AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

12-27-89
Vol. 54 No. 247

federal register

Wednesday
December 27, 1989

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

OFFICIAL BUSINESS
Penalty for private use, $300

SECOND CLASS NEWSPAPER

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

12-27-89
Vol. 54 No. 247
Pages 53037-53302

federal register

Wednesday
December 27, 1989

Briefing on How To Use the Federal Register
For information on a briefing in Washington, DC, see announcement on the inside cover of this issue.

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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.

WASHINGTON, DC

WHEN: January 30, 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.

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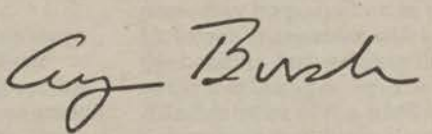
Title 3—

The President

Executive Order 12697 of December 22, 1989

Extending the National Commission on Superconductivity

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Omnibus Trade and Competitiveness Act of 1988 (P.L. 100–418, 102 Stat. 1107) and section 301 of title 3 of the United States Code, and to give the National Commission on Superconductivity additional time to complete its report, it is hereby ordered that Section 3–401(5) of Executive Order No. 12661 is amended by deleting the date "February 23, 1989," and inserting in lieu thereof the date "March 31, 1990," and that the first sentence of Section 3–401(7) of the same Executive Order is amended to read "The Commission shall disband no later than May 31, 1990."



THE WHITE HOUSE,
December 22, 1989.

[FR Doc. 89–30182
Filed 12–22–89; 4:14 pm]
Billing code 3195–01–M

Rules and Regulations

Federal Register
Vol. 54, No. 247
Wednesday, December 27, 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

Agricultural Marketing Service

7 CFR Part 959

[Docket No. FV-90-108]

South Texas Onions; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes an assessment rate under Marketing Order 959 for the 1989–90 fiscal period. Authorization of this budget will allow the South Texas Onion Committee to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATE: August 1, 1989, through July 31, 1990.

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone 202–447–2431.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 143 and Marketing Order No. 959 (7 CFR Part 959), regulating the handling of onions grown in South Texas. The marketing 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 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 rule on small entities.

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

There are approximately 35 handlers and 75 producers of South Texas onion covered under this marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of the handlers and producers may be classified as small entities.

The budget of expenses for the 1989–90 fiscal year was prepared by the South Texas Onion Committee (committee), the agency responsible for local administration of the marketing order, and submitted to the Department of Agriculture for approval. The members of the committee are handlers and producers of onions. They are familiar with the committee's needs and with the costs for goods, services and personnel in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the committee was derived by dividing anticipated expenses by expected shipments of onions. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses.

The committee met on October 31, 1989, and unanimously recommended a 1989–90 budget of $376,966. Last season's budget was $379,675. Major expense items include promotion and research projects which, at a total of $280,066, account for over 70 percent of the budget. Changes in this year's budgeted expenses include increases in committee staff salaries and research and decreases in committee travel and promotion activities.

The committee also unanimously recommended an assessment rate of $0.055 per 50-pound container, the same rate as last year. This rate, when applied to anticipated shipments of 6,075,000 containers, would yield $334,125 in assessment revenue. This amount, when added to $42,841 form the reserve, would be adequate to cover budgeted expenses. Additional reserve funds could be used to meet any deficit in assessment income.

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

A proposed rule was published in the **Federal Register** on November 27, 1989 (54 FR 48752). That document contained a proposal to add § 959.230 to authorize expenses and establish an assessment rate for the committee. That rule provided that interested persons could file comments through December 7, 1989. No comments were received.

It is found that the specified expenses are reasonable and likely to be incurred and that such expenses and the specified assessment rate to cover such expenses will tend to effectuate the declared policy of the Act.

This action should be expedited because the committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1989–90 fiscal period began in August, and the marketing order requires that the rate of assessment apply to all assessable onions handled during the fiscal period. In addition, handlers are aware of this action which was recommended by the committee at the public meeting. Therefore, it is also found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553).

List of Subjects in 7 CFR Part 959

Marketing agreements and orders, onions, South Texas.

For the reasons set forth in the preamble, 7 CFR part 959 is amended as follows:

PART 959—ONIONS GROWN IN SOUTH TEXAS

1. The authority citation for 7 CFR part 959 continues to read as follows:

Authority: Secs. 1–9, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new § 959.230 is added to read as follows:

Note: This section prescribes the annual expenses and assessment rate and will not be published in the Code of Federal Regulations.

§ 959.230 Expenses and assessment rate.

Expenses of $376,966 by the South Texas Onion Committee are authorized and an assessment rate of $0.055 per 50-pound container or equivalent quantity of regulated onions is established for the fiscal period ending July 31, 1990. Unexpended funds may be carried over as a reserve.

