole traps caused significant injury to migratory birds caught in such traps. The Service decided to review this issue and consider public comment as a part of this regulatory package. As a result of that review, the Service has determined that no statutory authority exists under the Migratory Bird Treaty Act to prohibit the deployment of pole traps, per se. There are legitimate uses of pole traps which do not constitute violations of the Act. For example, it would not be unlawful to take unprotected birds such as starlings or rock doves (pigeons) with pole traps. However the taking of migratory birds with pole traps is a violation of the Act and current regulations. Violations involving the use of pole traps are investigated in the same manner as any other unlawful taking prohibited by the Act and regulations.

Because the issue required a more immediate response than the regulatory process was able to provide, the Service promulgated a new policy that severely limited the circumstances under which a permit could be issued authorizing the taking of migratory birds with pole traps. In the proposed rule of December 28, 1987, the Service published its policy and willingness to address this question. Public comment on this issue was received and analyzed as part of this rulemaking. The Service has reviewed the effectiveness of the current policy and believes that it has accomplished the goals intended. Therefore, the Service does not believe that regulatory action is necessary at this time.

Change in the status of the gyrfalcon and the peregrine falcon. A few commenters requested that the Service include regulations removing the gyrfalcon from Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (Convention). Others suggested that the Service downlist the arctic peregrine falcon from endangered to threatened and allow limited take for falconry purposes. Still others wanted the Service to allow the taking of tundra peregrines for falconry.

All of these suggestions are outside the scope of this rulemaking. Changes to the Convention appendices are not unilateral actions, but require the concurrence of the parties to the Convention and are considered only at the biennial Conferences of the Parties. There are separate and distinct rulemaking procedures for listing actions, involving careful review of formal petitions to the Service and in-depth analysis of all available biological information prior to initiating a listing or downlisting action. Allowing the take of tundra peregrine falcons (*Falco peregrinus tundrius*) was reviewed and considered in the Environmental Assessment prepared in conjunction

with the proposed rule. A major concern was that, although the tundra subspecies has arguably recovered to levels which might permit a limited take for falconry, such activities might result in the inadvertent removal of *anatum* peregrines from the wild, possibly retarding the recovery of this subspecies. The Service is concerned that some *anatum* birds might be taken and kept by persons not able to make the difficult determination of subspecies. Finally, permitting the limited take of tundra peregrines would likely add considerably to the Service's administrative burdens, as outlined in the Environmental Assessment. The Service believes that, for these reasons and others expressed in the Environmental Assessment, it would be inadvisable to allow the take of tundra peregrine falcons at this time.

International Association of Fish and Wildlife Agencies falconry guidelines. A number of commenters suggested that the Service adopt the recommendations of the falconry subcommittee report submitted by the International Association of Fish and Wildlife Agencies (International). The Service reviewed this report as part of this regulatory process and found these recommendations extremely helpful. Most of the suggestions contained in the report were adopted in the final rule. For example, the International suggested retaining the facility and equipment standards, retaining the three classes of falconers, continuing to permit the sale of captive-bred, seamless banded raptors, and simplifying certain recordkeeping and marking requirements. On some issues the International's recommendations were more restrictive than the Service's regulations, and for others less restrictive. For example, the International suggested that all raptors used for falconry and propagation continue to be marked with Service bands, and that establishment and enforcement of the regulations be left primarily to the states, within broad federal standards. Based on public comments received during the rulemaking process and for other reasons outlined elsewhere in this document, these particular recommendations were not fully adopted. In the final analysis, the Service believes that the rulemaking process in which it solicited recommendations and comments from a broad segment of interested individuals and groups is superior to one which would merely adopt recommendations from a single source.

Use of form 3–186A (Migratory Bird Acquisition/Disposition Report. The Service received comments both supporting and opposing the use of the 3–186A form. However, the comments did not deal with substantive regulatory issues, and the Service strongly believes that this form is necessary to track the possession and transfer of captive migratory birds for administrative and law enforcement purposes. Therefore, the Service is implementing the use of this form as proposed.

Raptor Propagation. The proposed changes in the Raptor propagation rules produced only a handful of comments. The Service has decided to retain the equipment and facilities standards found in the current regulations. Also under the final rule, propagators will not be required to submit a form 3–186A to report birds produced through captive propagation as long as the permittee retains possession of the bird. These birds will be reported in an annual report as previously required. A form 3–186A will be required to report any other birds acquired by or disposed of by the permittee. Otherwise, the final rule is the same as the proposal.

Additional Changes

In addition to the modifications discussed above, the Service is making the following changes to the regulations:

Part 13 changes. The term "Special Agent in Charge" has been changed to "Assistant Regional Director for Law Enforcement" to reflect the new organizational title of these officials. The Service will charge a $25.00 processing fee for migratory bird permits, except for banding and marking permits which will be issued at no charge. Section 13.13 relating to the abandonment of a permit application has been incorporated into § 13.11 and revised to reduce the time at which an application is considered abandoned from 60 days to 45 days from the date of notification of deficiency. Finally, technical language changes will be made in § 13.12 to clarify the general information required on applications for permits.

Part 21 changes. The new falconry permit regulations include a specific prohibition against the propagation of raptors without a raptor propagation permit. While this has always been the intent of Service regulations, the current regulations are not clear on this issue. The final rule would allow falconers to sell or barter captive bred raptors that are marked with a numbered, seamless band provided by the Service in accordance with the provisions of § 21.30.

The Service will no longer review State laws or regulations for compliance with the Federal falconry standards. Instead the Service will accept certification from the State that it is in compliance with these standards. The Service will publish a list of States that have submitted such certification in § 21.29(k) of 50 CFR. Those States that have already been certified in compliance with Federal falconry standards are exempted from additional certification.

Certain technical administrative changes have been included in the regulations to facilitate permit administration. Chiefly, the standard term of a permit has been changed from a two year period ending on December 31 of the second year following issuance to a three year term ending three years following the date of issuance. This change will stagger the renewal of permits throughout the year.

Note.—The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and certifies that this rule will not have a significant effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) The principal impact of these regulations will be to simplify and expedite the process of handling the migratory bird permits for which the Service is responsible, thereby creating time savings for the public and increased Government efficiency.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned clearance number 1018–0022. The information is being collected to provide the facts necessary to evaluate permit applications. This information will be used to review permit applications and make decisions, according to criteria established in various Federal wildlife conservation statutes and regulations, on the issuance, suspension, revocation, or denial of permits. The obligation to respond is required to obtain or retain a permit. The total established burden hours required for applicants and permittees under to comply with the information collection requirements of these amended regulations are not expected to be significantly different from existing burden hours under the current regulations in parts 13 and 21.

An Environmental Assessment on falconry and raptor propagation regulations has been prepared by the Service's Office of Migratory Bird Management in connection with the

proposed rulemaking. Based upon this environmental assessment, the Service has issued a Finding of No Significant Impact for these regulations. The environmental assessment and the finding of no significant impact statement are available for public inspection in room 634, Arlington Square Building, 4401 North Fairfax Drive, Arlington, Virginia. Prior rulemakings dealing with falconry and raptor propagation were covered by environmental assessments prepared in 1976 and 1982. Changes in the regulations published in part 13 and in sections of part 21 other than §§ 21.28 through 21.30 are internal organizational changes or are regulatory and enforcement actions which are covered by a categorical exclusion from National Environmental Policy Act procedures under 516 DM 6, Appendix 1, § 1.4(A)(1).

Authors

The authors of this final rule are Special Agent in Charge Thomas L. Striegler and Senior Special Agent Michael Sutton, Division of Law Enforcement, U.S. Fish and Wildlife Service, Washington, DC.

List of Subjects

50 CFR Part 13

Administrative practice and procedure, Exports, Fish, Imports, Penalties, Reporting and recordkeeping requirements, Wildlife.

50 CFR Part 21

Exports, Imports, Reporting and recordkeeping requirements, Wildlife.

Regulation Promulgation

For the reasons set out in the preamble, title 50, chapter I, subchapter B of the Code of Federal Regulations is amended as set forth below:

PART 13—GENERAL PERMIT PROCEDURES

1. The authority citation for part 13 is revised to read as follows:

Authority: 16 U.S.C. 668a; 16 U.S.C. 704, 712; 16 U.S.C. 742j–1; 16 U.S.C. 1382; 16 U.S.C. 1538(d); 16 U.S.C. 1539, 1540(f); 16 U.S.C. 3374; 18 U.S.C. 42; 19 U.S.C. 1202; E.O. 11911, 41 FR 15683; 31 U.S.C. 9701.

2. Section 13.2 is revised to read as follows:

§ 13.2 Purpose of regulations.

The regulations contained in this part provide uniform rules, conditions, and procedures for the application for and the issuance, denial, suspension, revocation, and general administration of all permits issued pursuant to this subchapter B.

3. Section 13.5 is amended by designating the existing paragraph as (a) and by adding a new paragraph (b) as follows:

§ 13.5 Information collection requirements.

* * * * *

(b) The public reporting burden for these reporting requirements is estimated to vary from 15 minutes to 4 hours per response, with an average of 0.803 hours per response, including time for reviewing instructions, gathering and maintaining data, and completing and reviewing the forms. Comments regarding the burden estimate or any other aspect of these reporting requirements should be directed to the Service Information Collection Clearance Officer, MS–224 ARLSQ, Fish and Wildlife Service, Washington, DC 20240, or the Office of Management and Budget, Paperwork Reduction Project (1018–0022), Washington, DC 20503.

4. Section 13.11 is amended as follows:

a. Revise the section heading and add introductory text as set out below.

b. In paragraph (b)(2) remove "Special Agent in Charge of the Law Enforcement" and insert in lieu thereof "Assistant Regional Director for Law Enforcement of".

c. Revise paragraphs (c), and (d)(1) and (d)(2) as set out below.

d. Amend paragraph (d)(4) by revising the entry "Migratory Bird (Part 21)" under "Type of Permit" to read "Migratory Bird—Banding or marking (21.22)".

e. Add paragraph (e) as set out below.

§ 13.11 Application procedures.

The Service may not issue a permit for any activity authorized by this subchapter B unless the applicant has filed an application in accordance with the following procedures. Applicants do not have to submit a separate application for each permit unless otherwise required by this subchapter.

* * * * *

(c) *Time notice.* The Service will process all applications as quickly as possible. However, it cannot guarantee final action within the time limits the applicant requests. Applicants for endangered species and marine mammal permits should submit applications to the Office of Management Authority which are postmarked at least 90 calendar days prior to the requested effective date. Applicants for all other permits should submit applications to the issuing office which are postmarked at least 60 days prior to the requested effective date.

(d) *Fees.* (1) Unless otherwise exempted by this paragraph, applicants for issuance or renewal of permits must pay the required permit processing fee at the time of application. Applicants should pay fees by check or money order made payable to "U.S. Fish and Wildlife Service." The Service will not refund any application fee under any circumstances if the Service has processed the application. However, the Service may return the application fee if the applicant withdraws the application before the Service has significantly processed it.

(2) Except as provided in paragraph (d)(4) of this sections the fee for processing any application is $25.00. If regulations in this subchapter require more than one type of permit for an activity, and the permits are issued by the same office, the issuing office may issue one consolidated permit authorizing the activity. The issuing office may charge only the highest single fee for the activity permitted.

* * * * *

(e) *Abandoned or incomplete applications.* Upon receipt of an incomplete or improperly executed application, or if the applicant does not submit the proper fees, the issuing office will notify the applicant of the deficiency. If the applicant fails to supply the correct information to complete the application or to pay the required fees within 45 calendar days of the date of notification, the Service will consider the application abandoned. The Service will not refund any fees for an abandoned application.

5. Section 13.12 is amended by revising the section heading, paragraph (a) introductory text and (a)(1) through (a)(5) as follows; and remove paragraphs (a)(6) and (a)(7), and redesignate paragraphs (a)(8) through (a)(11) as pargraphs (a)(6) through (a)(9).

§ 13.12 General information requirements on applications for permits.

(a) General information required for all applications. All applications must contain the following information:

(1) Applicant's full name, mailing address, telephone number(s), and,

(i) If the applicant is an individual, the date of birth, height, weight, hair color, eye color, sex, and any business or institutional affiliation of the applicant related to the requested permitted activity; or

(ii) If the applicant is a corporation, firm, partnership, association, institution, or public or private agency, the name and address of the president or principal officer and of the registered agent for the service of process;

(2) Location where the requested permitted activity is to occur or be conducted;

(3) Reference to the part(s) and section(s) of this subchapter B as listed in paragraph (b) of this section under which the application is made for a permit or permits, together with any additional justification, including supporting documentation as required by the referenced part(s) and section(s);

(4) If the requested permitted activity involves the import or re-export of wildlife or plants from or to any foreign country, and the country of origin, or the country of export or re-export restricts the taking, possession, transportation, exportation, or sale of wildlife or plants, documentation as indicated in § 14.52(c) of this subchapter B;

(5) Certification in the following language:

I hereby certify that I have read and am familiar with the regulations contained in title 50, part 13, of the Code of Federal Regulations and the other applicable parts in subchapter B of chapter I of title 50, Code of Federal Regulations, and I further certify that the information submitted in this application for a permit is complete and accurate to the best of my knowledge and belief. I understand that any false statement herein may subject me to suspension or revocation of this permit and to the criminal penalties of 18 U.S.C. 1001.

* * * * *

§ 13.12 [Amended]

6. Section 13.12(b) is amended by removing reference to "paragraph (a)(5)" and inserting in lieu thereof a reference to "paragraph (a)(3)".

§ 13.13 [Removed]

7. Section 13.13 is removed.

§ 13.14 [Removed]

8. Section 13.14 is removed.

§ 13.21 [Amended]

9. Section 13.21 is amended to revise paragraphs (c) and (d), and add paragraphs (e), (f), and (g) to read as follows:

§ 13.21 Issuance of permits.

* * * * *

(c) *Disqualifying factors.* Any one of the following will disqualify a person from receiving permits issued under this Part.

(1) A conviction, or entry of a plea of guilty or nolo contendere, for a felony violation of the Lacey Act, the Migratory Bird Treaty Act, or the Bald and Golden Eagle Protection Act disqualifies any such person from receiving or exercising the privileges of a permit, unless such disqualification has been expressly waived by the Director in response to a written petition.

(2) The revocation of a permit for reasons found in § 13.28 (a)(1) or (a)(2) disqualifies any such person from receiving or exercising the privileges of a similar permit for a period of five years from the date of the final agency decision on such revocation.

(3) The failure to pay any required fees or assessed costs and penalties, whether or not reduced to judgement disqualifies such person from receiving or exercising the privileges of a permit as long as such moneys are owed to the United States. This requirement shall not apply to any civil penalty presently subject to administrative or judicial appeal; provided that the pendency of a collection action brought by the United States or its assignees shall not constitute an appeal within the meaning of this subsection.

(4) The failure to submit timely, accurate, or valid reports as required may disqualify such person from receiving or exercising the privileges of a permit as long as the deficiency exists.

(d) *Use of supplemental information.* The issuing officer, in making a determination under this subsection, may use any information available that is relevant to the issue. This may include any prior conviction, or entry of a plea of guilty or nolo contendere, or assessment of civil or criminal penalty for a violation of any Federal or State law or regulation governing the permitted activity. It may also include any prior permit revocations or suspensions, or any reports of State or local officials. The issuing officer shall consider all relevant facts or information available, and may make independent inquiry or investigation to verify information or substantiate qualifications asserted by the applicant.

(e) *Conditions of issuance and acceptance.* (1) Any permit automatically incorporates within its terms the conditions and requirements of Subpart D of this part and of any part(s) or section(s) specifically authorizing or governing the activity for which the permit is issued.

(2) Any person accepting and holding a permit under this Subchapter B acknowledges the necessity for close regulation and monitoring of the permitted activity by the Government. By accepting such permit, the permittee consents to and shall allow entry by agents or employees of the Service upon premises where the permitted activity is conducted at any reasonable hour. Service agents or employees may enter such premises to inspect the location; any books, records, or permits required to be kept by this Subchapter B; and any wildlife or plants kept under authority of the permit.

(f) *Term of permit.* Unless otherwise modified, a permit is valid during the period specified on the face of the permit. Such period shall include the effective date and the date of expiration.

(g) *Denial.* The issuing officer may deny a permit to any applicant who fails to meet the issuance criteria set forth in this section or in the part(s) or section(s) specifically governing the activity for which the permit is requested.

10. Sections 13.22 through 13.29 are revised to read as follows:

§ 13.22 Renewal of permits.

(a) *Application for renewal.* Applicants for renewal of a permit must submit a written application at least 30 days prior to the expiration date of the permit. Applicants must certify in the form required by § 13.12(a)(5) that all statements and information in the original application remain current and correct, unless previously changed or corrected. If such information is no longer current or correct, the applicant must provide corrected information.

(b) *Renewal criteria.* The Service shall issue a renewal of a permit if the applicant meets the criteria for issuance in § 13.21(b) and is not disqualified under § 13.21(c).

(c) *Continuation of permitted activity.* Any person holding a valid, renewable permit, who has complied with this section, may continue the activities authorized by the expired permit until the Service has acted on such person's application for renewal.

(d) *Denial.* The issuing officer may deny renewal of a permit to any applicant who fails to meet the issuance criteria set forth in § 13.21 of this part, or in the part(s) or section(s) specifically governing the activity for which the renewal is requested.

§ 13.23 Amendment of permits.

(a) *Permittee's request.* Where circumstances have changed so that a permittee desires to have any condition of his permit modified, such permittee must submit a full written justification and supporting information in conformity with this part and the part under which the permit was issued.

(b) *Service reservation.* The Service reserves the right to amend any permit for just cause at any time during its term, upon written finding of necessity.

(c) *Change of name or address.* A permittee is not required to obtain a new permit if there is a change in the legal individual or business name, or in

the mailing address of the permittee. A permittee is required to notify the issuing office within 10 calendar days of such change. This provision does not authorize any change in location of the conduct of the permitted activity when approval of the location is a qualifying condition of the permit.

§ 13.24 Right of succession by certain persons.

(a) Certain persons, other than the permittee are granted the right to carry on a permitted activity for the remainder of the term of a current permit provided they comply with the provisions of paragraph (b) of this section. Such persons are the following:

(1) The surviving spouse, child, executor, administrator, or other legal representative of a deceased permittee; and

(2) A receiver or trustee in bankruptcy or a court designated assignee for the benefit of creditors.

(b) In order to secure the right provided in this section the person or persons desiring to continue the activity shall furnish the permit to the issuing officer for endorsement within 90 days from the date the successor begins to carry on the activity.

§ 13.25 Permits not transferable; agents.

(a) Permits issued under this part are not transferable or assignable. Some permits authorize certain activities in connection with a business or commercial enterprise and in the event of any lease, sale, or transfer of such business entity, the successor must obtain a permit prior to continuing the permitted activity. However, certain limited rights of succession are provided in § 13.24.

(b) Except as otherwise stated on the face of the permit, any person who is under the direct control of the permittee, or who is employed by or under contract to the permittee for purposes authorized by the permit, may carry out the activity authorized by the permit, as an agent for the permittee.

§ 13.26 Discontinuance of permit activity.

When a permittee, or any successor to a permittee as provided for by § 13.24, discontinues activities authorized by a permit, the permittee shall within 30 calendar days of the discontinuance return the permit to the issuing office together with a written statement surrendering the permit for cancellation. The permit shall be deemed void and cancelled upon its receipt by the issuing office. No refund of any fees paid for issuance of the permit or for any other fees or costs associated with a permitted activity shall be made when a permit is surrendered for cancellation for any reason prior to the expiration date stated on the face of the permit.

§ 13.27 Permit suspension.

(a) *Criteria for suspension.* The privileges of exercising some or all of the permit authority may be suspended at any time if the permittee is not in compliance with the conditions of the permit, or with any applicable laws or regulations governing the conduct of the permitted activity. The issuing officer may also suspend all or part of the privileges authorized by a permit if the permittee fails to pay any fees, penalties or costs owed to the Government. Such suspension shall remain in effect until the issuing officer determines that the permittee has corrected the deficiencies.

(b) *Procedure for suspension.* (1) When the issuing officer believes there are valid grounds for suspending a permit the permittee shall be notified in writing of the proposed suspension by certified or registered mail. This notice shall identify the permit to be suspended, the reason(s) for such suspension, the actions necessary to correct the deficiencies, and inform the permittee of the right to object to the proposed suspension. The issuing officer may amend any notice of suspension at any time.

(2) Upon receipt of a notice of proposed suspension the permittee may file a written objection to the proposed action. Such objection must be in writing, must be filed within 45 calendar days of the date of the notice of proposal, must state the reasons why the permittee objects to the proposed suspension, and may include supporting documentation.

(3) A decision on the suspension shall be made within 45 days after the end of the objection period. The issuing officer shall notify the permittee in writing of the Service's decision and the reasons therefore. The issuing officer shall also provide the applicant with the information concerning the right to request reconsideration of the decision under § 13.29 of this part and the procedures for requesting reconsideration.

§ 13.28 Permit revocation.

(a) *Criteria for revocation.* A permit may be revoked for any of the following reasons:

(1) The permittee willfully violates any Federal or State statute or regulation, or any Indian tribal law or regulation, or any law or regulation of any foreign country, which involves a violation of the conditions of the permit or of the laws or regulations governing the permitted activity; or

(2) The permittee fails within 60 days to correct deficiencies that were the cause of a permit suspension; or

(3) The permittee becomes disqualified under § 13.21(c) of this part; or

(4) A change occurs in the statute or regulation authorizing the permit that prohibits the continuation of a permit issued by the Service; or

(5) The population(s) of the wildlife or plant that is subject of the permit declines to the extent that continuation of the permitted activity would be detrimental to maintenance or recovery of the affected population.

(b) *Procedure for revocation.* (1) When the issuing officer believes there are valid grounds for revoking a permit, the permittee shall be notified in writing of the proposed revocation by certified or registered mail. This notice shall identify the permit to be revoked, the reason(s) for such revocation, the proposed disposition of the wildlife, if any, and inform the permittee of the right to object to the proposed revocation. The issuing officer may amend any notice of revocation at any time.

(2) Upon receipt of a notice of proposed revocation the permittee may file a written objection to the proposed action. Such objection must be in writing, must be filed within 45 calendar days of the date of the notice of proposal, must state the reasons why the permittee objects to the proposed revocation, and may include supporting documentation.

(3) A decision on the revocation shall be made within 45 days after the end of the objection period. The issuing officer shall notify the permittee in writing of the Service's decision and the reasons therefore, together with the information concerning the right to request and the procedures for requesting reconsideration.

(4) Unless a permittee files a timely request for reconsideration, any wildlife held under authority of a permit that is revoked must be disposed of in accordance with instructions of the issuing officer. If a permittee files a timely request for reconsideration of a proposed revocation, such permittee may retain possession of any wildlife held under authority of the permit until final disposition of the appeal process.

§ 13.29 Review procedures.

(a) *Request for reconsideration.* Any person may request reconsideration of an action under this part if that person is one of the following:

(1) An applicant for a permit who has received written notice of denial;

(2) An applicant for renewal who has received written notice that a renewal is denied;

(3) A permittee who has a permit amended, suspended, or revoked, except for those actions which are required by changes in statutes or regulations, or are emergency changes of limited applicability for which an expiration date is set within 90 days of the permit change; or

(4) A permittee who has a permit issued or renewed but has not been granted authority by the permit to perform all activities requested in the application, except when the activity requested is one for which there is no lawful authority to issue a permit.

(b) *Method of requesting reconsideration.* Any person requesting reconsideration of an action under this part must comply with the following criteria:

(1) Any request for reconsideration must be in writing, signed by the person requesting reconsideration or by the legal representative of that person, and must be submitted to the issuing officer.

(2) The request for reconsideration must be received by the issuing officer within 45 calendar days of the date of notification of the decision for which reconsideration is being requested.

(3) The request for reconsideration shall state the decision for which reconsideration is being requested and shall state the reason(s) for the reconsideration, including presenting any new information or facts pertinent to the issue(s) raised by the request for reconsideration.

(4) The request for reconsideration shall contain a certification in substantially the same form as that provided by § 13.12(a)(5). If a request for reconsideration does not contain such certification, but is otherwise timely and appropriate, it shall be held and the person submitting the request shall be given written notice of the need to submit the certification within 15 calendar days. Failure to submit certification shall result in the request being rejected as insufficient in form and content.

(c) *Inquiry by the Service.* The Service may institute a separate inquiry into the matter under consideration.

(d) *Determination of grant or denial of a request for reconsideration.* The issuing officer shall notify the permittee of the Service's decision within 45 days of the receipt of the request for reconsideration. This notification shall be in writing, shall state the reasons for the decision, and shall contain a description of the evidence which was relied upon by the issuing officer. The notification shall also provide information concerning the right to appeal, the official to whom an appeal may be addressed, and the procedures for making an appeal.

(e) *Appeal.* A person who has received an adverse decision following submission of a request for reconsideration may submit a written appeal to the Regional Director for the region in which the issuing office is located, or to the Director for offices which report directly to the Director. An appeal must be submitted within 45 days of the date of the notification of the decision on the request for reconsideration. The appeal shall state the reason(s) and issue(s) upon which the appeal is based and may contain any additional evidence or arguments to support the appeal.

(f) *Decision on appeal.* (1) Before a decision is made concerning the appeal the appellant may present oral arguments before the Regional Director or the Director, as appropriate, if such official judges oral arguments are necessary to clarify issues raised in the written record.

(2) The Service shall notify the appellant in writing of its decision within 45 calendar days of receipt of the appeal, unless extended for good cause and the appellant notified of the extension.

(3) The decision of the Regional Director or the Director shall constitute the final administrative decision of the Department of the Interior.

§ 13.30—13.32 [Removed]

11. Sections 13.30 through 13.32 are removed.

12. Section 13.41 is revised to read as follows:

§ 13.41 Humane conditions.

Any live wildlife possessed under a permit must be maintained under humane and healthful conditions.

§ 13.46 [Amended]

13. Section 13.46, *Maintenance of records* is amended to remove the third and fourth sentences and substitute a sentence reading as follows: "Such records shall be legibly written or reproducible in English and shall be maintained for five years from the date of expiration of the permit."

14. Sections 13.48, 13.49, and 13.50 are added to read as follows:

§ 13.48 Compliance with conditions of permit.

Any person holding a permit under Subchapter B and any person acting under authority of such permit must comply with all conditions of the permit and with all appllicable laws and regulations governing the permitted activity.

§ 13.49 Surrender of permit.

Any person holding a permit under Subchapter B shall surrender such permit to the issuing officer upon notification that the permit has been suspended or revoked by the Service, and all appeal procedures have been exhausted.

§ 13.50 Acceptance of liability.

Any person holding a permit under Subchapter B assumes all liability and responsibility for the conduct of any activity conducted under the authority of such permit.

Subpart E—[Removed]

15. Subpart F—Violations of the Permit, consisting of § 13.51, is removed.

PART 21—MIGRATORY BIRD PERMITS

1. The authority citation for part 21 is revised to read as follows:

Authority: Pub. L. 95–616, 92 Stat. 3112 (16 U.S.C. 712(2)).

2. Section 21.1 is revised to read as follows:

§ 21.1 Purpose of regulations.

The regulations contained in this part supplement the general permit regulations of part 13 of this subchapter with respect to permits for the taking, possession, transporation, sale, purchase, barter, importation, exportation, and banding or marking of migratory birds. This part also provides certain exceptions to permit requirements for public, scientific, or educational institutions, and establishes depredation orders which provide limited exceptions to the Migratory Bird Treaty Act (16 U.S.C. 703–712).

3. Section 21.2 is amended by revising paragraph (a) as follows, and removing paragraph (d).

§ 21.2 Scope of regulations.

(a) Migratory birds, their parts, nests, or eggs, lawfully acquired prior to the effective date of Federal protection under the Migratory Bird Treaty Act (16 U.S.C. 703–712) may be possessed or transported without a permit, but may not be imported, exported, purchased, sold, bartered, or offered for purchase, sale or barter, and all shipments of such birds must be marked as provided by part 14 of this subchapter: *Provide,* no exemption from any statute or regulation shall accrue to any offspring of such migratory birds.

* * * * *

4. Section 21.4 is added to read as follows:

§ 21.4 Information collection requirements.

(a) The information collection requirements contained within this part 21 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned Clearance Number 1018–0022. This information is being collected to provide information necessary to evaluate permit applications. This information will be used to review permit applications and make decisions, according to criteria established in the Migratory Bird Treaty Act, 16 U.S.C. 703–712 and the regulations promulgated thereunder on the issuance, suspension, revocation, or denial of permits. The obligation to respond is required in order to obtain or retain a permit.

(b) The public reporting burden for these reporting requirements is estimated to vary from 15 minutes to 4 hours per response, with an average of 0.803 hours per response, including time for reviewing instructions, gathering and maintaining data, and completing and reviewing the forms. Comments regarding the burden estimate or any other aspect of these reporting requirements should be directed to the Service Information Collection Clearance Officer, MS–224 ARLSQ, Fish and Wildlife Service, Washington, DC 20240, or the Office of Management and Budget, Paperwork Reduction Project (1018–0022), Washington, DC 20503.

5. Section 21.11 is revised to read as follows:

§ 21.11 General permit requirements.

No person shall take, possess, import, export, transport, sell, purchase, barter, or offer for sale, purchase or barter, any migratory bird, or the parts, nests, or eggs of such bird except as may be permitted under the terms of a valid permit issued pursuant to the provisions of this part and part 13, or as permitted by regulations in this part or part 20 (the hunting regulations).

6. Section 21.12 is amended by revising the section heading and the last sentence of paragraph (b) to read as follows:

§ 21.12 General exceptions to permit requirements.

* * * * *

(b) * * * Records shall be maintained or reproducible in English on a calendar year basis and shall be retained for a period of five (5) years following the end of the calendar year covered by the records.

7. Section 21.21 is added to read as follows:

§ 21.21 Import and export permits.

(a) *Permit requirement.* (1) Except for migratory game birds imported in accordance with the provisions of Subpart G of part 20 of this Subchapter B, an import permit is required before any migratory birds, their parts, nests, or eggs may be imported.

(2) An export permit is required before any migratory birds, their parts, nests, or eggs may be exported: *Provided,* that captive-reared migratory game birds that are marked in compliance with the provisions of § 21.13(b) may be exported to Canada or Mexico without a permit. *Provided further,* that raptors lawfully possessed under a falconry permit issued pursuant to § 21.28 of this part may be exported to or imported from Canada or Mexico without a permit for the purposes of attending bona fide falconry meets, as long as the person importing or exporting the birds returns the same bird(s) to the country of export following any such meet. Nothing in this paragraph, however, exempts any person from the permit requirements of parts 17, 22, and 23 of this subchapter.

(b) *Application procedures.* Applications for permits to import or export migratory birds shall be submitted to the appropriate issuing office (see §§ 10.22 and 13.11(b) of this subchapter). Each such application must contain the general information and certification required by § 13.12(a)(5) of this subchapter plus the following additional information:

(1) Whether importation or exportation is requested;

(2) The species and numbers of migratory birds or their parts, nests, or eggs to be imported or exported;

(3) The name and address of the person from whom such birds are being imported or to whom they are being exported;

(4) The purpose of the importation or exportation;

(5) The estimated date of arrival or departure of the shipment(s), and the port of entry or exit through which the shipment will be imported or exported; and

(6) Federal and State permit numbers and type of permits authorizing possession, acquisition, or disposition of such birds, their parts, nests, or eggs where such a permit is required.

(c) *Additional permit conditions.* In addition to the general conditions set forth in Part 13 of this Subchapter B, import and export permits shall be subject to any requirements set forth in the permit.

(d) *Term of permit.* An import or export permit issued or renewed under this part expires on the date designated on the face of the permit unless amended or revoked, but the term of the permit shall not exceed three (3) years from the date of issuance or renewal.

8. Section 21.22 is amended as follows:

a. In paragraph (b) revise the zip code to read "20708."

b. In paragraph (c)(1) change the word "Bureau" to read "Service".

c. In paragraph (c)(2) revise the zip code to read "20708."

d. Paragraph (d) is revised to read as set out below:

§ 21.22 Banding or marking permits.

* * * * *

(d) *Term of permit.* A banding or marking permit issued or renewed under this part expires on the date designated on the face of the permit unless amended or revoked, but the term of the permit shall not exceed three (3) years from the date of issuance or renewal.

9. Section 21.23 is amended as follows:

a. In paragraph (b) introductory text, change the words "Special Agent in Charge" to read "issuing officer".

b. Paragraph (d) is revised to read as set out below:

§ 21.23 Scientific collecting permits.

* * * * *

(d) *Term of permit.* A scientific collecting permit issued or renewed under this part expires on the date designated on the face of the permit unless amended or revoked, but the term of the permit shall not exceed three (3) years from the date of issuance or renewal.

10. Section 21.24 is amended as follows:

a. In paragraph (b) introductory text, change the words "Special Agent in Charge" to read "issuing officer".

b. Paragraph (e) is revised to read as set out below:

§ 21.24 Taxidermist permits.

* * * * *

(e) *Term of permit.* A taxidermist permit issued or renewed under this part expires on the date designated on the face of the permit unless amended or revoked, but the term of the permit shall not exceed three (3) years from the date of issuance or renewal.

11. Section 21.25 is amended as follows:

a. In paragraph (b) introductory text, change the words "Special Agent in Charge" to read "issuing officer".

b. Paragraph (d) is revised to read as set out below:

§ 21.25 Waterfowl sale and disposal permits.

* * * * *

(d) *Term of permit.* A waterfowl sale and disposal permit issued or renewed under this part expires on the date designated on the face of the permit unless amended or revoked, but the term of the permit shall not exceed three (3) years from the date of issuance or renewal.

12. Section 21.27 is amended as follows:

a. Revise the introductory text and paragraph (a) as set out below.

b. In paragraph (b) introductory text, change the words "Special Agent in Charge" to read "issuing officer".

c. Paragraph (c) introductory text is republished, paragraph (c)(1) is revised, and paragraphs (c)(3), (c)(4), (c)(5), and (c)(6) are added as set out below.

e. Paragraph (d) is revised as set out below.

§ 21.27 Special purpose permits.

Permits may be issued for special purpose activities related to migratory birds, their parts, nests, or eggs, which are otherwise outside the scope of the standard form permits of this part. A special purpose permit for migratory bird related activities not otherwise provided for in this part may be issued to an applicant who submits a written application containing the general information and certification required by Part 13 and makes a sufficient showing of benefit to the migratory bird resource, important research reasons, reasons of human concern for individual birds, or other compelling justification.

(a) *Permit requirement.* A special purpose permit is required before any person may lawfully take, salvage, otherwise acquire, transport, or possess migratory birds, their parts, nests, or eggs for any purpose not covered by the standard form permits of this part. In addition, a special purpose permit is required before any person may sell, purchase, or barter captive-bred, migratory game birds, other than waterfowl, that are marked in compliance with § 21.13(b) of this part.