Dated: December 20, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–29995 Filed 12–26–89; 8:45 am]

BILLING CODE 3410–02–M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 303

RIN 3064–AB02

Applications, Requests, Submittals, Delegations of Authority, and Notices of Acquisition of Control

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule implements section 914 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA") by adding a new section, § 303.14, to 12 CFR part 303. Section 303.14 requires insured nonmember banks which fall within specified categories to file a notice with the FDIC prior to adding or replacing a member of the board of directors or employing or changing the responsibilities of an individual to a position as a senior executive officer. The FDIC may disapprove any proposed board member or senior executive officer whose service is not considered to be in the best interests of the depositors of the insured nonmember bank or the public.

DATES: Effective: December 27, 1989.

Comments: Comments must be received on or before February 26, 1990.

ADDRESSES: Send comments to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand delivered to Room 6097 on business days between 8:30 a.m. and 5 p.m. Comments may also be inspected in Room 6097 between 8:30 a.m. and 5 p.m. on business days. (FAX number: (202) 347–2773 or 2775.)

FOR FURTHER INFORMATION CONTACT: Karl R. Krichbaum, Chief, Special Situations and Applications Section-Review Section II, Division of Supervision, (202) 898–6758; Roger A. Hood, Assistant General Counsel Legal Division (202) 898–3681; Nancy L. Alper, Senior Attorney, Legal Division (202) 898–3720, FDIC, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Discussion

Background

On August 9, 1989 President Bush signed FIRREA, Public Law No. 101–73, 103 Stat. 183 (1989), into law. FIRREA amended the Federal Deposit Insurance Act ("FDI Act") in a number of ways, among which was the addition of a new section 32 to the FDI Act by section 914 of FIRREA, Public Law No. 101–73, sec. 914, Stat. 183, 484–485 (1989) (to be codified at 12 U.S.C. 1831i). The FDIC is amending part 303 of its regulations ("Applications, Requests, Submittals, Delegations of Authority, and Notices of Acquisition of Control") by adding a new § 303.14 to establish notice and application requirements which would implement the provisions described above.

Section 914 requires specified categories of insured nonmember banks to furnish the FDIC with at least 30 days notice before adding any individual to the board of directors or employing any individual as a senior executive officer. An insured nonmember bank is covered by the notice requirement if the bank: (1) Has been chartered less than two years, (2) has undergone a change in control within the preceding two years, or (3) is not in compliance with the minimum capital requirements applicable to it or is otherwise in a "troubled condition," as determined on the basis of the bank's most recent report of condition or report of examination or inspection. Section 914 also prohibits the bank from adding the individual to the board, or employing the individual as a senior executive officer, if the FDIC issues a notice of disapproval.

The FDIC is implementing section 914 by means of an interim rule, and insured nonmember banks are expected to comply beginning on the date of the rule's publication in the **Federal Register**. Comment is requested for 60 days after publication, however; and, changes, as warranted, will be made in the interim rule; and a final rule will then be adopted.

The FDIC plans to afford the parties involved an opportunity to present views in those instances in which the proposed addition or change is disapproved. Those procedures are being published in the **Federal Register** simultaneously with this rule and will be contained in 12 CFR part 308, subpart L.

Issues

Comment is invited on any of the issues described below, as well as on any other issues related to the regulation:

1. *Definition of senior executive officer.* The term "senior executive officer" is defined to include any individual who exercises significant influence over, or participates in, major policymaking decisions of an insured nonmember bank, without regard to title, salary, or compensation. Certain positions, listed in generic form, are automatically covered. The term "senior executive officer" also includes employees of an entity, such as a consulting firm, hired to perform the functions of positions covered by the regulation.

2. *Definition of troubled condition.* The term "troubled condition" is defined to include all banks assigned a composite rating by the FDIC of 4 or 5 under the Uniform Financial Institutions Rating System. The term also covers banks subject to either a cease and desist order or proceeding involving either the FDIC or the appropriate state banking authority, a capital directive issued by either the appropriate state banking authority or the FDIC, or a proceeding for termination or suspension of deposit insurance initiated by the FDIC (that is, voluntary terminations are not included). Instead of including all insured nonmember banks subject to a written agreement, the FDIC has decided to limit the regulation's coverage to banks under a written agreement issued by the FDIC or the appropriate State banking authority that requires action to improve or maintain the bank's safety and soundness.

The term "troubled condition" also includes a bank that is informed in writing, based on a visitation, examination, or a report of condition

that it has been designated as in "troubled condition" for purposes of this regulation. A memorandum of understanding based on safety and soundness concerns will be considered to fall within this provision.