* * * * *

(c) *Additional permit conditions.* In addition to the general conditions set forth in part 13 of this subchapter B, special purpose permits shall be subject to the following conditions:

(1) Permittees shall maintain adequate records describing the conduct of the permitted activity, the numbers and species of migratory birds acquired and disposed of under the permit, and inventorying and identifying all migratory birds held on December 31 of each calendar year. Records shall be maintained at the address listed on the permit; shall be in, or reproducible in English; and shall be available for inspection by Service personnel during regular business hours. A permittee may be required by the conditions of the permit to file with the issuing office an annual report of operation. Annual reports, if required, shall be filed no later than January 31 of the calendar year followng the year for which the report is required. Reports, if required, shall describe permitted activities, numbers and species of migratory birds acquired and disposed of, and shall inventory and describe all migratory birds possessed under the special purpose permit on December 31 of the reporting year.

* * * * *

(3) All live, captive-bred, migratory game birds possessed under authority of a valid special purpose permit shall be physically marked as defined in § 21.13(b) of this part.

(4) No captive-bred migratory game bird may be sold or bartered unless marked in accordance with § 21.13(b) of this part.

(5) No permittee may take, purchase, receive or otherwise acquire, sell, barter, transfer, or otherwise dispose of any captive-bred migratory game bird unless such permittee submits a Service form 3–186A (Migratory Bird Acquisition/Disposition Report), completed in accordance with the instructions on the form, to the issuing office within five (5) days of such transaction.

(6) No permittee, who is authorized to sell or barter migratory game birds pursuant to a permit issued under this section, may sell or barter such birds to any person unless that person is authorized to purchase and possess such migratory game birds under a permit issued pursuant to this part and part 13, or as permitted by regulations in this part.

(d) *Term of permit.* A special purpose permit issued or renewed under this part expires on the date designated on the face of the permit unless amended or revoked, but the term of the permit shall not exceed three (3) years from the date of issuance or renewal.

13. Section 21.28 is revised to read as follows:

§ 21.28 Falconry permits.

(a) *Permit requirements.* A falconry permit is required before any person may take, possess, transport, sell, purchase, barter, offer to sell, purchase, or barter raptors for falconry purposes.

(b) *Application procedures.* (1) An applicant who wishes to practice falconry in a State listed in § 21.29(k) of this part and which has been designated as a participant in a cooperative Federal/State permit application program may submit an application for a falconry permit to the appropriate agency of that State. Each such application must incorporate a completed official form approved by the Service and must include in addition to the general information required by part 13 of this subchapter all of the following:

(i) The number of raptors the applicant possesses at the time the application is submitted, including the species, age (if known), sex (if known), date of acquisition, and source of each;

(ii) A check or money order made payable to "U.S. Fish and Wildlife Service" in the amount of the application fee listed in § 13.11(d) of this subchapter.

(iii) An original, signed certification concerning the validity of the information provided in the application in the form set forth in § 13.12(a)(5).

(iv) Any additional information requested by the State to which the application is submitted.

(2) Upon receipt of a joint application by a State listed in § 21.29(k) as a participant in a cooperative Federal/State permit application program, the State will process the application for a State falconry permit in accordance with its own procedures. A copy of the application, the check or money order for Federal permit fees, and the original, signed certification required by paragraph (b)(1)(iii) of this section will be forwarded to the issuing office of the Service designated by § 13.11(b) of this subchapter. If the State decides to issue a falconry permit based upon the application, a copy of the permit will also be forwarded to the appropriate issuing office of the Service.

(3) An applicant who wishes to practice falconry in a State listed in § 21.29(k) of this subchapter, but which does not participate in a cooperative Federal/State permit application program must submit a written application for a falconry permit to the issuing office designated by § 13.11(b) of this subchapter. Each application must contain the general information and certification required by § 13.12(a) of this subchapter plus a copy of a valid State falconry permit issued to the applicant by a State listed in § 21.19(k) of this subchapter.

(c) *Issuance criteria.* Upon receiving an application completed in accordance with paragraph (b) of this section that meets all requirements of this part, the Director will issue a permit. In addition to meeting the general criteria in § 13.21(b), the applicant must have a valid State falconry permit issued by a

State listed in § 21.29(k) of this subchapter.

(d) *Permit conditions.* In addition to the general conditions set forth in part 13 of this subchapter, every permit issued under this section shall be subject to the following special conditions:

(1) A permittee may not take, transport, or possess a golden eagle (*Aquila chrysaetos*) unless authorized in writing under § 22.24 of this subchapter.

(2) A permit issued under this section is not valid unless the permittee has a valid State falconry permit issued by a State listed in § 21.29(k) of this subchapter.

(3) A permittee may not take, possess, transport, sell, purchase, barter, or transfer any raptor for falconry purposes except under authority of a Federal falconry permit issued under this section and in compliance with the Federal falconry standards set forth in § 21.29 of this subchapter.

(4) No permittee may take, purchase, receive, or otherwise acquire, sell, barter, transfer, or otherwise dispose of any raptor unless such permittee submits a form 3–186A (Migratory Bird Acquisition/Disposition Report), completed in accordance with the instructions on the form, to the issuing office within five (5) calendar days of any such transaction.

(5) No raptor may be possessed under authority of a falconry permit unless the permittee has a properly completed form 3–186A (Migratory Bird Acquisition/Disposition Report) for each bird possessed, except as provided in paragraph (d)(4) of this section.

(6) A raptor possessed under authority of a falconry permit may be temporarily held by a person other than the permittee for maintenance and care for a period not to exceed thirty (30) days. The raptor must be accompanied at all times by a properly completed form 3–186A (Migratory Bird Acquisition/Disposition Report) designating the person caring for the raptor as the possessor of record and by a signed, dated statement from the permittee authorizing the temporary possession.

(7) A permittee may not take, possess, or transport any peregrine falcon (*Falco peregrinus*), gyrfalcon (*Falco rusticolus*), or Harris hawk (*Parabuteo unicinctus*) unless such bird is banded either by a seamless numbered band provided by the Service or by a permanent, non-reusable band provided by the Service.

(i) Any peregrine falcon (*Falco peregrinus*), gyrfalcon (*Falco rusticolus*), or Harris hawk (*Parabuteo unicinctus*) taken from the wild must be reported to the issuing office within five (5) days of taking and must be banded with a permanent, non-reusable band provided by the Service. No raptor removed from the wild may be banded with a seamless numbered band.

(ii) The loss or removal of any band must be reported to the issuing office within five (5) working days of the loss. The lost band must be replaced by a permanent, non-reusable band supplied by the Service. A form 3–186A (Migratory Bird Acquisition/Disposition Report) must be filed in accordance with paragraph (d)(4) of this section reporting the loss of the band and rebanding.

(8) A permittee may not sell, purchase, barter, or offer to sell, purchase or barter any raptor unless the raptor is marked on the metatarsus by a seamless, numbered band supplied by the Service.

(9) A permittee may not propagate raptors without prior acquisition of a valid raptor propagation permit issued under Section 21.30 of this subchapter.

(e) *Term of permit.* A falconry permit issued or renewed under this part expires on the date designated on the face of the permit unless amended or revoked, but the term of the permit shall not exceed three (3) years from the date of issuance or renewal.

14. Section 21.29 is amended as follows.

a. Paragraph (a) is revised as set out below.

b. Paragraph (c) is revised as set out below.

c. Paragraph (h) is revised as set out below.

d. Paragraph (j)(4) is revised as set out below.

§ 21.29 Federal falconry standards.

(a) *General.* No person may take, possess, transport, sell, purchase, barter, or offer to sell, purchase, or barter any raptor for falconry purposes in any State which does not allow the practice of falconry or in any State which has not certified to the Director that its laws or regulations governing the practice of falconry meet or exceed the Federal falconry standards set forth in this section: Except, a Federal falconry permittee may possess and transport for falconry purposes otherwise lawfully possessed raptors through States which do not allow the practice of falconry or meet Federal falconry standards so long as the raptors remain in transit in interstate commerce. The States that have submitted certification to the Director are listed in paragraph (k) of this section.

* * * * *

(c) *Certification of compliance.* Any State that wishes to allow the practice of falconry must certify to the Director that its laws or regulations governing the practice of falconry meet or exceed the Federal standards established by this section, *Provided* that any State that previously submitted its laws or regulations for review by the Director and was listed in paragraph (k) of this section prior to September 14, 1989, shall be deemed to have met this requirement. When a State certifies to the Director that its laws or regulations meet or exceed these Federal standards, a notice will be published in the **Federal Register** and the State will be listed in paragraph (k) of this section.

* * * * *

(h) *Marking.* All peregrine falcons (*Falco peregrinus*), gyrfalcon (*Falco rusticolus*), and Harris hawk (*Parabuteo unicinctus*) possessed for falconry purposes must be marked in accordance with the following provisions:

(1) Any peregrine falcon (*Falco peregrinus*), gyrfalcon (*Falco rusticolus*), or Harris hawk (*Parabuteo unicinctus*), except a captive bred raptor lawfully marked by a numbered, seamless band issued by the Service, must be banded with a permanent, non-reusable, numbered band issued by the Service.

(2) Any peregrine falcon (*Falco peregrinus*), gyrfalcon (*Falco rusticolus*), or Harris hawk (*Parabuteo unicinctus*) possessed for falconry purposes must be banded at all times in accordance with these standards. Loss or removal of any band must be reported to the issuing office within five (5) working days of the loss and must be replaced with a permanent, non-reusable, numbered band supplied by the Service.

* * * * *

(j) * * *

(4) A raptor possessed under authority of a falconry permit may be temporarily held by a person other than the permittee only if that person is otherwise authorized to possess raptors, and only if the raptor is accompanied at all times by the properly completed form 3–186A (Migratory Bird Acquisition/Disposition Report) designating the permittee as the possessor of record and by a signed, dated statement from the permittee authorizing the temporary possession.

* * * * *

15. Section 21.30 is amended as follows:

a. Paragraph (a) is revised as set out below.

b. Paragraph (d)(3) is revised as set out below.

c. Paragraphs (d)(4)(i) and (d)(4)(ii) are revised and paragraph (d)(4)(iii) is added.

d. Paragraphs (d)(6) through (d)(11) are redesignated as (d)(11) through (d)(16).

e. New paragraphs (d)(6) through (d)(10) are added.

f. Newly designated paragraph (d)(11) is revised as set out below.

g. Newly redesignated paragraph (d)(14)(i) is amended by adding after the word "Director" in the first sentence the words "and the Director of the wildlife conservation department of the State in which release to the wild is proposed".

h. Paragraph (e) is revised as set out below.

§ 21.30 Raptor propagation permits.

(a) *Permit requirement.* A raptor propagation permit is required before any person may take, possess, transport, import, purchase, barter, or offer to sell, purchase, or barter any raptor, raptor egg, or raptor semen for propagation purposes.

* * * * *

(d) * * *

(3) *Marking requirement.* Unless otherwise specifically exempted, every raptor possessed for propagation, including all progeny produced pursuant to the permitted activity, must be banded in accordance with the following provisions:

(i) Except for captive-bred raptors lawfully marked with a seamless, numbered band provided by the Service, any raptor possessed for propagation purposes shall be banded with a permanent, non-reusable, numbered band issued by the Service.

(ii) Unless specifically exempted by the conditions of the raptor propagation permit, each captive-bred raptor produced under authority of a raptor propagation permit shall be banded within two (2) weeks of hatching with a numbered, seamless band provided by the Service, placed on the raptor's leg (metatarsus). In marking captive-bred raptors, permittees:

(A) Shall use a band with an opening (inside diameter) which is small enough to prevent its removal when the raptor is fully grown without causing serious injury to the raptor or damaging the bands integrity or one-piece construction;

(B) May band a raptor with more than one size band when the potential diameter of the raptor's leg at maturity cannot be determined at the time of banding;

(C) Shall remove all but one band from any raptor with more than one band before the raptor is five (5) weeks of age and return all bands removed to the issuing office.

(iii) No raptor taken from the wild, produced from an egg taken from the wild, or produced from an egg from any source other than bred in captivity under authority of a raptor propagation permit may be banded with a numbered seamless band issued by the Service.

(iv) No permittee under this section may band any raptor with any band issued or authorized by the Service unless that raptor is lawfully possessed by the permittee.

(4) * * *

(i) The State or foreign country in which the raptors or raptor eggs are taken must authorize the permittee in writing to take raptors or raptor eggs from the wild for propagation purposes;

(ii) No raptor listed in § 17.11 of this chapter as "endangered" or "threatened" may be taken from the wild without first obtaining the proper permit under Part 17 of this chapter; and

(iii) No raptor or raptor egg may be taken from the wild except in accordance with State law.

* * * * *

(6) *Use of Service form 3–186A.* No permittee may take, purchase, receive, or otherwise acquire, sell, trade, barter, transfer, or otherwise dispose of any raptor unless such permittee submits a form 3–186A (Migratory Bird Acquisition/Disposition Report), completed in accordance with the instructions on the form, to the issuing office within five (5) calendar days of any such transfer. *Provided,* that a permittee does not have to submit a form 3–186A (Migratory Bird Acquisition/Disposition Report) to report the acquisition raptors hatched from eggs produced as a result of the permittee's propagation activities as long as these raptors remain in the possession of the permittee.

(7) *Documentation of lawful possession.* No raptor may be possessed under authority of a raptor propagation permit unless the permittee has a properly completed form 3–186A (Migratory Bird Acquisition/Disposition Report) for each bird possessed, except as provided in paragraph (d)(5) of this section.

(8) *Temporary possession.* A raptor possessed under authority of a raptor propagation permit may be temporarily held by a person other than the permittee only if that person is otherwise authorized to possess raptors, and only if the raptor is accompanied at all times by the properly completed form 3–186A (Migratory Bird Acquisition/Disposition Report) designating the permittee as the possessor of record and by a signed, dated statement from the permittee authorizing the temporary possession.

(9) *Sale, purchase, barter.* A permittee may not sell, purchase, barter, or offer to sell, purchase, or barter any raptor unless the raptor is marked on the metatarsus by a seamless, numbered band supplied by the Service.

(10) *Transfer to another.* A permittee may not receive or otherwise acquire from, may not transfer or otherwise dispose of to, and may not loan to or temporarily place with another person any raptor unless that person is authorized to acquire, possess, and dispose of such raptors under a valid permit issued pursuant to this part and Part 13 or as permitted by regulations in this part.

(11) *Use in falconry.* A permittee may use a raptor possessed for propagation in the sport of falconry only if such use is designated in both the propagation permit and the permittee's falconry permit.

* * * * *

(e) *Term of permit.* A raptor propagation permit issued or renewed under this part expires on the date designated on the face of the permit unless amended or revoked, but the term of the permit shall not exceed three (3) years from the date of issuance or renewal.

Dated: August 4, 1989.

Susan Recce Lamson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89–21438 Filed 9–13–89; 8:45 am]

BILLING CODE 4310–55–M

federal register

Thursday
September 14, 1989

Part IV

Environmental Protection Agency

40 CFR Part 2

Public Information: Confidentiality of Business Information; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 2

[FRL-3558-9]

Public Information: Confidentiality of Business Information

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: This proposed rule amends 40 CFR Part 2 to state that certain information collected under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 relating to discharges to the air or water will be considered emission or effluent data under the Clean Air Act or the Clean Water Act, respectively. This rule is intended to clarify that such data collected pursuant to the requirements of section 313 of the Act will not be accorded confidential treatment.

DATES: Written comments on the proposed rule must be received on or before October 16, 1989.

ADDRESSES: Written comments should be submitted in triplicate to Beverly D. Horn, Attorney-Advisor, Office of General Counsel, General and Information Law Branch, LE-132G, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The supporting information and all comments on this proposal will be available for inspection at the EPA Public Information Reference Unit, Room 2402, Washington, DC. EPA regulations at 40 CFR Part 2 provide that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Beverly D. Horn, Attorney-Advisor, Office of General Counsel, General and Information Law Branch, LE-132G, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-5460.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are as follows:

I. Introduction
II. Proposed Rule
  A. Background
  B. Proposed Rule
III. Regulatory Analyses
  A. Paperwork Reduction Act
  B. Executive Order 12291
  C. Regulatory Flexibility Act

I. Introduction

The 1986 Superfund Amendments and Reauthorization Act, Public Law 99-499 (SARA), signed into law on October 17, 1986, amended and reauthorized portions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601 *et seq.* SRA Title III includes the Emergency Planning and Community Right-to-Know Act of 1986, (Act) itself a free-standing statute. Sections 303, 304, 311, 312, and 313 of the Act contain provisions requiring facilities to report to State and local authorities, and EPA, information regarding the presence, use and release of extremely hazardous substances, hazardous, and toxic chemicals. This rulemaking clarifies that certain information collected under section 313 relating to discharges to the air or water will be considered emission or effluent data under the Clean Air Act and Clean Water Act, respectively, and will not be accorded confidential treatment. This information will be disclosed by EPA to the public according to the procedures set forth in 40 CFR part 2.

This rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on small business entities.

II. Proposed Rule

A. Background

Section 313 of the Emergency Planning and Community Right-to-Know Act requires that a Toxic Chemical Release Inventory Reporting Form (Reporting Form R) be filed with a designated State agency and the EPA. A Reporting Form must be filed for any chemical described in section 313 which is manufactured, processed or otherwise used in amounts exceeding the threshold quantity at a covered facility. The information sought includes the total amount of releases of the chemical from a covered facility to the environment, including air or water. A covered facility is any facility with 10 or more employees in Standard Industrial Classification Codes 20-39 which manufactures, processes, or otherwise uses a listed chemical above an applicable threshold. *See* 40 CFR part 372.