3. *Prior Notice Requirement.* There are three categories of situations in which insured nonmember banks must file a notice of intent to add a director or employ a senior executive officer. The first category exists when a bank has been chartered for less than two years. The second category exists when a bank or any of its parents has, within the preceding two years, undergone a change in control requiring a notice to be filed under section 7(j) of the FDI Act, 12 U.S.C. 1817(j), or under the FDIC's implementing regulation. (This statutory provision is commonly known as the Change in Bank Control Act; although the provision now covers "insured depository institutions" and not just "insured banks," the title of the provision was not formally changed by FIRREA.) The second category also covers the situation when any of the bank's parents has undergone a transaction subject to section 3 of the Banking Holding Company Act or section 10 of the Home Owners' Loan Act, or to the regulations implementing those statutes. The third category exists when a bank is not in compliance with applicable minimum capital requirements, imposed either by 12 CFR part 325 or other regulatory action of the FDIC or the appropriate state banking authority, or is otherwise in a "troubled condition," as discussed above.

Except for the second condition, the conditions are self-explanatory. Paragraph (a)(2) of section 914 refers to a "change in control" in the generic sense and is not confined to those changes of control subject to the section 7(j) of the FDI Act. The FDIC believes that the use of the term in the generic sense indicates that Congress intended that changes other than those under section 7(j) of the FDI Act should be covered. Support for this position is founded in the fact that, at paragraph (d)(1) of section 214, information to be submitted is specifically that required by section 7(j)(6) of the FDI Act. It is reasonable that Congress would have, correspondingly, referred to that statute here if it had so intended. Further, it is logical that the primary federal supervisor of the bank should be informed if there are changes in the control of a parent which elicit corresponding management changes in the bank which the Federal supervisor regulates. Accordingly, the FDIC has elected to cover changes in senior executives officers or directors which occur after a change in the control of a parent when those changes are pursuant to either section 7(j) of the FDI Act, section 3 of the Bank Holding Company Act, or section 10 of the Home Owners' Loan Act (the Savings and Loan Holding Company Act). The term "parent" of course covers any parent at the time of the change in the insured nonmember bank, whether or not the parent was technically the parent at the time of the change in control. For instance, if a holding company is formed or purchased, and an insured nonmember bank becomes a subsidiary, changes in the insured nonmember bank are covered for the two-year period after the parent's change in control.

An additional issue is whether section 914's notice requirement covering the "employment of any individual as a senior executive officer" includes promotions and lateral transfers to that position. The FDIC believes that it does, and therefore the rule requires a notice whenever there is a "change in responsibilities" of any individual resulting in his or her assumption of a senior executive officer position. With respect to section 914's coverage of the "proposed addition of any individual to the board of directors," the rule covers not only increases in board membership, but also replacements of board members and the filling of vacancies on the board.

The prior notice requirement can be waived upon petition to the appropriate regional director, if delay could harm the bank or the public interest. The regulation notes the specific circumstance in which directors are elected at a shareholders' meeting. Even though prior notice is waived, the information will have to be submitted within 48 hours of the waiver. Thus, all parties who have any reason to believe that a change or addition covered by the statute or the regulation is forthcoming should assemble the information prior to the addition or change.

Since the filing required is by the bank, but the information relates to the individual, the individual must certify to the validity of the information; the individual has the option, with the concurrence of the bank, of forwarding this data to the FDIC under separate cover.

4. *Effective date.* This rule is effective on the day it is published in the **Federal Register.** Thus, every bank chartered or subject to a change in control after the effective date of this rule must comply with the rule's notice requirement for a period of two years. Additionally, a bank that is less than two years old on the effective date, or that underwent a change in control less than two years before the effective date, is covered by the notice requirement until the two year period after that event has elapsed. For example, a bank chartered in March 1989 would remain covered until March 1991, and therefore a notice would have to be filed for any addition to the board or any employment of a senior executive officer effected prior to March 1991. Similarly, a bank that underwent a change in control in March 1989 would be covered by the rule as a result of the change in control until March 1991.

5. *Miscellaneous.* The regulation has been drafted so that all changes in senior executive officers in state-licensed insured branches or foreign banks are covered, but changes in either senior executive officers or board members in the foreign bank parent are not. Although section 914 does not specify the exclusion of these changes in the foreign bank parent, the FDIC believes that the exclusion is reasonable. Comment on this point is specifically invited.

The rule does not cover "advisory directors." The definition for this term is patterned after the one in Federal Reserve Regulation O, 12 CFR 215.2(c).

Adoption Without Notice and Comment and Reason for Immediate Effective Date

The FDIC had determined that there is good cause for adopting this rule immediately upon publication in the **Federal Register** without prior notice and comment or a delayed effective date. Waiting to adopt a regulation until after notice and comment is contrary to the public interest. Section 914 requires the FDIC to review the competence experience, character, and integrity of an individual proposed for a position as a director or senior executive officer of certain insured nonmember banks. This requirement is intended to enhance the safety and soundness of the banking system. For this reason, Congress decided to make the requirement effective immediately upon the signing of FIRREA on August 9, 1989. Without an immediately effective rule, the FDIC cannot perform its statutorily-mandated responsibilities thus creating a risk to the safety and soundness of the banking system. Any increased risk to the banking system is contrary to the public interest.

Regulatory Flexibility Analysis

Because no notice of proposed rulemaking is required under section 553 of the Administrative Procedure Act or any other law, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply. In

addition, pursuant to the FDIC's statement of policy on the drafting of regulations, it has been determined that a cost-benefit analysis, including a small bank impact statement, is not required.

List of Subjects in 12 CFR Part 303

Administrative practice and procedure, Authority delegations (Government agencies) Bank deposit insurance, Banks, banking, Insured depository institutions, Savings associations.

In consideration of the foregoing, the FDIC hereby amends part 303 of title 12 of the Code of Federal Regulations to add new § 303.14 as follows:

PART 303—APPLICATIONS, REQUESTS, SUBMITTALS, DELEGATIONS OF AUTHORITY, AND NOTICES OF ACQUISITION OF CONTROL

1. The authority citation for part 303 is revised to read as follows:

Authority: 12 U.S.C. 378, 1813, 1815, 1816, 1817(j), 1818, 1819 ["Seventh" and "Tenth"], 1828, 1829; Pub. L. No. 101–73, sec. 914, 103 Stat. 183, 484–485 (1989) (12 U.S.C. 1831i); 15 U.S.C. 1607.

2. Section 303.13 is reserved as follows:

§ 303.13 [Reserved]

3. Section 303.14 is added to read as follows:

§ 303.14 Change in senior executive officer or board of directors.

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

(1) The term "individual" means any natural person, as well as any other entity and/or its employees substituted for such natural person.

(2) The term "insured nonmember bank" means any bank, including any foreign bank having an insured branch the deposits of which are insured in accordance with the provisions of the Federal Deposit Insurance Act, which is not a member of the Federal Reserve System. The term does not include any institution chartered by the Comptroller of the Currency, any branch licensed by the Comptroller of the Currency, any District bank, or any federal savings bank.

(3) The term "senior executive officer" means any individual who exercises significant influence over, or participates in, major policymaking decisions of an insured nonmember bank, without regard to title, salary, or compensation. The term includes, but is not limited to, the following positions: president, chief executive officer, chief managing official (in an insured state branch of a foreign bank), chief operating officer, chief financial officer, chief lending officer, or chief investment officer. The term also includes employees of entities retained by an insured nonmember bank to perform such functions in the insured nonmember bank, when such firm is hired in lieu of directly hiring the individuals.

(4) The term "troubled condition" means any insured nonmember bank that:

(i) Has been assigned a composite rating by the FDIC of 4 or 5 under the Uniform Financial Institutions Rating System, or, in the case of an insured state-licensed branch of a foreign bank ("State branch"), an equivalent rating;

(ii) Is subject to a proceeding initiated by the FDIC for termination or suspension of deposit insurance;

(iii) Is subject to a written agreement which requires action to improve or maintain the safety and soundness of the institution and which is issued by either the FDIC or by the appropriate state banking authority, a cease and desist order issued by either the FDIC or the appropriate state banking authority, a cease and desist order or proceeding initiated by either the FDIC or the appropriate state banking authority, or a capital directive issued by either the FDIC or the appropriate state banking authority; or

(iv) Is informed in writing by the regional director (Division of Supervision) of the region in which the institution is located ("appropriate regional director") or his or her designee, based on a visitation, examination, or report of condition, that it has been designated a "troubled institution" for the purposes of § 303.14.

(b) *Prior Notice Requirement.* An insured nonmember bank shall give the FDIC written notice at least 30 days prior to the effective date of any addition or replacement of a member of the board of directors (or a member of the board of trustees in an insured nonmember bank held in a mutual form of ownership) or the employment or change in responsibilities of any individual to a position as a senior executive officer if:

(1) The bank has been chartered or the insured state branch has been licensed less than two years;

(2) Within the two years preceding the proposed addition or employment;

(i) The insured nonmember bank or any of its parents has undergone a change in control which required a notice under section 7(j) of the Federal Deposit Insurance Act or regulations issued pursuant to that statute; or

(ii) The insured nonmember bank has undergone a transaction subject to section 3 of the Bank Holding Company Act or section 10 of the Home Owners Loan Act or regulations issued pursuant to either of those statutes;

(3) The insured nonmember bank is not in compliance with the minimum capital requirements applicable to it and which are imposed by 12 CFR part 325 or by other regulatory action of the FDIC or the appropriate state banking authority; or

(4) The insured nonmember bank is otherwise in a troubled condition.

In the case of the addition of a member of the board of directors or a change in senior executive officer in a foreign bank having an insured State branch, the notice requirement shall not apply to such additions and changes in the foreign bank parent, but only to changes in senior executive officers in the State branch. The notice requirement also does not apply in the case of an advisory director who is not elected by the shareholders of the bank or any of its parents, who is not authorized to vote on matters before the board of directors, and who provides solely general policy advice to the board of directors.