A submitter may under certain circumstances claim the identity of chemicals reported under section 313 as trade secret. Section 322 contains procedures for claiming trade secrecy for information submitted under sections 303(d)(2) and (d)(3), 311, 312, and 313 of the Act. Section 322 provides that a submitter under section 313 who claims trade secrecy for chemical identity must demonstrate that the chemical identity is "not required to be disclosed, or otherwise made available, to the public under any other Federal or State law." 42 U.S.C. 11042.

Federal law identifies information which is not entitled to confidential treatment. *See* Clean Water Act section 308(b), 33 U.S.C. section 1318(b); Clean Air Act section 114(c), 42 U.S.C. section 7414(c). Section 308(b) of the Clean Water Act and section 114(c) of the Clean Air Act provide that effluent and emission data, respectively, must be disclosed even if it would otherwise constitute trade secret information. Effluent data, for example, consist of data, including chemical identities, concerning point source discharges to waters of the United States. *See* 40 CFR 2.302(a)(2)(i). This would include information required on a National Pollutant Discharge Elimination System (NPDES) permit or permit application, provided on a discharge monitoring report, or releases to publicly owned treatment works. There is an analogous provision in the Clean Air Act regulations regarding emission data. *See* 40 CFR 2.301(a)(2)(i). Data determined to be effluent or emission data are therefore data required to be disclosed to the public under other federal law.

Reports submitted under the Act, however, may also contain information pertaining to discharges of pollutants or emissions not already identified in NPDES permits or under the Clean Air Act program. Information provided in response to questions 5.1 (fugitive or non-point emissions), 5.2 (stack or point air emissions), 5.3 (discharges to water) and 6.1 (discharges to publicly owned treatment works) of Part III on the section 313 Reporting Form will describe the nature, amount, and frequency of discharges of the chemical being reported on the Section 313 Reporting Form to the air, water or publicly owned treatment works. Such data are expected to be useful to the Agency in the implementation of its statutory responsibilities under the Clean Water Act (e.g., implementation of section 304(l) of the Clean Water Act and development and enforcement of NPDES permit limits) and Clean Air Act as well as SARA Title III. Under the authority of section 114 of the Clean Air Act and section 308 of the Clean Water Act such information may be obtained by the Agency, and may be treated as emission or effluent data under 40 CFR 2.301(b)(2) and 2.302(b)(2). The Offices of Air and Water have requested access to this information. While such requests could be handled on a case-by-case basis, such an approach is cumbersome. It is much more efficient to clarify on a categorical basis the status of this

information under the Clean Air and Clean Water Acts.

Therefore, as the data collected on Questions 5.1, 5.2, 5.3, and 6.1 of Part III on the section 313 Reporting Form characterize emissions or effluents of the specific chemical identity being reported and are needed for implementation of the Clean Air and Clean Water Acts respectively, this rule clarifies that such data are emission or effluent data. Consequently, claims of confidential treatment for the specific chemical identity reported under section 313 that pertains to discharges to the air or waters of the United States will be routinely denied on the ground that it is emission or effluent data under 40 CFR 2.301 and 2.302, respectively. It is important to note that the information collected in response to questions 5.1, 5.2, 5.3, and 6.1 may never be withheld as a trade secret. If discharges to air and water are reported in response to any of these questions, the specific identity of the chemical reported on the section 313 Reporting Form may not be withheld from the report as a trade secret.

B. Proposed rule

The proposed rule amends 40 CFR 2.301(a) (Special Rules Governing Certain Information Obtained Under the Clean Air Act) and 2.302(a) (Special Rules Governing Certain Information Obtained Under the Clean Water Act) to specify that information provided under section 313 of Title III of SARA by or from the owner or operator concerning emission or effluent data will not be eligible for confidential treatment. EPA is therefore required to disclose this chemical identity information to the public. Disclosure of such data will take place according to the procedures at 40 CFR Part 2 which require a 10 day notice period. Submitters will receive a prior notice of release.

Submitters may not seek to have this chemical identity information withheld under section 322(b) of SARA when discharges to air or water are reported on the section 313 Reporting Form. Submitters claiming this information as confidential may be ultimately subject to penalties under § 325(d) of SARA Title III for submission of frivolous claims.

III. Regulatory Analysis

A. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, EPA must submit new or revised requirements for collection of information to the Director of the Office of Management and Budget (OMB) for review and approval. The amendments proposed today will not have an effect to increase requirements for collection of information; this revision only clarifies how the data will be handled. Reporting on Form R by submitters under section 313 was approved by OMB for use through January 30, 1991, as OMB Control No. 2070–0093.

B. Executive Order 12291

Pursuant to Executive Order 12291, EPA must judge whether a regulation is major and therefore subject to the requirement of a Regulatory Impact Analysis. These amendments clarify the Agency's interpretation of the use of certain data collected under Title III of SARA. The amendments should make the regulations less burdensome for affected businesses. The amendments do not satisfy any of the criteria specified in section 1(b) of the Executive Order and, as such, do not constitute a major rule. This regulation was submitted to OMB for review as required by Executive Order 12291. Any comments from OMB and any response to these comments are available for public inspection at the EPA Information Reference Unit, Room 2402.

C. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA is required to prepare a Regulatory Flexibility Analysis to assess the impact of rules on small entities. No regulatory flexibility analysis is required, however, where the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The proposed amendments to 40 CFR Part 2 clarify the Agency's interpretation of §§ 2.301 and 2.302 and explain how certain data may be used. Accordingly, I hereby certify, pursuant to 5 U.S.C. 605(b), that these proposed amendments, if issued in final form, will not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 2

Confidential business information, Trade secrecy, Community right-to-know.

Dated: August 31, 1989.

F. Henry Habicht, Jr.,

Acting Administrator.

PART 2—PUBLIC INFORMATION

For the reasons set out in the preamble, Title 40, part 2 of the Code of Federal Regulations is proposed to be amended as set forth below.

1. The authority citation of Part 2 is revised to read as follows:

Authority: 5 U.S.C. 301, 552, 553; secs. 114, 206, 208, 301, and 307, Clean Air Act, as amended (42 U.S.C. 7414, 7525, 7542, 7601, 7607); secs. 308, 501 and 509(a), Clean Water Act, as amended (33 U.S.C. 1318, 1361, 1369(a); sec. 13, Noise Control Act of 1972 (42 U.S.C. 4912); secs. 1445 and 1450, Safe Drinking Water Act (42 U.S.C. 300j–4, 300j–9); secs. 2002, 3007, and 9005, Solid Waste Disposal Act, as amended (42 U.S.C. 6912, 6927, 6995); secs. 8(c), 11, and 14, Toxic Substances Control Act (15 U.S.C. 2607(c), 2610, 2613); secs. 10, 12, and 25, Federal Insecticide, Fungicide and Rodenticide Act, as amended (7 U.S.C. 136h, 136j, 136w); sec. 408(f), Federal Food, Drug and Cosmetic Act, as amended (21 U.S.C. 346(f); secs. 104(f) and 108, Marine Protection Research and Sanctuaries Act of 1972 (33 U.S.C. 1414(f), 1418); sec. 104, Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9604); sec. 505, Motor Vehicle Information and Cost Savings Act, as amended (15 U.S.C. 2005); secs. 313 and 322 of the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 11013 and 11042).

§ 2.301 [Amended]

2. Section 2.301 is amended by adding paragraph (a)(2)(i)(D) to read as follows:

§ 2.301 Special rules governing certain information obtained under the Clean Air Act.

(a) * * *

(2)(i) * * *

(D) Information regarding fugitive or non-point, and stack or point air emissions provided to or obtained by EPA under section 313 of Title III (the Emergency Planning and Community Right-to-Know Act of 1986), of the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. 11013, by or from the owner or operator of any stationary source, for the purpose of carrying out the objectives of the Superfund Amendments and Reauthorization Act (including but not limited to complying with the requirements of the toxic chemical release inventory reporting form).

* * * * *

4. Section 2.302 is amended by adding paragraph (a)(2)(i)(D) to read as follows:

§ 2.302 Special rules governing certain information obtained under the Clean Water Air Act

(a) * * *

(2)(i) * * *

(D) Information regarding discharges to waters of the United States as defined in 40 CFR 122.2 or to publicly owned

treatment works, provided to or obtained by EPA under section 313 of Title III (the Emergency Planning and Community Right-to-Know Act of 1986), of the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. 11013, by or from the owner or operator of any point source, for the purpose of carrying out the objectives of the Superfund Amendments and Reauthorization Act (including but not limited to complying with the requirements of the toxic chemical release inventory reporting form).

* * * * *

[FR Doc. 89-21502 Filed 9-13-89; 8:45 am]
BILLING CODE 6560-50-M

federal register

Thursday
September 14, 1989

Part V

Department of Education

Final Funding Priorities for Certain New Direct Grant Awards and Invitation of Applications for New Awards for Fiscal Year 1990; Notices

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

Final Funding Priorities for Certain New Direct Grant Awards

AGENCY: Department of Education.

ACTION: Notice of final funding priorities for certain new direct grant awards.

SUMMARY: The Secretary announces final funding priorities for grants under the Handicapped Children's Early Education Program; Educational Media Research, Production, Distribution, and Training Program; Postsecondary Education Programs for Handicapped Persons, Program for Severely Handicapped Children; Secondary Education and Transitional Services for Handicapped Youth Program; and Technology, Educational Media, and Materials for the Handicapped Program.

EFFECTIVE DATE: These funding priorities take effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. If you want to know the effective date of these priorities call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Joseph Clair, Division of Educational Services, Office of Special Education Programs, U.S. Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 4620–2644), Washington, DC 20202 (except CFDA No. 84.180). Telephone: Joseph Clair, (202) 732–4503. Linda Glidewell, Division of Innovation and Development, Office of Special Education Programs, 400 Maryland Avenue, SW. (Switzer Building, Room 3094–M.S. 2313), Washington, DC 20202 (CFDA No. 84.180). Telephone: Linda Glidewell, (202) 732–1099.

SUPPLEMENTARY INFORMATION: On May 1, 1989, at 54 FR 18570, the Secretary published in the **Federal Register** a Notice of Proposed Funding Priorities for fiscal year 1990 for certain program competitions under the Office of Special Education and Rehabilitative Services.

This notice announces final funding priorities for fiscal year 1990.

A notice requesting transmittal of applications under these priorities is published in this issue of the **Federal Register.**

Analysis of Comments and Changes

A total of 22 responses from 19 individuals and organizations were received in response to the proposed priorities. Nine of the responses supported various priorities as published without suggestions for change. As a result of the remaining comments, changes were made to five priorities.

General

Comment: One respondent commented on the potential role of independent living centers in projects supported under several of the proposed priorities. This commenter suggested that applicants be required to involve practitioners from independent living centers in the development of grant proposals and in the implementation of the grant.

Discussion: The Secretary recognizes the important link between education and independent living. However, given the variety of projects potentially fundable under these priorities, requiring the involvement of individuals with any particular background would be overly restrictive. Participation of independent living centers and their staff is allowed under all priorities addressed by the commenter.

Changes: None.

Handicapped Children's Early Education Program—Inservice Training Programs for Related Service Personnel

Comment: Two commenters suggested that the Inservice Training Programs for Related Services Personnel should include related service personnel who could be providing services to infants, toddlers, and preschool aged children, in addition to personnel already engaged in the provision of services to this population.

Discussion: The Secretary agrees that this would enhance the potential impact of these projects.

Changes: The priority has been modified to permit the inclusion of professionals and paraprofessionals who could be providing targeted services as appropriate recipients of inservice training.

Comment: One commenter recommended that this priority be interpreted in such a way that it includes inservice training for related service personnel working with children who are blind or visually impaired.

Discussion: Projects focusing on specific handicapped populations are not precluded under the priority as written. The intent of the priority is to support a wide range of projects. Specifying specific handicapping conditions would be unnecessarily prescriptive.

Changes: None.

Comment: One commenter suggested that this priority emphasize preparing personnel to provide services consistent with a multidisciplinary team approach.

Discussion: The Secretary agrees that this focus is desirable because it is consistent with the requirements of the Handicapped Infants and Toddlers program under Part H of the Education of the Handicapped Act.

Changes: The priority has been modified to emphasize training in the multidisciplinary team approach.

Comment: Two commenters suggested that this priority be modified to permit projects to train personnel who are providing services in a variety of settings, including center based programs, clinic programs, hospital based programs, and home-based programs.

Discussion: The Secretary agrees that the original limitation to center-based programs is too restrictive.

Changes: The priority has been modified to allow projects to provide inservice training for related service personnel in a variety of settings.

Comment: One commenter recommended that requirements relating to dissemination of training models and materials be expanded to include other States as well as the State in which the project is located.

Discussion: The Secretary agrees that projects supported under this priority should broadly disseminate models and materials which they develop.

Changes: The priority has been modified to require projects to broadly disseminate information about their inservice models and materials.

Comment: One commenter recommended that the priority include language to assure that projects address the unique needs of special populations such as personnel who serve culturally diverse groups, multilingual populations, children exposed to drugs, homeless groups, and migrant children and families. The commenter also suggested that special attention be given to training of professionals and paraprofessionals who are members of minority groups.

Discussion: The Secretary recognizes the importance of addressing the unique needs of special populations and underrepresented groups. The intent of this priority is to support a broad range of applications addressing the need for inservice training for related service personnel. Projects focusing on special populations are allowable, but limiting the priority as suggested would be unnecessarily prescriptive.

Changes: None.

Research on Early Childhood Program Features

Comment: One commenter recommended that the Research on Early Childhood Program Features priority include an option for funding projects that integrate the development of language and motor skills rather than viewing these as discrete domains of child development.

Discussion: The Secretary agrees that a variety of program components (language, motor, cognitive) affect children's development and progress in more than one developmental domain. The intent of this priority is to compare different programs to determine their relative effectiveness on a variety of child outcome measures. Projects using a variety of outcome measures across different domains of child development are allowable and encouraged under this priority as written.

Changes: None.

Comment: One commenter recommended that the Research on Early Childhood Program Features priority allow research on any child or family domain, including, but not limited to, language and motor skills.

Discussion: Research comparing the relative effectiveness of program components is needed in a wide variety of areas. However, the Secretary believes that the priority's focus on language and motor components is of greatest importance at this time. Personnel providing services to infants, toddlers, and preschool children have, on an informal basis, requested information about the relative effectiveness of language and motor development programs, and have pointed out that delays or dysfunctions in these areas are often the first indicators of a handicapping condition.

Changes: None.

Comment: One commenter suggested that this priority should not imply that one intervention method or instructional approach is universally superior, especially for individual children.

Discussion: The intent of the priority is to support projects that will produce objective information about the relative effects of different program components for different children or groups of children. The Secretary believes that the current priority language is consistent with this intent.

Changes: None.

Comment: Two commenters suggested that the priority should not specify the number of program components that must be compared.

Discussion: The Secretary agrees that the number of components to be studied need not be specified beyond two or more, since for some projects this is sufficient.

Changes: The priority language has been modified to allow projects to compare the effectiveness of two or more components.

Comment: One commenter suggested that Early Childhood Program Features priority include research on language components that address the unique needs of children who are multilingual.

Discussion: Research on such language components is allowable under this priority. The intent of the priority is to support research on a variety of program components. The suggested change would unnecessarily limit the range of possibilities being considered.

Changes: None.

Comment: One commenter suggested that this priority be modified to indicate that research on motor components include children with motor delays without known pathology and children with motor delays resulting from known pathology.

Discussion: The Secretary believes that the priority allows for the inclusion of both groups of children in these projects.

Changes: None.

Educational Media Research, Production, Distribution, and Training—Closed-Captioned National News and Public Information

Comment: One commenter recommended that the funding level for captioning news and public affairs programming be increased.

Discussion: Funding for all priorities will depend on appropriations. This comment is not relevant in the context of establishing priority areas.

Changes: None.

Closed-Captioned Syndicated Television Programming

Comment: One commenter suggested that the Department maintain its flexible attitude toward funding the captioning of a wide variety of syndicated programming, including prerecorded as well as "live" programs.

Discussion: The priority allows for captioning of a wide variety of syndicated programming including prerecorded as well as "live" programs.

Changes: None.

Closed-Captioned Children's Programs

Comment: One commenter suggested that support be allowed for captioning pay cable television and home video VCR programming for children.

Discussion: The priority allows captioning of cable programs and does not preclude possible captioning of pay television. Children's home video is beyond the scope of this priority which deals with television programming.

Changes: None.

Comment: One commenter proposed expanding the priorities to include captioning of instructional (self-help, "how to") home video programming.

Discussion: The Secretary has received requests for these kinds of educational materials and will consider this suggestion under the contractual authority of the program, which evalulates and leases rights to specific productions.

Changes: None.

Postsecondary Education Programs for Handicapped Persons—Postsecondary Demonstration Projects

Comment: Three commenters requested that the priority be amended to target persons with psychiatric disabilities; one of these three included targeting persons with acquired brain injuries as well.

Discussion: The Secretary recognizes the importance of attending to the needs of the subpopulations identified by these commenters. These subpopulations of persons with disabilities attending to the needs of the subpopulations identified by these commenters. These subpopulations of persons with disabilities are allowable as target groups to be served under the demonstration project priority.

Changes: None.

Secondary Education and Transitional Services for Handicapped Youth Program—Institute on Intervention Effectiveness

Comment: One commenter suggested the inclusion of an annual project directors' meeting as a technical assistance activity.

Discussion: The Secretary agrees that an annual project director's meeting can serve as a valuable forum for technical assistance, provide an opportunity for national dissemination of project findings, and build networks among transition personnel to facilitate replication and continuation of the transition initiative.

Changes: The priority has been modified to include an annual project directors' meeting as an institute activity under the technical assistance activity. Projects must plan, organize and evaluate an annual project directors' meeting.