(c) *Procedures for notice of proposed change in Director or Senior Executive Officer*—(1) *Filing and acceptance.* Notices shall be filed with the appropriate regional director and shall contain information pertaining to the competence, experience, character, or integrity of the individual with respect to whom the notice is submitted, as prescribed in the designated FDIC form, subject to the authority of the regional director or his or her designee to require additional information. Each individual on whose behalf the notice is filed must attest to the validity of the information filed which pertains to that individual. At the option of the individual, the information may be forwarded to the regional director by the individual; however, in such cases, the insured nonmember bank must file a notice to that effect. The 30-day notice period will begin to run on the date all required information is received by the appropriate regional director. The bank submitting the notice shall be notified of the date on which all such required information is received and the notice is accepted for processing.

(2) *Waiver of prior notice requirement*—(i) *Procedure for obtaining.* Parties may petition the appropriate regional director for a waiver of the prior notice required under this section. Waiver may be granted if it is found that delay could harm the bank

or the public interest. Any waiver shall not affect the authority of the FDIC to issue a notice of disapproval within 30 days of the waiver.

(ii) *Election of directors.* In the case of the election of a new member of the board of directors at a meeting of the shareholders of an insured nonmember bank, such waiver is hereby granted, but a completed notice must be filed with the appropriate regional director within 48 hours of the election.

(3) *Notice of intent not to disapprove.* A proposed director or senior executive officer may begin service before the expiration of the 30-day period if the FDIC notifies the bank and the individual in writing of the FDIC's intention not to disapprove the proposed addition or employment.

(4) *Commencement of service.* A proposed senior executive officer or director may begin service upon the expiration of the 30-day period following acceptance of a complete notice, unless the FDIC issues a notice of disapproval before the end of the 30-day period.

(d) *Notice of disapproval.* The FDIC may disapprove the individual's serving as a director or senior executive officer if it finds that the competence, experience, character, or integrity of the individual with respect to whom a notice under this section is submitted indicates that it would not be in the best interests of the depositors of the bank or in the best interests of the public to permit the individual to be employed by, or associated with, the bank. The notice of disapproval will advise the parties of their rights of appeal.

(e) *Delegations.* The authority to issue notices of disapproval or notices of intent not to disapprove under this section; to grant waivers of the prior notice requirement; to determine the informational adequacy of a notice; to designate an insured nonmember bank as a "troubled institution"; and to determine when the 30-day period begins to run is delegated to the Director of the Division of Supervision, and, where confirmed in writing by the Director, to an Associate Director of the Division of Supervision or the regional director (Division of Supervision) or deputy regional director (Division of Supervision).

By Order of the Board of Directors.

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

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 89-29534 Filed 12-26-89; 8:45 am]

BILLING CODE 6714-01-M

12 CFR Part 308

RIN 3064-A1302

Rules of Practice and Procedure

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Interim rule with request for comments.

SUMMARY: The Federal Deposit Insurance Corporation ("FDIC") is publishing an interim rule with a request for comments to add Subpart L of 12 CFR part 308. This Subpart constitutes an amendment to 12 CFR part 308, Rules of Practice and Procedures, which govern the conduct of administrative proceedings before the FDIC. Subpart L was created in order to set forth the rights that an individual or a state nonmember bank may exercise and procedures which must be followed in responding to a Notice of Disapproval issued by the FDIC pursuant to section 914 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), Pub. L. No. 101-73, 103 Stat. 183 (1989). The FDIC may issue a Notice of Disapproval in response to a Notice filed by an insured state nonmember bank, pursuant to section 914 of FIRREA, notifying the FDIC of its intent to add or replace a member of the board of directors of a state nonmember bank, or employ or change the responsibilities of an individual to a position of senior executive officer of such a bank. The purpose of Subpart L of the FDIC's Rules of Practice and Procedures, 12 CFR part 308, is to provide for the efficient and just handling of Notices of Disapproval which must be filed pursuant to section 914 of FIRREA.

DATES: *Effective:* December 27, 1989.

Comments: Comments must be received on or before February 26, 1990.

ADDRESSES: Comments should be sent to Office of the Executive Secretary, 6th Floor, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429; Attention: Robert Feldman, Deputy Executive Secretary. Comments may be hand delivered to room 6108 on business days between 8:30 a.m. and 5 p.m. Comments will be available for inspection and photocopying at that address between 8:30 a.m. and 5 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Nancy L. Alper, Senior Attorney, Compliance and Enforcement Section, Legal Division, 550 17th Street, NW., Washington, DC 20429, telephone 202/898-3720.

SUPPLEMENTARY INFORMATION: This notice of the interim rule amends 12 CFR part 308, Rules of Practice and Procedures ("part 308"), which governs the FDIC's administrative proceedings, by adding a new subpart, Subpart L. Subpart L provides rules and procedures for notices filed pursuant to section 914 of FIRREA. The FDIC is implementing section 914 by means of an interim rule, and insured nonmember banks are expected to comply beginning on the date of the rule's publication in the **Federal Register.** Comment is requested for 60 days after publication, however, and, changes, as warranted, will be made in the interim rule and a final rule will then be adopted.

I. Discussion

On August 9, 1989 President Bush signed into law the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA"), Public Law No. 101-73, 103 Stat. 183 (1989). FIRREA amended the Federal Deposit Insurance Act ("FDI Act") in a number of ways, one of which was the addition of a new section 32 to the FDI Act, added pursuant to section 914 of FIRREA, Public Law No. 101-73, sec. 914, 103 Stat. 183, 484-485 (1989) (to be codified at 12 U.S.C. 1831i). The FDIC is amending part 308 of its Rules of Practice and Procedures, 12 CFR part 308, by including Subpart L which sets forth the rights that an individual or a state nonmember bank may exercise and procedures which must be followed when the FDIC issues a Notice of Disapproval pursuant to section 914 of FIRREA.

Section 914 requires specified categories of insured nonmember banks to furnish the FDIC with at least 30 days notice before adding any individual to the board of directors or employing any individual as a senior executive officer. An insured nonmember bank is covered by the notice requirement if the bank: (1) Has been chartered less than two years, (2) has undergone a change in control within the preceding two years, or (3) is not in compliance with the minimum capital requirements applicable to it or is otherwise in a "troubled condition," as determined on the basis of the bank's most recent report of condition or report of examination or inspection. Section 914 also prohibits the bank from adding the individual to the board, or employing the individual as a senior executive officer, if the FDIC issues a notice of disapproval.

II. Section-by-Section Summary and Discussion

Section 308.94 sets forth the scope of subpart L. It sets forth under what conditions an institution must file a Notice of Change in Senior Executive

Officer or Director ("Notice of Change in Position") and states what change in position would have to occur to trigger a section 32 filing.

Section 308.95 of subpart L sets forth guidelines for when the Board of Directors of the FDIC ("Board") or its designee may issue a Notice of Disapproval of an individual on whose behalf an insured state nonmember bank ("state bank") has filed a Notice of Change in Position pursuant to section 32. Those criteria include, *inter alia*, that the individual's competence, experience, character, or integrity indicate that it would not be in the best interests of the depositors of the state bank to permit the individual to be employed by or associated with the state bank or that it would not be in the best interests of the public to permit the individual to be employed by such a bank.

Section 308.96b of subpart L provides that the Notice of Disapproval must be served upon the state bank and the individual who is a candidate for director or senior executive officer and that the Notice of Disapproval must state the relevant considerations for the disapproval. The Notice of Disapproval must also set forth that the individual or the bank may file an appeal from the Notice of Disapproval within fifteen days from the receipt of the Notice of Disapproval and must specify what additional information must be provided by the petitioner. The appeal must be writing and filed in the appropriate Regional Office. The appeal must set forth the reasons why the FDIC should review its decision and other evidence that was not presented at the time of filing the Notice of Change in Position.

A determination on an appeal must be rendered within thirty days from receipt of the appeal. Where an appeal is denied, § 308.97(c) requires that the individual be notified of the relevant considerations for the denial and be advised that the applicant may request an oral hearing within fifteen days from the receipt of the denial. Should the petitioner not receive a decision denying the appeal within thirty days, then he may file a request for a hearing within fifteen days from the date of expiration of the thirty-day period. The request for a hearing pursuant to § 308.97(a) must set forth the relief desired and the grounds for requesting that relief.

Section 308.98 of subpart L accords an individual the opportunity for an oral hearing. The hearing is conceived as an informal proceeding where, under § 308.98(b)(5), a presiding officer determines whether to allow the presentation of witnesses. Pursuant to § 308.98(b)(4) no discovery is permitted; however, an applicant may introduce relevant and material documents and argument is made on the record. The presiding officer is authorized to take or cause to be taken depositions of unavailable witnesses pursuant to § 308.98(b)(6).

At the request of the applicant or FDIC enforcement staff, under § 308.98(b)(7) the record may remain open for an additional five days following the hearing for additional submissions. Once the record has closed, the presiding officer must make his or her recommendations pursuant to § 308.98(b)(8) to the Board or its designee within fifteen days. The Board of Directors or its designee will issue a decision and order within forty-five days.

III. Regulatory Factors

A. Adoption Without Notice and Comment and Reason for Immediate Effective Date

The FDIC has determined that there is good cause for adopting this rule immediately upon publication in the **Federal Register** without prior notice and comment or a delayed effective date. Waiting to adopt a regulation until after notice and comment is contrary to the public interest. Section 914 of FIRREA requires the FDIC to review the competence, experience, character, and integrity of an individual proposed for a position as a director or senior executive officer of certain insured state nonmember banks. This requirement is intended to enhance the safety and soundness of the banking system. For this reason, Congress decided to make the requirement effective immediately upon the signing of FIRREA on August 9, 1989. Without an immediately effective rule, the FDIC cannot perform its statutorily-mandated responsibilities, thus creating a risk to the safety and soundness of the banking system. Any increased risk to the banking system is contrary to the public interest.