Comment: One commenter suggested that a function of the Institute on Intervention Effectiveness should include a library component as part of its research activity.

Discussion: The Secretary agrees that an important function of the institute should be to collect and preserve relevant research, literature, reports, and other documentation associated with the transition initiative. Such a library can be an important aid to evaluation efforts to assess the impact of the initiative as well as serving as a resource to researchers, advocacy groups, and policy makers.

Changes: The priority has been changed to include a library component as an institute initiative under research activity. Projects must plan and organize a transition library which can serve as a resource and reference to individuals and programs interested in transition.

Comment: One commenter indicated that policy research will be most effective if it is data-based using secondary analyses of transition data bases, and tied directly to technical assistance to States and local projects.

Discussion: The importance of having policy research which is data-based and tied directly to the field is recognized. However, the Secretary has stated that the research activity must include policy research to determine strategies that promote responsive programs and services. The research should not be limited by requiring all policy research to be tied to the secondary analysis of transition databases and technical assistance activities to States and local projects.

Changes: None.

Comment: One commenter indicated that the applied research activities should clearly reflect an attempt to take what has been learned in the first five years of the Secondary Education and Transitional Services for Handicapped Youth Program.

Discussion: The present priority states that research themes must be based on a conceptual framework that uses theory and research to identify factors that affect the successful transition of handicapped youth. This should include knowledge gained in the first five years of the Secondary Education and Transitional Services for Handicapped Youth Program.

Changes: None

Demonstration Projects to Identify and Teach Skills Necessary for Self-Determination

Comment: One commenter questioned the desirability and feasibility of the requirement that all projects include all of the following components; investigating experiences that would promote self-determination and opportunities for its development, development and testing of strategies, involvement of youth with a range of disabilities, evaluation in terms of objective measures and perceptions, and the detailed contents called for in the final reports. The commenter suggested that the applicants determine the extent to which some or all of these factors be included in the proposal. The evaluation of proposals should consider the extent to which these factors have been included.

Discussion: This area is an important priority and therefore the Secretary has prescribed the programmatic components of a self-determination project that applicants must include in their applications. Applicants will vary in their ability to address these specified components. However, the Secretary does recognize that the requirement to include students with "a range of disabilities" is unnecessarily restrictive.

Changes: The priority has been changed by modifying the requirement that projects "must include students with a range of disabilities," and replacing it with a requirement to focus on "students with disabilities."

Technology, Educational Media, and Materials for the Handicapped Program—Designs for Multi-Media Instruction for Educating Children with Handicaps

Comment: One commenter noted that high technology can be augmented by "low technology" teaching methods, and that the priority should emphasize the integration of high and low technology, as well as multi-media and multi-sensory manipulatives, within an overall instructional program.

Discussion: While the priority is intended to support the application of new technologies that can integrate text, audio, and visual information, the priority also emphasizes instructional design features and the realities of teacher preparation and classroom management. This emphasis is intended to encourage the integration of high technology into the ongoing demands of teaching, including the media and materials currently used by teachers. The integration of multi-media designs into the overall instructional program is a key feature of this priority.

Changes: None.

Comment: One commenter expressed the concern that the priority would focus on traditionally and academically based curriculum areas that would not be most useful to individuals with severe and multiple disabilities, who would most benefit from teaching functional skills.

Discussion: The language of the priority is not limited to traditional curriculum areas. The term "content" used in the priority is intended to be generic, and does not refer to traditional and academically based curriculum areas. Models that would emphasize functional skills (e.g. skills associated with performance, social competence, or vocational/occupational skills) are certainly within the scope of the priority.

Changes: The following sentence has been added to the priority to clarify that functional skills are within the scope of the priority: "Projects may focus on any content area appropriate for educating children with handicaps, including functional skills, as well as traditional curriculum content areas."

Comment: One commenter noted the importance of demonstrating how the design principles and prototypes may be useful to other curriculum activities and to students with varying learning characteristics.

Discussion: The Secretary agrees that such demonstrations would be valuable. However, the proposed length and funding level of these projects preclude exhaustive tests of their generalizability.

Changes: None.

The Secretary has adopted the following priorities for fiscal year 1990 awards.

Title of Program: Handicapped Children's Early Education Program

CFDA No.: 84.024.

Purpose: To provide Federal support for a variety of activities designed to address the special problems of infants, toddlers and children with handicaps, from birth through age eight, and their families, and to assist State and local entities in expanding and improving programs and services for those infants, toddlers, and children and their families. Activities include demonstration, outreach, experimental, research and training projects, and research institutes.

Priorities: The Secretary establishes the following funding priorities for the Handicapped Children's Early Education Program, CFDA No. 84.024. In accordance with the Education Department General Administrative Regulations (EDGAR) in 34 CFR 75.105(c)(3), the Secretary will give an absolute preference under this program to applications that respond to the following priorities; that is, the Secretary will select for funding only those applications proposing projects that meet these priorities.

Priority 1. Inservice Training Programs for Related Service Personnel. (CFDA No. 84.024)

This priority supports projects that develop, demonstrate, and evaluate inservice training models (and accompanying materials) that will prepare related service personnel to

provide, coordinate, or enhance early intervention services to infants and toddlers with handicaps and/or related services to preschool-aged children with handicaps. Model projects must provide inservice training for professionals and paraprofessionals who are already engaged, or could be engaged, in the provision of related services, but who have not been trained to serve infants and toddlers with handicaps and/or preschoolers with handicaps. Projects must identify existing infant/toddler, preschool or child care programs, that will serve as training sites and obtain their commitment prior to submission of the application. The model may target related service providers (e.g., occupational therapists, speech therapists, physical therapists, nurses) working in a variety of service settings (home, center, hospital) and in the corporate or private-for-profit sector as well as in the not-for-profit public or private sector. The model developed by the project must prepare related service personnel to provide services consistent with a multidisciplinary team approach, and must be based on a conceptual framework that identifies the existing roles and responsibilities of the individuals to be trained, the changes required in those roles to serve infants, toddlers, or preschool children with handicaps, and the skills needed to implement the new roles. The model must directly train personnel to provide, coordinate, or enhance early intervention or related services to infants, toddlers, or preschool children with handicaps in integrated community based programs. Inservice training procedures and materials must address the importance of coordinating early intervention or related services, as appropriate, with the special education service staff and/or direct care staff as well as with the family. In addition to initial training the model must include an array of follow-up and support actvities that insures that personnel participating in the training master and implement services to meet the needs of infants, toddlers, and preschool children with handicaps. Projects must also evaluate the inservice training model through assessment of participant skills following the training and after a period of time. At least some measures must be based on direct observation in the service setting using standardized observational rating techniques. Models must be consistent with personnel standards and certification/licensure requirements in their States. Finally, if shown to be effective, projects must disseminate information about their training model and materials broadly.

The Secretary particularly invites applications from agencies or organizations that are or will be involved with certification and/or accreditation groups, State or private agencies responsible for State-wide inservice training programs. However, in accordance with 34 CFR 75.105(c)(1), applications that meet this invitational priority will not receive a competitive preference over other applications that develop, demonstrate, and evaluate inservice models that will prepare professionals and paraprofessionals to provide related services to preschool-aged children with handicaps.

Priority 2. Research on Early Childhood Program Features (CFDA No. 84.024)

To provide effective and replicable services for handicapped infants and preschool-aged children, research is needed to identify the most effective methods and materials for promoting infants', toddlers' and children's progress in developmental language domains and developmental motor domains. Presently, much of the available information on the effectiveness of service is limited to entire programs; little information is available on the comparative effectiveness of different program components for promoting, for example, language development of handicapped children. Yet many professionals who are planning to establish a service program prefer to review and assemble components from several programs rather than to adopt an entire program. Similarly, many professionals who are now operating a service program desire to replace certain components of their program with more effective ones. There currently are available several well-defined program components for promoting language development of young children with handicaps and several well-defined components for promoting motor development of young children with handicaps. These components vary significantly in such matters as conceptual/theoretical bases, instructional procedures and instructional materials. Although much is known about these components, information is generally not available regarding their relative effectiveness as indexed by a variety of measures of child progress.

This priority supports projects that use a variety of measures of child progress to compare the effectiveness of two or more program components for promoting (1) language development or (2) motor development of infants, toddlers, and children with handicaps, within the age range of birth through five years. These components must be well designed sets of instructional goals and procedures that can be incorporated within planned or existing infant/toddler early intervention programs or preschool programs of varying types. The components selected must be compared in multiple studies and in different types of existing early intervention or preschool programs. Projects must fully address the components that will be studied, the justification for their selection, and the existing early intervention or preschool programs in which they will be studied. In conducting the studies, projects must monitor the amount and quality of implementation of the components, as well as the infants', toddlers', and children's experiences in other components of the program. Included within the research activities must be a plan for conducting studies to determine whether the initial findings can be replicated, and a plan for documenting the costs and other resources necessary to incorporate the components in different kinds of preschool or early intervention programs. The goal of these research projects is to provide information about the relative effects of the components studied, and to provide to professionals replicable components that can be incorporated in new or existing infant or preschool programs.

Final reports submitted by projects funded under this priority must include both the specific findings of the project as well as general principles that have been learned or tested in conducting the studies. Quantifiable information from project evaluation activities must also be included along with precise information regarding the procedures for implementing the interventions and the contexts in which they were evaluated as well as available cost information. The Secretary intends to make four awards under this priority: two in language development and two in motor development.

Program Authority: 20 U.S.C. 1424.

Title of Program: Educational Media Research, Production, Distribution, and Training

CFDA No.: 84.026.

Purpose: To promote the educational advancement of persons with handicaps by providing assistance for: (a) Conducting research in the use of educational media and technology for persons with handicaps; (b) producing and distributing educational media for the use of persons with handicaps, their parents, their actual or potential employers, and other persons directly involved in work for the advancement of

persons with handicaps; and (c) training persons in the use of educational media for the instruction of persons with handicaps.

Priorities: The Secretary establishes the following funding priorities for the Educational Media Research, Production, Distribution, and Training program, CFDA No. 84.026. In accordance with the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(3), the Secretary will give an absolute preference under this program to applications that respond to the following priorities; that is, the Secretary will select for funding only those applications proposing projects that meet these priorities.

Priority 1: Closed-Captioned National News and Public Information (CFDA No. 84.026)

The purpose of this priority is to support one cooperative agreement for closed-captioned real-time national news and public information programming, so that persons with hearing impairments can have access to up-to-date national morning, evening, and weekend news as well as information concerning current events and other significant public information. Projects funded under this priority must:

(1) Include criteria for selecting news programs for captioning;

(2) Include a number of television hours to be captioned and a specific method to be used for each hour—real-time, computer assisted, teleprompting, etc.;

(3) Include how they will provide real-time captioning of simultaneously aired programs (two or more live network programs in the same time-slot);

(4) Provide a type and use of back-up systems that will ensure successful, timely captioning services; and

(5) Obtain willingness of major networks to permit captioning of their programs.

Priority 2: Closed-Captioned Syndicated Television Programming (CFDA 84.026)

The purpose of this priority is to support one or more cooperative agreements for closed-captioned syndicated television programming. Projects funded under this priority must:

(1) Include criteria for selecting programs for captioning;

(2) Include a number of television hours to be captioned and a specific method to be used for each hour—offline, teleprompting, etc.; and

(3) Provide a type and use of back-up systems that will ensure successful, timely captioning services.

Priority 3: Closed-Captioned Children's Programs (CFDA No. 84.026)

The purpose of this priority is to support one cooperative agreement for closed-captioned syndicated and public broadcasting programs televised nationally, so that children who are deaf or hearing impaired will have access to selected children's programs. Projects funded under this priority must:

(1) Include criteria for selecting programs for captioning;

(2) Include a number of television hours to be captioned and a specific method to be used for each hour—realtime, off-line, teleprompting, etc.;

(3) Provide a type and use of back-up systems that will ensure successful, timely captioning service; and

(4) Obtain willingness of major networks to permit captioning of their programs.

Program Authority: 20 U.S.C. 1451, 1452.

Title of Program: Postsecondary Education Programs for Handicapped Persons

CFDA No.: 84.078.

Purpose: To develop, operate, and disseminate specially designed model programs of postsecondary, vocational, technical, and continuing, or adult education for individuals with handicapping conditions.

Priority: The Secretary establishes the following funding priority for the Postsecondary Education Programs for Handicapped Persons program, CFDA No. 84.078. In accordance with the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(3), the Secretary will give an absolute preference to applications that respond to the following priority; that is, the Secretary will select for funding only those applications proposing projects that meet this priority.

Priority 1: Postsecondary Demonstration Projects (CFDA No. 84.078)

This priority supports model projects which provide individuals with disabilities other than deafness with adapted or other specially designed programs that coordinate, facilitate, and promote the provision of appropriate educational experiences for these individuals alongside their nondisabled peers. These projects are to be targeted to improve the vocational outcomes of youths and adults who are in need of additional educationor training after high school in order to secure and maintain competitive employment. Projects under this priority must accomplish the following tasks:

(1) Locate and serve youths and adults with disabilities who are in need of continued educational services, working cooperatively with secondary schools, as appropriate.

(2) Achieve appropriate job placements for persons with disabilities served through individualized educational interventions, i.e., short- and long-term training, using existing or establishing new cooperative arrangements among and between schools, vocational rehabilitation agencies, and potential employers.

(3) Provide follow-up and follow-along activities for persons with disabilities served in the project who are placed in jobs.

Program Authority: 20 U.S.C. 1424a.

Title of Program: Program for Severely Handicapped Children

CFDA No.: 84.086.

Purpose: To provide Federal financial assistance for demonstration or development, research, training, and dissemination activities for severely handicapped, including deaf-blind, children and youth.

Priority: The Secretary establishes the following funding priority for the Program for Severely Handicapped Children, CFDA No. 84.086. In accordance with the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(3), the Secretary proposes to give an absolute preference under this program to applications that respond to the following priority; that is, the Secretary will select for funding only those applications proposing projects that meet this priority.

Priority 1: Training of Educators of Students with Multiple Handicaps that Include Auditory and Visual Handicaps (CFDA 84.086)

This priority would establish a project to develop, evaluate and disseminate new or improved curricula and materials for the inservice training and self-study use of special education personnel to deliver educational services that meet the unique needs of children and youth with multiple handicaps, that include severe auditory and visual handicaps. In particular the project shall develop, evaluate, and disseminate curricula and materials related to the development of communication and mobility skills by students with multiple handicaps that include severe auditory and visual handicaps in integrated community-based settings. The project is to produce replicable training curricula that have been validated at community-based sites selected in cooperation with State

educational agencies and grantees of State and multi-State deaf-blind projects funded under section 622 of part C, EHA. The final materials must be developed for broad application, including the provision of inservice or self-study use by the State and multi-State deaf-blind projects and by existing training programs that currently prepare specialists in the education of severely and multiply handicapped children and youth. In developing new or improved training curricula and materials, the project is expected to work with institutions of higher education and other agencies that have nationally recognized programs for training personnel to educate children and youth with multiple handicaps that include severe auditory and visual handicaps in integrated community-based programs.

To take advantage of current best practices, the project must examine the curricula and materials related to communication and mobility skills now being implemented in exemplary training programs and in relevant demonstration and research projects and use these as a point of departure in the project's curricular material development program.

The project must develop curricula and materials that focus on equipping educational service providers with the knowledge base and techniques for most effectively serving children and youth with multiple handicaps that include severe auditory and visual handicaps who represent a wide range of cognitive and functional capacities, and who are provided services in a variety of community-based settings. The curricula and materials must also develop trainee skills in working with parents and families, interacting with professionals from other disciplines, determining when other specialists must be consulted, and accessing emerging information and research findings in the trainee's own and related disciplinary areas.

The project shall conduct a series of evaluation studies of the different versions of the training materials using community-based sites selected in cooperation with State educational agencies and grantees of State and multi-State deaf-blind projects funded under section 622 of part C, EHA.

In addition to addressing other goals and objectives established for the evaluation studies, curricula and material must be evaluated with respect to their effectiveness in inservice and self-study applications.

The Secretary will approve one cooperative agreement with a project period of 48 months subject to the requirements of 34 CFR 75.253(a) for continuation awards.

Program Authority: 20 U.S.C. 1424.

Title of Program: Secondary Education and Transitional Services for Handicapped Youth Program

CFDA No.: 84.158.

Purpose: To assist handicapped youth in the transition from secondary school to postsecondary environments such as competitive or supported employment and to ensure that secondary special education and transitional services result in competitive or supported employment to handicapped youth.

Priorities: The Secretary establishes the following funding priorities for the Secondary Education and Transitional Services Program, CFDA No. 84.158. In accordance with the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(3), the Secretary will give an absolute preference to applications that respond to the following priority; that is, the Secretary will select for funding only those applications proposing projects that meet this priority.

Priority 1. Institute on Intervention Effectiveness (CFDA No. 84.158)

This priority supports a cooperative agreement to establish a secondary and transition research and evaluation institute in intervention effectiveness. The project funded under this priority must:

(1) Conduct research and analyze evaluation data regarding the efficacy of assisting students with disabilities to make an effective transition from school to adult and community life;

(2) Provide technical assistance related to program evaluation for the projects funded by the Office for Special Education Programs in the area of secondary and transition services;

(3) Provide technical assistance to education agencies and organizations interested in implementing selected model secondary and transition services; and

(4) Conduct policy research to determine the strategies that might promote programs and services that are responsive to the needs of handicapped youth.