B. Regulatory Flexibility Analysis

Because no notice of proposed rulemaking is required under section 553 of the Administrative Procedure Act or any other law, the Regulatory Flexibility Act (5 U.S.C. 601–612), does not apply. In addition, pursuant to the FDIC's statement of policy on drafting regulations, it has been determined that a cost-benefit analysis, including a small bank impact statement, is not required.

List of Subjects in 12 CFR Part 308

Administrative practice and procedure, Banks, Banking, Bank deposit insurance, Authority delegations (Government agencies), Director, Insured depository institution, Notice of disapproval, Senior executive officer, Savings associations, Troubled condition.

For the reasons set out in the preamble, part 308 of title 12 of the Code of Federal Regulations is amended as follows:

PART 308—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 308 is revised to read as follows:

Authority: 12 U.S.C. 1819, 1972; Pub. L. 101–73, sec. 914, 103 Stat. 183, 484–485 (1989) (12 U.S.C. 1831i); 15 U.S.C. 78w; 5 U.S.C. 504.

2. A new subpart L, consisting of §§ 308.94 through 308.98, is added to read as follows:

Subpart L—Procedures and Standards Applicable to a Notice of Change in Senior Executive Officer or Director Pursuant to Section 32 of the Act

Sec.

308.94 Scope.
308.95 Grounds for disapproval of notice.
308.96 Procedures where notice of disapproval issued pursuant to § 308.14.
308.97 Decision on appeal.
308.98 Hearing.

Subpart L—Procedures and Standards Applicable to a Notice of Change in Senior Executive Officer or Director Pursuant to Section 32 of the Act

§ 308.94 Scope.

The rules and procedures set forth in this subpart shall apply to the notice filed by a state nonmember bank pursuant to section 32 of the Act, 12 U.S.C. 1831i, for the consent of the FDIC to add to or replace an individual on the board of directors, or to employ any individual as a senior executive officer or change the responsibilities of any individual to a position of senior executive officer where the bank:

(a) Has been chartered for less than two years or the insured state branch has been licensed for less than two years;

(b) Has undergone a change in control within the preceding two years; or

(c) Is not in compliance with the minimum capital requirement applicable to it or is otherwise in a troubled condition as determined by the FDIC on the basis of such institution's most recent report of condition or report of examination or inspection.

§ 308.95 Grounds for disapproval of notice.

The Board or its designee may issue a notice of disapproval with respect to a notice submitted by a state nonmember

bank pursuant to section 32 of the Act, 12 U.S.C. 1831i, where:

(a) The competence, experience, character, or integrity of the individual with respect to whom such notice is submitted indicates that it would not be in the best interests of the depositors of the state nonmember bank to permit the individual to be employed by or associated with such bank; or

(b) The competence, experience, character, or integrity of the individual with respect to whom such notice is submitted indicates that it would not be in the best interests of the public to permit the individual to be employed by, or associated with, the state nonmember bank.

§ 308.96 Procedures where notice of disapproval issued pursuant to § 303.14.

(a) The Notice of Disapproval shall be served upon the insured state nonmember bank and the candidate for director or senior executive officer. The Notice of Disapproval shall:

(1) Summarize or cite the relevant considerations specified in § 308.95;

(2) Shall inform the individual and the bank that an appeal of the disapproval may be filed within fifteen days of receipt of the Notice of Disapproval; and

(3) Shall specify what additional information, if any, must be contained in the appeal.

(b) The appeal must be filed at the appropriate Regional Office.

(c) The appeal must be in writing and should:

(1) Specify the reasons why the FDIC should review its disapproval; and

(2) Set forth relevant, substantive and material documents that for good cause were not previously set forth in the Notice required to be filed pursuant to section 32 of the Act.

§ 308.97 Decision on appeal.

(a) Within thirty days of receipt of the appeal, the Director, and where confirmed in writing by the Director, an associate director, shall notify the bank and or individual filing the appeal (hereafter "petitioner") of the FDIC's decision on appeal.

(b) If the decision is to approve the notice, the bank and the individual involved shall be so notified.

(c) A denial of the appeal pursuant to section 32 of the Act shall:

(1) Inform the petitioner that a written request for a hearing, stating the relief desired and the grounds therefor, may be filed with the Executive Secretary within fifteen days after the receipt of the denial; and

(2) Summarize or cite the relevant considerations specified in § 308.95.

(d) If a decision is not rendered within thirty days, the petitioner may file a request for a hearing within fifteen days from the date of expiration.

§ 308.98 Hearing.