Major Institute Activities

Research. The research activities of this institute will be designed to yield new or improved interventions, or features of interventions, that will assist handicapped youth in making the transition from school to the adult and community life. The specific investigations are to be derived from the institute's annual review and synthesis of the professional literature, especially the literature on efficacy of secondary and transitional services; from analysis of the secondary and transitional services funded by the Office of Special Education Programs; and from analysis of findings reported by related research efforts (e.g., the congressionally mandated longitudinal study, Field Initiated Research projects, etc.). However, projects must include themes of research that will comprise the initial focus of the research as well as the specific investigations that will be conducted during the first year of funding. The research themes must be based on a conceptual framework that uses theory and research to identify factors that affect the successful transition of different groups of secondary-aged students with handicaps into adult and community life and intervention features that positively influence those factors. The research investigations conducted by the institute must (1) be designed to both extend the practical knowledge base regarding effective interventions by developing and testing new interventions, as well as to compare and validate promising current practices that have not been extensively tested or evaluated; (2) be applied rather than basic, and take place in typical educational, employment, or community settings; and (3) include policy research to determine strategies that promote responsive programs and services.

The research activity must also include a library component to collect and preserve relevant research, literature, reports, and other documentation associated with the transition initiative. Projects must plan and organize a transition library which can serve as a resource and reference to individuals and programs interested in tranisiton.

Evaluation. The evaluation activities of the institute will consist of several levels of data collection and analysis. First, the institute will collect data from each of the Secondary and Transitional Program projects and Postsecondary Program projects funded by the Office of Special Education Programs and conduct analyses of aggregated data. To the extent appropriate, the institute will conduct meta-analysis of intervention effects of the projects or subsets of the projects. Second, the institute will analyze each project in terms of intervention objectives, approaches and target populations, and findings. The institute will then contrast the approaches and effectiveness of the projects, clustering them for analytic purposes if appropriate. Third, the

institute will gather other data (e.g., national and Statewide data on employment status, independent living status, etc.) on secondary education and transitional services outcomes for nonhandicapped and handicapped groups that can serve as benchmarks for comparing the effects of current and future model demonstration projects. Fourth, the institute will analyze and select instruments for measuring student characteristics and skills that will serve as a benchmark or baseline against which present and future evaluation and program development efforts can be compared. Fifth, the institute will make recommendations regarding areas requiring additional research or demonstration efforts to verify findings and areas in which new research or demonstration should be initiated.

Technical Assistance. The institute will provide technical assistance to projects to improve the evaluation of their activities. This technical assistance will include information pertaining to program documentation methods; study design; selection of measurement instruments; data collection methods; procedures to ensure an objective, unbiased evaluation study; data analysis procedures; and formats for reporting the results of a program evaluation.

Technical assistance will also be provided to other educational agencies and organizations that fit into the general evaluation design for the institute's research and evaluation activities and that agree on-going data collection and analysis to determine the effectiveness of the services implemented.

Technical assistance will be provided in several ways. The institute will prepare a single, general purpose evaluation document that will be distributed to all project directors. The document will address each of the areas described above, and will contain specific evaluation principles, procedures and examples drawn from secondary/transitional programs. The institute will also analyze the evaluation plan, as found in the original grant application, proposed by each project and tailor evaluation technical assistance for each project. Additionally, the institute will encourage, and respond to, requests from the model demonstration projects regarding evaluation technical assistance. Technical assistance will be provided through no more than 10 on-site visits and three workshops during a given 12-month period; the less expensive mechanisms (mail, telephone, annual meetings) will be predominant methods of providing technical assistance. In addition, applicants must plan, organize, conduct, and evaluate an annual project directors' meeting.

In order to plan for the provision of technical assistance, the institute will conduct an informal telephone assessment of all project directors and/or project evaluators each year. The technical assistance needs will then be coordinated with the institute's technical assistance resources in order to develop an overall technical assistance plan (including a description of the technical assistance needs of each project) for the 12-month period.

In conducting the technical assistance activities, the institute will periodically revise/improve any written materials (including the general purpose evaluation document) that are developed on the basis of feedback from the projects.

In carrying out its research and development activities, the institute must provide research training and experience for at least 10 graduate students annually.

The Secretary will approve one cooperative agreement with a project period of 60 months subject to the requirements of 34 CFR 75.253(a) for continuation awards. In determining whether to continue the institute for the last two years of the project period, in addition to considering factors in 34 CFR 75.253(a), the Secretary will also consider the recommendation of a review team consisting of three external experts selected by the Secretary and designated Federal program officials. The services of the review team are to be performed during last half of the institute's second year, and will replace that year's annual evaluation that the recipient is required to perform under 34 CFR 75.590. During all other years of the project, the recipient must comply with 34 CFR 75.590. Costs associated with the services to be performed by the three external members of the review team are to be incorporated into the applicant's proposed budget. In developing its recommendation, the review team will consider, among other factors, the following:

(1) The timelines and the effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the recipient of the cooperative agreement; and

(2) The degree to which the institute's research design and methodological procedures demonstrate the potential for producing significant new knowledge and products.

Priority 2: Demonstration Projects to Identify and Teach Skills Necessary for Self-Determination (CFDA No. 84.158)

This priority supports model projects that identify the skills and characteristics necessary for self-determination, as well as the in-school and out-of-school experiences that lead to the development of self-determination. Self-determination refers to the attitudes and abilities that lead individuals to define goals for themselves and to take the initiative in achieving those goals. Some of the personal characteristics associated with self-determination are: assertiveness, creativity, and self-advocacy. Projects must involve youth with disabilities, their families, and adults with disabilities in investigating (1) the types of experiences and responsibilities that would appear to be important in developing the skills and characteristics necessary for self-determination; and (2) the range of opportunities or potential opportunities in-school and out-of-school that could provide these experiences. Projects must then develop strategies to systemically involve youth with disabilities in the types of activities that foster assertiveness, creativity, self-advocacy, and other skills associated with self-determination. Projects must also develop and test strategies to assist families and service providers in understanding the importance of self-determination for students with disabilities and to accept and support changes in roles and responsibilities as youth with disabilities exercise self-determination skills. Projects must involve adults with disabilities in the transition process as information resources, role models, and advocates.

Projects funded under this priority must evaluate the success of the project in developing self-determination skills among youth with disabilities. Objective measures must be included as well as the perceptions of the youth participants, their families, and adults with disabilities who have been involved in the project activities.

Final reports submitted by projects funded under this priority must provide both specific information regarding project outcomes as well as general findings and principles learned, regarding the development of self-determination skills. Quantifiable information from project activities must be included along with precise information as to the skills and experiences identified as important to the development of self-determination, the procedures for the interventions, the contexts in which the interventions were

implemented, and the range of participants.

Program Authority: 20 U.S.C. 1425.

Title of Program: Technology, Educational Media, and Materials for the Handicapped Program

CFDA No: 84.180.

Purpose: The purpose of this program is to support projects and centers for advancing the availability, quality, use, and effectiveness of technology, educational media, and materials in the education of children and youth with handicaps and the provision of early intervention services to infants and toddlers with handicaps. In creating a new part G, Congress expressed the intent that the projects and centers funded under that part should be primarily for the purpose of enhancing research and development advances and efforts being undertaken by the public or private sector, and to provide necessary linkages to make more efficient and effective the flow from research and development to application.

Priority: The Secretary establishes the following priority for the Technology, Educational Media, and Materials for the Handicapped Program, CFDA No. 84.180. In accordance with the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(3), the Secretary will give an absolute preference under this program to applications that respond to the following priority: that is, the Secretary proposes to select for funding only those applications proposing projects that meet this priority.

Priority 1. Designs for Multi-Media Instruction for Educating Children with Handicaps (CFDA No. 84.180)

Technology has emerged which can integrate text, audio, and visual information. The technologies that make the integration of multi-media possible are optical storage and computers. Multi-media learning will significantly change the nature of teaching and learning opportunities and in so doing classroom management, environments, and climates. While prototypic applications are being developed, current designs are focused on expanding the technology itself, rather than on its practical use and implementation in educational settings. This priority supports the development and evaluation of multi-media designs which incorporate critical instructional design features related to educating infants, toddlers, children, and youth with handicaps including the use of multi-media by their teachers. These design prototypes must provide the knowledge needed for computer enhanced multi-media learning to be transferred from experimental applications to pragmatic use in advancing the education of children with handicaps. Projects must include design features critical for multi-media educational materials to address the learning characteristics of children with handicaps and fit the realities inherent to teacher preparation and classroom management.

Projects must select and justify content appropriate for illustrating the learner and teacher design features that will contribute to the effective use of multi-media materials for educating children with handicaps. Projects may focus on any content area appropriate for educating children with handicaps, including functional skills as well as traditional curriculum content areas. Projects must include: development and research methodologies consistent with substantiating the prototypic design features being recommended; a conceptual, theoretical and research-based plan; and participation by experts, special educators, multi-media experts, and practitioners. The final report must highlight the design features, empirically support their significance, and provide direction for future product development.

Priority 2. Using Technology to Improve Assessment of Children with Handicaps (CFDA NO. 84.180)

This priority supports projects that use innovative technologies to advance assessment theory and practice for infants, toddlers, children, and youth with handicaps. Projects must develop and evaluate technology applications which extend beyond the current paper and pencil tests used to measure skill, proficiency, competence or performance of children with handicaps in educational, home, community, or training settings. The cognitive, language, perceptual-motor, academic, vocational, or social proficiency domains can be addressed.

Projects must develop and evaluate technologically based prototypes for advancing assessment theory and practice. These projects are not meant to produce tests or scales but rather to stimulate such development in the future by providing prototypic design features related to any of the following: (a) item stimuli, (b) sequence of item presentation, (c) expanded response capabilities, or (d) scoring criteria. The innovative methodologies developed may require expansions of traditional psychometric theory to address new procedures for establishing indices of reliability and validity. Projects must address issues of reliability and validity where applicable. Thus, these projects are viewed as development activities providing direction for future test assessment products.

Projects must include specific strategies and rationales that justify the development activity including why the assessment would be important and what impact the applications of such an assessment might have. Projects must also provide resources and expertise related to the domain(s) being measured and the integration of electronic technologies. The final report must highlight the prototypic design features by describing their nature and evidence to support the extent to which they advance current practice.

This final priority was published on January 26, 1989, at 54 FR 3938.

Program Authority: 20 U.S.C. 1461.

Intergovernmental Review

These programs, except CFDA No. 84.180 (Technology, Educational Media, and Materials for the Handicapped Program), are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for these programs.

(Catalog of Federal Domestic Assistance Numbers: 85.024, Handicapped Children's Early Education Program; 84.026, Educational Media Research, Production, Distribution, and Training Program; 84.078, Postsecondary Education Programs for Handicapped Persons; 84.086, Programs for Severely Handicapped Children; 84.158, Secondary Education and Transitional Services for Handicapped Youth Program; 84.180, Technology, Educational Media and Materials for the Handicapped Program.)

Dated: September 1, 1989.

Lauro F. Cavazos,

Secretary of Education.

Office of Special Education Programs

[CFDA No.: 84.024, 84.026, 84.078, 84.086, 84.158, 84.180]

Invitation of Applications for New Awards for Fiscal Year 1990

Note to Applicants

This notice is a complete application package. Together with the statute authorizing the program, and applicable regulations governing the program, including EDGAR, the notice contains information, application forms, and instructions needed to apply for a grant under these competitions. The priorities for these programs are published in a separate part of this issue of the **Federal Register**, with the exception of the priority titled "Using Technology to Improve Assessment of Children with Handicaps" (84.180B) under the Technology, Educational Media, and Materials for the Handicapped Program. The final priority for this competition was published on January 26, 1989, at 54 FR 3938.

The estimates of funding levels in this notice do not bind the Department of Education to a specific number of grants, unless the amount is otherwise specified by statute or regulation.

Applicable Regulations

Except as noted below, the Education Department General Administrative Regulations (EDGAR) in 34 CFR part 74, 75, 77, 79, 80, 81, and 85; and the following program regulations:

Handicapped Children's Early Education Program (CFDA) No. 84.024) 34 CFR part 309

Educational Media Research, Production, Distribution, and Training Program (CFDA No. 84.026) 34 CFR part 332

Postsecondary Education Programs for Handicapped Persons (CFDA No. 84.078) 34 CFR part 338

Programs for Severely Handicapped Children (CFDA 34.086) 34 CFR part 315

Secondary Education and Transitional Services for Handicapped Youth Program (CFDA No. 84.158) 34 CFR part 326

Technology, Educational Media, and Materials for the Handicapped Program (CFDA 84.180) 34 CFR part 333. 34 CFR part 79 does not apply to this program.

HANDICAPPED CHILDREN'S EARLY EDUCATIONAL PROGRAM

[Application Notices for Fiscal Year 1990]

Title and CFDA No.	Deadline for transmittal of applications	Deadline for intergovernmental review	Available funds*	Estimated range of awards	Estimated size of awards*	Estimated number of awards	Project period in months
Inservice training programs for related services personnel (84.024P)	01/22/90	03/22/90	1,000,000	110,000–130,000	125,000	8	36
Research on early childhood program features (84.024V)	01/08/90	03/08/90	1,200,000	280,000–310,000	300,000	4	48

*These are estimates. The actual amount available for awards and the size of awards cannot be determined pending final action by the Congress.

Selection Criteria

The Secretary uses the following criteria to evaluate an application under the Handicapped Children's Early Education Program. The maximum score for all the criteria is 100 points.

(a) *Importance.* (15 points)

(1) The Secretary reviews each application to determine the extent to which the proposed project addresses concerns in light of the purposes of this part.

(2) The Secretary considers—

(i) The significance of the problem or issue to be addressed;

(ii) The extent to which the project is based on previous research findings related to the problem or issue;

(iii) The numbers of individuals who will benefit; and

(iv) How the project will address the identified problem or issue.

(b) *Impact.* (15 points)

(1) The Secretary reviews each application to determine the probable impact of the proposed project in meeting the needs of children with handicaps, birth through age eight, and their families.

(2) The Secretary considers—

(i) The contribution that project findings or products will make to current knowledge and practice;

(ii) The methods used for dissemination of project findings or products to appropriate target audiences; and

(iii) The extent to which findings or products are replicable, if appropriate.

(c) *Techical soundness.* (35 points)

(1) The Secretary reviews each application to determine the technical soundness of the project plan;

(2) In reviewing applications under this part, the Secretary considers—

(i) The quality of the design of the project;

(ii) The proposed sample or target population, including the numbers of participants involved and methods that will be used by the applicant to ensure that participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition;

(iii) The methods and procedures used to implement the design, including instrumentation and data analysis; and

(iv) The anticipated outcomes.

(3) With respect to training projects, in applying the criterion in paragraph (c)(2)(iii) of this section, the Secretary considers—

(i) The curriculum, course sequence, and practice leading to specific competencies; and

(ii) The relationship of the project to the comprehensive system of personnel development plans required by parts B and H of the Act, and State licensure or certification standards.

(4) In addition to the criteria in paragraph (c)(2) of this section, the Secretary, in reviewing outreach projects, also considers—

(i) The agencies to be served through outreach activities;

(ii) The current services, their location, and anticipated impact of outreach assistance for each of those agencies;

(iii) The model demonstration project upon which the outreach project is based, including the effectiveness of the model program with children, families, or other recipients of project services; and

(iv) The likelihood that the demonstration project will be continued and supported by funds other than those available through this part;

(d) *Plan of operation.* (10 points)

(1) The Secretary reviews each application to determine the quality of the plan of operation for the project.

(2) The Secretary considers—

(i) The extent to which the management plan will ensure proper and efficient administration of the project;

(ii) Clarity in the goals and objectives of the project;

(iii) The quality of the activities proposed to accomplish the goals and objectives;

(iv) The adequacy of proposed timelines for accomplishing those activities; and

(v) Effectiveness in the ways in which the applicant plans to use the resources and personnel to accomplish the goals and objectives.

(e) *Evaluation plan.* (5 points)

(1) The Secretary reviews each application to determine the quality of the plan for evaluating project goals, objectives, and activities.

(2) The Secretary considers the extent to which the methods of evaluation are appropriate and produce objective and quantifiable data.

(f) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use.

(2) The Secretary considers—

(i) The qualifications of the project director and project coordinator (if one is used);

(ii) The qualifications of each of the other key project personnel;

(iii) The time that each person referred to in paragraphs (f)(2) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant will ensure that personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(3) The Secretary considers experience and training in areas related to project goals to determine qualifications of key personnel.

(g) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application to determine adequacy of resources allocated to the project.

(2) The Secretary considers the adequacy of the facilities and the equipment and supplies that the applicant plans to use.

(h) *Budget and cost-effectiveness.* (5 points)

(1) The Secretary reviews each application to determine if the project has an adequate budget.

(2) The Secretary considers the extent to which—

(i) The budget for the project is adequate to undertake project activities; and

(ii) Costs are reasonable in relation to objectives of the project.

Eligible Applicants: Public agencies, profit-making, and nonprofit private organizations may apply for an award under any of the priorities.

Program Authority: 20 U.S.C. 1423.

EDUCATIONAL MEDIA RESEARCH, PRODUCTION, DISTRIBUTION AND TRAINING PROGRAM

[Application Notices for Fiscal Year 1990]

Title and CFDA No.	Deadline for transmittal of applications	Deadline for intergovernmental review	Available funds*	Estimated range of awards	Estimated size of awards*	Estimated number of awards	Project period in months
Closed-captioned national news and public information (84.026P).	04/30/90	6/29/90	2,000,000	2,000,000	2,000,000	1	36
Closed-captioned syndicated television programming (84.026J).	04/30/90	6/29/90	800,000	400,000	400,000	2	36
Closed-captioned children's programs (84.026V).	04/30/90	6/29/90	1,000,000	1,000,000	1,000,000	1	36

* These are estimates. The actual amount available for awards and the size of awards cannot be determined pending final action by Congress.

Selection Criteria

The Secretary uses the following criteria to evaluate applications under the Educational Media Research, Production, Distribution, and Training Program. The maximum score for all criteria is 100 points.

(a) *Plan of operation.* (25 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective;

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally under represented, such as—

(A) Handicapped persons;

(B) Members of racial or ethnic minority groups;

(C) Women; and

(D) The elderly.

(b) *Quality of key personnel.* (20) points

(1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its non-discriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally under represented, such as—

(A) Handicapped persons,

(B) Members of racial or ethnic minority groups,

(C) Women, and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (15 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (5 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. (*See* 34 CFR 75.590—Evaluation by the grantee.)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (10 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources for the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Need.* (20 points)

(1) The Secretary reviews each application for information that shows the need for the project.

(2) The Secretary looks for information that shows—

(i) The need for the proposed activity with respect to the handicapping condition served or to be served by the applicant;

(ii) The potential for using the results in other projects or programs.

(g) *Marketing and dissemination.* (5 points)

(1) The Secretary reviews each application for information that shows adequate provisions for marketing or disseminating results.

(2) The Secretary reviews each application for information that shows—

(i) The provisions for marketing or otherwise disseminating the results of the project; and

(ii) Provisions for making materials and techniques available to the populations for whom the project would be useful.

Eligible Applicants: Parties eligible for grants under this subpart are profit and nonprofit public and private agencies, organizations, and institutions.

Program Authority: 20 U.S.C. 1451, 1452.

POSTSECONDARY EDUCATION PROGRAMS FOR HANDICAPPED PERSONS

[Application Notices for Fiscal Year 1990]

Title and CFDA No.	Deadline for transmittal of applications	Deadline for intergovernmental review	Available funds*	Estimated range of awards	Estimated size of awards*	Estimated number of awards	Project period in months
Postsecondary demonstration projects (84.078C).	11/17/89	01/15/90	1,159,000	92,000–102,000	97,000	12	36

*These are estimates. The actual amount available for awards and the size of awards cannot be determined pending final action by the Congress.

Selection Criteria

The Secretary uses the weighted criteria to evaluate applications under Postsecondary Education Programs for Handicapped Persons. The maximum score for all the criteria is 100 points.

(a) *Plan of Operation.* (25 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members or racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of Key Personnel:* (10 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its non-discriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers experience and training in fields related to the objectives of the project as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (15 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. (See 34 CFR 75.590, *Evaluation by the grantee.)*

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (10 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Continuation of program.* (5 points)

(1) The Secretary reviews each application for information that shows that the activities to be supported are likely to be continued after Federal funding ends.

(2) The Secretary looks for information that shows the likelihood that the services provided under the proposed program will be continued by the applicant following the expiration of Federal funding, as measured by evidence of financial and other commitment of the applicant to the program.

(g) *Importance.* (10 points)

(1) The Secretary reviews each application for information demonstrating that the proposed project is nationally important in light of the purposes of this part.

(2) The Secretary looks for information that shows—

(i) The significance of the problem or issue to be addressed;

(ii) The importance of the proposed project in increasing the understanding of the problem or issue, and in remediating or compensating for it;

(iii) The experiences of service providers related to the problem or issue; and

(iv) Previous research findings related to the problem or issue.

(h) *Impact.* (15 points)

The Secretary reviews each application for information that shows the probable impact of the proposed research or demonstration activities in improving postsecondary education for handicapped individuals, including—

(1) The contribution that the research or demonstration findings or products will make to current knowledge or practice; and

(2) The extent to which findings and products will be disseminated to, and used for the benefit of, appropriate target groups.

Eligible Applicants: State educational agencies, institutions of higher education, junior and community colleges, vocational and technical institutes, and other nonprofit educational agencies are eligible to apply for an award.

Program Authority: 20 U.S.C. 1424a.

PROGRAMS FOR SEVERELY HANDICAPPED CHILDREN

[Application Notices for Fiscal Year 1990]

Title and CFDA No.	Deadline for transmittal of applications	Deadline for intergovernmental review	Available funds*	Estimated range of awards	Estimated size of awards*	Estimated number of awards	Project period in months
Training of educators of students with multiple handicaps that include auditory and visual impairments (84.086A).	10/27/89	12/29/89	450,000	450,000	450,000	1	48

*These are estimates. The actual amount available for awards and the size of awards cannot be determined pending final action by the Congress.

Selection Criteria

The Secretary uses the following criteria to evaluate applications under the Program for Severely Handicapped Children. The maximum score for all criteria is 100 points.

(a) *Extent of need and expected impact of the project.* (25 points) The Secretary reviews each application to determine the extent to which the project is consistent with national needs in the provision of innovative services to severely handicapped children and youth, including consideration of—

(1) The needs addressed by the project;

(2) The impact and benefits to be gained by meeting the educational and related service needs of severely handicapped children and youth served by the project, their parents and service providers; and

(3) The national significance of the project in terms of potential benefits to severely handicapped children and youth who are not directly involved in the project.

(b) *Plan of operation.* (25 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the design of the project;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective;

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition.

(c) *Quality of key personnel.* (15 points)

(1) The Secretary reviews each application to determine the quality of the key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (c)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(2) To determine personnel qualifications under paragraphs (c)(1) (i) and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(d) *Budget and cost-effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(e) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project; and

(2) To the extent possible, are objective and produce data that are quantifiable.

(Cross-reference: See 34 CFR 75.590 Evaluation by the grantee.)

(f) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to

devote to the project, including facilities, equipment, and supplies.

(g) *Dissemination plan.* (5 points) The Secretary reviews each application to determine the quality of the dissemination plan for the project, including the extent to which the applicant's plan—

(1) Ensures proper and efficient dissemination of project information within the State in which the project is located and throughout the Nation; and

(2) Adequately includes the content, intended audiences, and timeliness for production of all project documents and other products which the applicant will disseminate.

Eligible Applicants: Any public or private, profit or nonprofit, organization or institution may apply for a grant under this program.

Program Authority: 20 U.S.C. 1424.

SECONDARY EDUCATION AND TRANSITIONAL SERVICES FOR HANDICAPPED YOUTH PROGRAM

[Application Notices for Fiscal Year 1990]

Title and CFDA No.	Deadline for transmittal of applications	Deadline for intergovernmental review	Available funds*	Estimated range of awards	Estimated size of awards*	Estimated number of awards	Project period in months
Institute on intervention effectiveness (84.158T).	03/16/90	05/15/90	735,000	735,000	735,000	1	60
Demonstration projects to identify and teach skills necessary for self-determination (84.158K).	03/16/90	05/15/90	618,000	118,000–128,000	123,000	5	36

*These are estimates. The actual amount available for awards and the size of awards cannot be determined pending final action by the Congress

Selection Criteria

The Secretary uses the following criteria to evaluate applications for demonstration projects under the Secondary Education and Transitional Services for Handicapped Youth Program. The maximum score for all of the criteria is 100 points.

(a) *Plan of operation.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan for management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objectives; and

(v) A clear description of how the applicant will provide equal access and participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that are underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly;

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (5 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. *(See 34 CFR 75.590, Evaluation by the grantee)*

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are qualifiable.

(e) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Important.* (10 points)

(1) The Secretary reviews each application for information demonstrating that the proposed project addresses national concerns in light of the purposes of this part.

(2) The Secretary looks for information that shows—

(i) The significance of the problem or issue to be addressed;

(ii) The importance of the proposed project in increasing the understanding of the problem or issue;

(iii) The experiences of service providers related to the problem or issue; and

(iv) Previous research findings related to the problem or issue.

(g) *Impact.* (10 points)

The Secretary reviews each application for information that shows the probable impact of the proposed project in educating handicapped youth, including—

(1) The contribution that the project findings or products will make to current knowledge or practice; and

(2) The extent to which findings and products will be disseminated to, and used for the benefit of, appropriate target groups.

(h) *Technical soundness.* (40 points)

The Secretary reviews each application for information demonstrating the technical soundness of the research or evaluation plan, including—

(1) The design (10 points);

(2) The proposed sample (10 points);

(3) Instrumentation (10 points); and

(4) Data analysis procedures (10 points).

Program Authority: 20 U.S.C. 1425.

TECHNOLOGY, EDUCATIONAL MEDIA AND MATERIALS FOR THE HANDICAPPED PROGRAM

[Application Notices for Fiscal Year 1990]

Title and CFDA No.	Deadline for transmittal of applications	Deadline for intergovernmental review	Available funds*	Estimated range of awards	Estimated size of awards*	Estimated number of awards	Project period in months
Designs for multi-media instruction for educating children with handicaps (84.180C).	12/01/89	N/A	800,000	150,000–250,000	200,000	4	Up to 24.
Using Technology to Improve Assessment of Children with Handicaps (84.180B)**.	01/05/90	N/A	650,000	200,000–232,000	216,000	3	Up to 24.

*These are estimates. The actual amount available for awards and the size of awards cannot be determined pending final action by the Congress.
**This priority was published in final on January 26, 1989, at 54 FR 3938. See page 1 of applicable notice.

Selection Criteria

The Secretary uses the following weighted criteria to evaluate applications under the Technology, Educational Media and Materials for the Handicapped Program. The maximum score for all criteria is 100 points.

(a) *Importance.* (20 points)

(1) The Secretary reviews each application to determine the extent to which the proposed project addresses national concerns in light of the purposes of this part.

(2) The Secretary considers—

(i) The significance of the problem or issue to be addressed;

(ii) The potential impact of the proposed project for providing innovative advancements to the problem or issue; and

(iii) Previous research findings related to the problem or issue.

(b) *Technical soundness.* (30 points)

(1) The Secretary reviews each application to determine the quality and technical soundness of the plan of operation for the project.

(2) The Secretary looks for—

(i) High quality in the conceptual design of the project;

(ii) A clear specification of the procedures to be followed in carrying out the project; and

(iii) The extent to which the methods of evaluation are appropriate for the project and, to the extent possible, are objective and produce data that can be quantified.

(c) *Plan of operation.* (15 points)

(1) The Secretary reviews each application to determine the quality of the plan of operation for the project.

(2) The Secretary looks for—

(i) An effective plan of management that insures proper and efficient administration of the project;

(ii) The way the applicant plans to use its resources and personnel to achieve each objective; and

(iii) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition.

(d) *Evaluation plan.* (5 points) The Secretary reviews each application to determine the quality of the evaluation plan for assuring adequate performance measurement of project progress.

(Cross Reference: 34 CFR 75.590, Evaluation by the grantee)

(e) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary considers—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (e)(2) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, and any other qualifications that pertain to the quality of the project.

(f) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application to determine that the applicant plans to devote adequate resources to the project.

(2) The Secretary considers the extent to which—

(i) The facilities that the applicant plans to use are adequate;

(ii) The equipment and supplies that the applicant plans to use are adequate; and

(iii) The applicant demonstrates access to subjects necessary to conduct the proposed project.

(g) *Marketing and dissemination.* (10 points)

(1) The Secretary reviews each application to determine if there are adequate provisions for marketing or disseminating results.

(2) The Secretary considers—

(i) The provisions for marketing, replicating, or otherwise disseminating the results of the project; and

(ii) Provisions for making materials and techniques available to the populations for whom the project would be useful.

(h) *Budget and cost effectiveness.* (5 points)

(1) The Secretary reviews each application to determine if the project has an adequate budget and is cost effective.

(2) The Secretary considers the extent to which—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(Authority: 20 U.S.C. 1461)

Eligible Applicants: Under this program, the Secretary may award grants or contracts, or enter into cooperative agreements with, institutions of higher education, State and local educational agencies, public

agencies, and private nonprofit or for-profit organizations.

Program Authority: 20 U.S.C. 1461.

Intergovernmental Review of Federal Programs

These programs, except CFDA 84.180 (Technology, Educational Media, and Materials for the Handicaped Program), are subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR Part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should contact, immediately upon receipt of this notice, the Single Point of Contact for each State and follow the procedure established in those States under the Executive Order. If you want to know the name and address of any State Single Point of Contact, see the list published in the **Federal Register** on November 18, 1987, pages 44338–44340.

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372–CFDA# (applicant must insert number and letter), U.S. Department of Education, MS 6403, 400 Maryland Avenue SW., Washington, DC 20202–0125. Proof of mailing will be determined on the same basis as applications.

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA#), Washington, DC 20202–4725, or, (2) hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA#), Room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) An applicant wishing to know that its application has been received by the Department must include with the application a stamped, self-addressed postcard containing the CFDA number and title of this program.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms

The appendix to this application is divided into three parts plus a statement regarding estimated public reporting burden and various assurances and certifications. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget Information—Non-Construction Programs (Standard Form 424A) and instructions.

Part III: Application Narrative.

Additional Materials

Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certification regarding Debarment, Suspension, and Other Responsibility Matters: Primary Covered Transactions (ED Form GCS–008) and instructions.

Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form GCS–009) and instructions. (NOTE: ED Form GCS–009 is intended for the use of grantees and should not be transmitted to the Department.)

Certification Regarding Drug-Free Workplace Requirements: Grantees Other than Individuals (ED 80–0004).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. No grant may be awarded unless a completed application form has been received.

FOR FURTHER INFORMATION CONTACT: Joseph Clair, Division of Educational Services, Office of Special Education Programs, U.S. Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 4620–2644), Washington, DC 20202 (except CFDA No. 84.180). Telephone: Joseph Clair (202) 732–4503.

Linda Glidewell, Division of Innovation and Development, Office of Special Education Programs, 400 Maryland Avenue, SW. (Switzer Building, Room 3094–M.S. 2313), Washington, DC 20202 (CFDA No. 84–180 only). Telephone: Linda Glidewell (202) 732–1099.

Dated: August 22, 1989.

Robert Davila,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

Appendix

Potential applicants frequently direct questions to officials of the Department regarding application notices and programmatic and administrative regulations governing various direct grant programs. To assist potential applicants the Department has assembled the following most commonly asked questions.

Q. Can we get an extension of the deadline?

A. No. A closing date may be changed only under extraordinary circumstances. Any change must be announced in the **Federal Register** and apply to all applications. Waivers for individual applications cannot be granted, regardless of the circumstances.

Q. How many copies of the application should I submit and must they be bound?

A. Current Government-wide policy is that only an original and two copies need be submitted. The binding of applications is optional. At least one copy should be left unbound to

facilitate any necessary reproduction. Applicants should not use foldouts, photographs, or other materials that are hard-to-duplicate.

Q. We just missed the deadline for the XXX Competition. May we submit under another competition?

A. Yes, but it may not be worth the postage. A properly prepared application should meet the specifications of the competition to which it is submitted.

Q. I'm not sure which competition is most appropriate. What should I do?

A. We are happy to discuss the questions with you and provide clarification on the unique elements of the various competitions.

Q. Will you help us prepare our application?

A. we are happy to provide general program information. Clearly, it would not be appropriate for staff to participate in the actual writing of an application, but we can respond to specific questions about application requirements, evaluation criteria, and the priorities. Applicants should understand that this previous contact is not required nor does it guarantee the success of an application.

Q. When will I find out if I'm going to be funded?

A. You can expect to receive notification within 3 to 4 months of the application closing date, depending on the number of applications received and the number of competitions with closing dates at about the same time.

Q. Once my application has been reviewed by the review panel, can you tell me the outcome?

A. No. Every year we are called by a number of applicants who have legitimate reasons for needing to know the outcome of the review prior to official notification. Some applicants need to make job decisions, some need to notify a local school district, etc. Regardless of the reason, because final funding decisions have not been made at that point, we cannot share information about the review with anyone.

Q. How long should an application be?

A. The Department of Education is making a concerted effort to reduce the volume of paperwork in discretionary program applications. The scope and complexity of projects is too variable to establish firm limits on length. Your application should provide enough information to allow the review panel to evaluate the significance of the project against the criteria of the competition. It is helpful to include in the appendices such information as: (1) Staff qualifications. These should be brief. They should include the person's title and role in the proposed project and contain only information relevant to the proposed project. Qualification of consultants and advisory council members should be provided and be similarly brief. (2) Assurance of participation of an agency other than the applicant if such participation is critical to the project, including copies of evaluation instruments proposed to be used in the project in instances where such instruments are not in general use.

Q. How can I be sure that my application is assigned to the correct competition?

A. Applicants should clearly indicate in Block 10 of the face page of their application (Standard Form 424) the CFDA number and the title of the program priority (e.g., 84.023) representing the competition in which the application should be considered. If this information is not provided, your application may inadvertently be assigned and reviewed under a different competition from the one you intended.

Q. Will my application be returned if I am not funded?

A. We no longer return original copies of unsuccessful applications. Thus, applicants should retain at least one copy of the application. Copies of reviewer comments will be mailed to applicants who are not successful.

Q. How should my application be organized?

A. The application narrative should be organized to follow the exact sequence of the components in the selection criteria of the regulations pertaining to the specific program competition for which the application is prepared. In each instance, a table of contents and a one-page abstract summarizing the objectives, activities, project participants, and expected outcomes of the proposed project should precede the application narrative.

Q. Is travel allowed under these projects?

A. Travel associated with carrying out the project is allowed (i.e. travel for data collection, etc.). Because we may request the principal investigator or director of funded projects to attend an annual meeting, you may also wish to include a trip to Washington, DC in the travel budget. Travel to conferences is sometimes allowed when it is for purposes of dissemination.

Q. If my application receives a high score from the reviewer does that mean that I will receive funding?

A. No. It is often the case that the number of applications scored highly by or approved by the reviewers exceeds the dollars available for funding projects under a particular competition. The order of selection, which is based on the scores of the applications and other relevant factors, determines the applications that can be funded.

Q. What happens during negotiations?

A. During negotiations technical and budget issues may be raised. These are issues that have been identified during panel and staff review and require clarification. Sometimes issues are stated as "conditions." These are issues that have been identified as so critical that the award cannot be made unless those conditions are met. Questions may also be raised about the proposed budget. Generally, these issues are raised because there is inadequate justification or explanation of a particular budget item, or because the budget item seems unimportant to the successful completion of the project. If you are asked to make changes that you feel could seriously affect the project's success, you may provide reasons for not making the changes or provide alternative suggestions. Similarly, if proposed budget reductions will, in your opinion, seriously affect the project activities, you may explain why and provide additional justification for the proposed expenses. An award cannot be made until all negotiation issues have been resolved.

Q. If my application is successful, can I assume I will get the estimated/projected budget amounts in subsequent years?

A. No. The estimate for subsequent year project costs is helpful to us for planning purposes but it in no way represents a commitment for a particular level of funding in subsequent years. Grantees having a multi-year project will be asked to submit a continuation application and a detailed budget request prior to each year of the project.

Q. What is a cooperative agreement and how does it differ from a grant?

A. A cooperative agreement is similar to a grant in that its principal purpose is to provide assistance for a public purpose of support or stimulation as authorized by a Federal statute. A cooperative agreement differs from a grant because of the substantial involvement anticipated between the executive agency (in this case the Department of education) and the recipient during the performance of the contemplated activity.

Q. Is the procedure for applying for a cooperative agreement different from the procedure for applying for a grant?

A. No. If the Department of Education determines that a given award should be made by cooperative agreement rather than a grant, the applicant will be advised at the time of negotiation of any special procedures that must be followed.

Q. How do I provide an assurance?

A. Simply state in writing that you are meeting a prescribed requirement.

Q. Where can copies of the **Federal Register**, program regulations, and federal statutes be obtained?

A. Copies of these materials can usually be found at your local library. If not, they can be obtained from the Government Printing Office by writing to: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Telephone: (202) 783–3238.

BILLING CODE 4000–01–M

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED	Applicant Identifier
3. DATE RECEIVED BY STATE	State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

1. TYPE OF SUBMISSION:

Application
- ☐ Construction
- ☐ Non-Construction

Preapplication
- ☐ Construction
- ☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, state, and zip code)*:	Name and telephone number of the person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER (EIN):

☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

- A. State
- B. County
- C. Municipal
- D. Township
- E. Interstate
- F. Intermunicipal
- G. Special District
- H. Independent School Dist.
- I. State Controlled Institution of Higher Learning
- J. Private University
- K. Indian Tribe
- L. Individual
- M. Profit Organization
- N. Other (Specify): _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐.☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(cities, counties, states, etc.)*:

13. PROPOSED PROJECT:		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BUDGET INFORMATION — Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

Authorized for Local Reproduction

Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:
23. Remarks	

SF 424A (4-88) Page 2
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary
Lines 1-4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1-4, Columns (c) through (g.) (continued)

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i — Show the totals of Lines 6a to 6h in each column.

Line 6j – Show the amount of indirect cost.

Line 6k – Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

INSTRUCTIONS FOR THE SF-424A *(continued)*

Line 7 – Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8-11 – Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) – Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) – Enter the contribution to be made by the applicant.

Column (c) – Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) – Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) – Enter totals of Columns (b), (c), and (d).

Line 12 — Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 – Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 – Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 – Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16 - 19 – Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 – Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 – Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 – Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 – Provide any other explanations or comments deemed necessary.

BILLING CODE 4000-01-C

Notice: Reporting Burden

Public reporting burden for this collection of information is estimated to be 40 hours (for new applications) per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202–4651; and to the Office of Management and Budget, Paperwork Reduction Project 1820–0028, Washington, DC 20503.

Part III—Program Narrative

A. New Grants

Prepare the program narrative statement in accordance with the following instructions for all new grants programs and all new functions or activities for which support is being requested.

Note that the program narrative should encompass each program and each function or activity for which funds are being requested. Relevant selection criteria (included in this package) should be carefully examined for criteria upon which evaluation of an application will be made and the program narrative must respond to such criteria under the related headings below. The program narrative should begin with an overview statement (Abstract) of the major points covered below.

1. Objectives and Need for This Assistance

Describe the problem and demonstrate the need for assistance and state the principal and subordinate objectives of the project. Supporting documentation or other testimonies from concerned interests other than the applicant may be used.

Any relevant data based on planning studies should be included or footnoted. Projects involving Demonstration/Service activities should present available data, or estimates for need in terms of number of handicapped children (by type of handicap and by type of service) in the geographic area involved.

Projects involving Training should present available data, or estimates, for need in terms of number of personnel by position type (i.e., teachers, teacher-aides) by type of handicap to be served. Documentation by the SEA should be supplied for 84.029 (Handicapped Personnel Preparation).

2. Results or Benefits Expected

Identify results and benefits to be derived. Projects involved in training activities should indicate the number of personnel to be trained. Projects involved in demonstration/service activities must provide research or other evidence that indicate that the proposed activities will be effective.

3. Approach

a. Outline a plan of action pertaining to the scope and detail of how the proposed work will be accomplished for each grant program, function or activity provided in the budget. Cite factors which might accelerate or decelerate the work and your reason for taking this approach as opposed to others.

For example, an application for demonstration/service programs should describe the planned educational curriculum: the types of attainable accomplishments set for the children served; supplementary services including parent education; and the composition and responsibilities of an advisory council.

An application for a training program should describe the substantive content and organization of the training program, including the roles or positions for which students are prepared, the tasks associated with such roles, the competencies that must be acquired; the program staffing; and the practicum facilities including their use by students, accessibility to students and their staffing.

b. Provide for each grant program, function or activity, quantitative projections of the accomplishments to be achieved.

An application for demonstration/service programs should project the number of children to receive demonstration/services by type of handicapping conditions, and number of persons to receive inservice training.

Training programs should project the number of students to be trained by type of handicapping condition.

For non-demonstration/service and non-training activities of all programs, planned activities should be listed in chronological order to show the schedule of accomplishment and their target dates.

c. Identify the kinds of data to be collected and maintained and discuss the criteria to be used to evaluate the results and successes of the project. For demonstration/service child-centered objectives set for project participants. For 84.029 (Handicapped Personnel Preparation), the positions for which students are receiving training should be related to the needs as explained in 1 and 2 above.

For all activities, explain the methodology that will be used to evaluate project accomplishments.

d. List organizations, cooperators, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution. Especially for demonstration/service activities, describe the liaison with community or State organizations as it affects project planning and accomplishments.

e. Present biological sketch of the project director with the following information: name, address, telephone number, background, and other qualifying experience for the project. Also, list the names, training and background for other key personnel engaged in the project.

Note.—The application narrative should not exceed 30 double-spaced typed pages (on one side only).

BILLING CODE 4000-01-M

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Standard Form 424B (4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

SF 424B (4-88) Back

Certification Regarding Debarment, Suspension, and Other Responsibility Matters Primary Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, Section 85.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). Copies of the regulations may be obtained by contacting the U.S. Department of Education, Grants and Contracts Service, 400 Maryland Avenue, S.W. (Room 3633 GSA Regional Office Building No. 3), Washington, D.C. 20202-4725, telephone (202) 732-2505.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Organization Name PR/Award Number or Project Name

Name and Title of Authorized Representative

Signature Date

ED Form GCS-008, (REV.12/88)

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion–Lower Tier Covered Transactions," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding
Debarment, Suspension, Ineligibility and Voluntary Exclusion
Lower Tier Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, Section 85.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). Copies of the regulations may be obtained by contacting the person to which this proposal is submitted.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Organization Name PR/Award Number or Project Name

Name and Title of Authorized Representative

Signature Date

ED Form GCS-009, (REV. 12/88)

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Drug-Free Workplace Requirements
Grantees Other Than Individuals

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988, 34 CFR Part 85, Subpart F. The regulations, published in the January 31, 1989 Federal Register, require certification by grantees, prior to award, that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the agency determines to award the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment (see 34 CFR Part 85, Sections 85.615 and 85.620).

The grantee certifies that it will provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing a drug-free awareness program to inform employees about--

(1) The dangers of drug abuse in the workplace;
(2) The grantee's policy of maintaining a drug-free workplace;
(3) Any available drug counseling, rehabilitation, and employee assistance programs; and
(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will--

(1) Abide by the terms of the statement; and
(2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

(e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;

(f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted--

(1) Taking appropriate personnel action against such an employee, up to and including termination; or
(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

Organization Name PR/Award Number or Project Name

Name and Title of Authorized Representative

Signature Date

ED 80-0004

[FR Doc. 89-21605 Filed 9-13-89; 8:45 am]
BILLING CODE 4000-01-C

Reader Aids

Federal Register

Vol. 54, No. 177

Thursday, September 14, 1989

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-5237

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, SEPTEMBER

36275-36750.....1
36751-36954.....5
36955-37088.....6
37089-37286.....7
37287-37448.....8
37449-37634.....11
37635-37780.....12
37781-37926.....13
37927-38190.....14

CFR PARTS AFFECTED DURING SEPTEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6015.....37287
6016.....37441
6017.....37927
Administrative Orders:
Presidential Determinations:
No. 88-22 of Sept. 8, 1988 (*See* No. 89-25 Aug. 28, 1989).....37089
No. 89-25 of Aug. 28, 1989.....37089
No. 89-26 of Aug. 31, 1989.....37929

5 CFR

302.....37091
315.....37091
872.....37092
873.....37092
Proposed Rules:
302.....37685
532.....37470
841.....36799

7 CFR

11.....37781
29.....36955
59.....37289
354.....37931
801.....36751
905.....37290
910.....36752, 37449
915.....36955
922.....37293
929.....37294
932.....36958
944.....36958
967.....37635
985.....37932
993.....36959
998.....37295
1036.....36752
1485.....37781
1550.....37781
1980.....37093
Proposed Rules:
52.....36982
425.....37116
907.....37687
908.....37687
911.....37336
920.....36984
932.....36985
971.....37337
982.....36803
1106.....36986
1126.....36986

8 CFR

204.....36753
210a.....36275

9 CFR

78.....37449
201.....37094
310.....36755
Proposed Rules:
92.....36806, 36986

10 CFR

9.....36757

12 CFR

225.....37297
327.....37935
Ch. V.....36757
611.....37094
Ch. IX.....36757
934.....36760
Proposed Rules:
561.....37944
563.....37944

13 CFR

120.....37095
122.....36760
124.....37636
Proposed Rules:
108.....37945

14 CFR

21.....37636
23.....37636
25.....37636
27.....37636
29.....37636
31.....37636
33.....37636
35.....37636
36.....37636
39.....36277-36287, 37302
43.....37636
45.....37636
47.....37636
61.....37636
63.....37636
65.....37636
71.....37636
91.....37636, 37762
93.....37636
99.....37636
103.....37636
108.....36938
121.....37636
125.....37636
127.....37636
133.....37636
135.....37636
137.....37636
141.....37636
1214.....37940

Proposed Rules:
25.....37414, 37768
39.....36317-36323, 37338, 37470-37476
71.....36996, 36997, 37339, 37884
75.....36998
91.....36999
121.....37414

16 CFR

Proposed Rules:
307.....37117

17 CFR

30.....37636
240.....37786

Proposed Rules:
1.....37001, 37004, 37117

18 CFR

154.....37303
157.....37303
260.....37303
284.....37303
385.....37303
388.....37303

19 CFR

162.....37600
171.....36960, 37600
175.....37096
207.....36289

Proposed Rules:
12.....37187

20 CFR

404.....37789
416.....37789

Proposed Rules:
332.....37007

21 CFR

81.....37307
133.....37531
341.....36762
524.....36962, 37097
558.....36962, 37097
1316.....37605

Proposed Rules:
109.....36324
174.....37340
175.....37340
176.....37340
177.....37340
211.....37342
1306.....36815

22 CFR

136.....37307

23 CFR

Proposed Rules:
650.....37343
658.....37344

24 CFR

8.....37645
200.....36765
206.....36765
570.....37410

Proposed Rules:
888.....37124

26 CFR

1.....37098, 37310, 37314
301.....37451
510.....37451
515.....37451
602.....37098, 37314, 37451

Proposed Rules:
1.....37008, 37125, 37346, 37815, 37947
301.....37478
602.....37478, 37947

27 CFR

Proposed Rules:
55.....36325

28 CFR

0.....36304

29 CFR

1910.....36644, 36765, 37531

Proposed Rules:
1602.....37479
1627.....37479

30 CFR

913.....36963
936.....37454

Proposed Rules:
931.....37127
934.....37128
935.....37692
943.....36817
950.....37128

32 CFR

51.....36304
52.....36304
83.....36304
170.....36304
262.....36304
355.....36304
518.....36964
706.....37324, 37325

Proposed Rules:
775.....36818

33 CFR

1.....37613
65.....36304
117.....36305
165.....37108

Proposed Rules:
117.....37129
151.....37084

34 CFR

222.....37250
245.....37874
246.....37874
247.....37874
668.....37264
682.....37264
745.....37874

35 CFR

101.....37326
113.....37326
121.....37326
123.....37326

36 CFR

Proposed Rules:
1230.....37693

37 CFR

1.....37562
2.....37562, 38041

38 CFR

21.....37108, 37331

Proposed Rules:
4.....37698

39 CFR

111.....37794
233.....37795

40 CFR

52.....36306, 36307, 36965, 37187, 37795
60.....37534
61.....38044
81.....37187, 37645-37648
148.....36967
261.....36592, 37333
268.....36967
271.....36972
272.....37649
763.....37531
790.....36311
799.....37799

Proposed Rules:
2.....38156
52.....36948, 37130, 37479, 37815, 37948
61.....38083
81.....37132, 37817
85.....37009
180.....36326-36329, 37009, 37278, 37403
185.....37278
186.....37278
271.....37817
300.....37949
307.....37892
761.....37698

41 CFR

101.....37651
201-1.....37462
201-8.....37462
201-13.....37462
201-38.....37462
201-39.....37462
201-40.....37462
301-4.....37810
302-6.....37811
302-12.....37811

42 CFR

412.....36452
413.....37270
424.....37270
442.....37466
482.....37270
483.....37270

Proposed Rules:
400.....37220
405.....36736
410.....36736, 37190, 37422
413.....36736
414.....37208
417.....37220
424.....37422
466.....37422
473.....37422
485.....37220
489.....37220
494.....36736

43 CFR

Public Land Orders:
2729 (Partially revoked by PLO 6744).....36973
6744.....36973
6745.....36973
6746.....36973
6747.....37812

44 CFR

64.....36768, 36769

Proposed Rules:
206.....37952
353.....36823

45 CFR

Proposed Rules:
302.....37866
303.....37866
304.....37866
1180.....36330

46 CFR

42.....36974
44.....36974
45.....36974
56.....36315
69.....37652
164.....36315
170.....36974
174.....36974

Proposed Rules:
25.....37084
64.....37482
98.....37482

47 CFR

1.....37681
73.....36316, 37108, 37109, 37682, 37683

Proposed Rules:
2.....37699
22.....37699
15.....36823
73.....37699-37702
73.....37133-37137
90.....37699

48 CFR

Ch. 2.....36772
702.....37334
734.....37334
752.....37334
1515.....36979
1552.....36979

Proposed Rules:
1403.....37959
1405.....37959
1415.....37959
1453.....37959
1529.....37081
1552.....37081

49 CFR

633.....36708
1056.....36980

Proposed Rules:
531.....37444, 37702

50 CFR

13.....38142
17.....37941
20.....36981, 37467

21.....36793, 38142
216.....37684
217.....37812
227.....37812
611.....37109, 37110, 37469
661.....37110
672.....37109, 37110
675.....37112, 37113, 37469
676.....37943

Proposed Rules:
17.....36823
23.....36823, 36827
Ch. VI.....36832
611.....36333
620.....36333
649.....37138
672.....36333
675.....36333

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List August 22, 1989

Microfiche Editions Available...

Federal Register

The Federal Register is published daily in 24x microfiche format and mailed to subscribers the following day via first class mail. As part of a microfiche Federal Register subscription, the LSA (List of CFR Sections Affected) and the Cumulative Federal Register Index are mailed monthly.

Code of Federal Regulations

The Code of Federal Regulations, comprising approximately 193 volumes and revised at least once a year on a quarterly basis, is published in 24x microfiche format and the current year's volumes are mailed to subscribers as issued. Or, the previous year's full set may be purchased at a reduced price and mailed as a single shipment.

Microfiche Subscription Prices:

Federal Register:

One year: $195
Six months: $97.50

Code of Federal Regulations:

Current year (as issued): $188

Previous year's full set: $115
(single shipment)



Superintendent of Documents Subscriptions Order Form

Order Processing Code
*** 6462**

Charge your order. It's easy!

Charge orders may be telephoned to the GPO order desk at (202) 783-3238 from 8:00 a.m. to 4:00 p.m eastern time, Monday-Friday (except holidays)

☐ **YES,** please send me the following indicated subscriptions.

24x MICROFICHE FORMAT:

_____ **Federal Register:** _____ One year as issued: $195 _____ Six months: $97.50

_____ **Code of Federal Regulations:** _____ Current year $188 _____ Previous year's full set: $115 (single shipment)

1. The total cost of my order is $_____ All prices include regular domestic postage and handling and are subject to change. International customers please add 25%

Please Type or Print

2. _____
(Company or personal name)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, ZIP Code)

(_____) _____
(Daytime phone including area code)

3. Please choose method of payment:

☐ Check payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐-☐
☐ VISA or MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

_____
(Credit card expiration date)

Thank you for your order!

_____
(Signature)

4. Mail To: Superintendent of Documents, Government Printing Office, Washington, D.C 20402-9371 **(Rev 1-1-89)**