(a) *Hearing dates.* The Executive Secretary shall order a hearing to be commenced within thirty days after receipt of a request for a hearing filed pursuant to § 308.97. Upon request of the petitioner or the FDIC, the presiding officer or the Executive Secretary may order a later hearing date.

(b) *Hearing procedure.* (1) The hearing shall be held in Washington, DC or at another designated place, before a presiding officer designated by the Executive Secretary.

(2) The provisions of §§ 308.08, 308.10, 308.14 and 308.18 of subpart B of this part shall apply to hearings held pursuant to this section, but except as expressly provided in this subpart L, the balance of subpart B of this part shall not apply to such hearings.

(3) The petitioner may appear at the hearing and shall have the right to introduce relevant and material documents and make an oral presentation. Members of the FDIC enforcement staff may attend the hearing and participate as a party.

(4) There shall be no discovery in proceedings under this subpart L.

(5) At the discretion of the presiding officer, witnesses may be presented within specified time limits, provided that a list of witnesses is furnished to the presiding officer and to all other parties prior to the hearing. Witnesses shall be sworn, unless otherwise directed by the presiding officer. The presiding officer may ask questions of any witness. Each party shall have the opportunity to cross-examine any witness presented by an opposing party. The transcript of the proceedings shall be furnished, upon request and payment of the cost thereof, to the petitioner afforded the hearing.

(6) In the course of or in connection with any hearing under this subsection, the presiding officer shall have the power to administer oaths and affirmations, to take or cause to be taken depositions of unavailable witnesses, and to issue, revoke, quash, or modify subpoenas and subpoenas duces tecum. Where the presentation of witnesses is permitted, the presiding officer may require the attendance of witnesses from any state, territory, or other place subject to the jurisdiction of the United States at any location where the proceeding is being conducted. Witness fees shall be paid in accordance with § 308.16 of subpart B of this part.

(7) Upon the request of the applicant afforded the hearing, or the members of the FDIC enforcement staff, the record shall remain open for five business days following the hearing for the parties to make additional submissions to the record.

(8) The presiding officer shall make recommendations to the Board or its designee, where possible, within fifteen days after the last day for the parties to submit additions to the record.

(9) The presiding officer shall forward his or her recommendation to the Executive Secretary who shall promptly certify the entire record, including the recommendation to the Board or its designee. The Executive Secretary's certification shall close the record.

(c) *Written submissions in lieu of hearing.* The petitioner may in writing waive a hearing and elect to have the matter determined on the basis of written submissions.

(d) *Failure to request or appear at hearing.* Failure to request a hearing shall constitute a waiver of the opportunity for a hearing. Failure to appear at a hearing in person or through an authorized representative shall constitute a waiver of hearing. If a hearing is waived, the order shall be final and unappealable, and shall remain in full force and effect.

(e) *Decision by Board or its designee.* Within forty-five days following the Executive Secretary's certification of the record to the Board or its designee, the Board or its designee shall notify the affected individual whether the denial of the notice will be continued, terminated, or otherwise modified. The notification shall state the basis for any decision of the Board or its designee that is adverse to the petitioner. The Board or its designee shall promptly rescind or modify the denial where the decision is favorable to the petitioner.

By order of the Board of Directors.

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

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 89-29535 Filed 12-26-89; 8:45 am]

BILLING CODE 6714-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-NM-141-AD; Amdt. 39-6432]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, which currently requires external and internal inspections of the skin at fuselage lap joints and stringer 17 to detect cracks, corrosion, and delamination, and repair, if necessary. This amendment increases the applicability to include additional airplanes, expands the definition of terminating action for one group of airplanes, and revises the terminating action requirements for the skin along stringer 17. This amendment is prompted by the discovery that the improved tearstrap hot bonding process occurred at a later airplane line number than previously determined. Cracks, corrosion, and/or delamination, if not corrected, could result in rapid decompression of the airplane.

EFFECTIVE DATE: January 31, 1990.

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

FOR FURTHER INFORMATION CONTACT: Mr. Steven C. Fox, Airframe Branch, ANM-120S; telephone (206) 431-1923. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by revising AD 88-22-11, Amendment 39-6059 (53 FR 44156; November 1, 1988), applicable to Boeing Model 737 series airplanes, to increase the applicability to include additional airplanes, expand the definition of terminating action for one group of airplanes, and revise the terminating action requirements for the skin along stringer 17, was published in the Federal Register on August 17, 1989 (54 FR 33938).

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

The manufacturer commented that the requirements in paragraphs C.3.b.1. and 2., concerning the replacement of blind fasteners with protruding head fasteners, should be clarified to indicate that such fasteners at Stringer 17 are also affected. This would make this requirement consistent with the service bulletin and the rest of the AD. The FAA concurs and this point in the final rule has been clarified accordingly.

The manufacturer also pointed out a typographical error in paragraph H.1.b. where the area for inspection was defined as "1 bay above and 2 bays below." The final rule has been changed to read "2 bays above and 1 bay below." This makes paragraph H.1.b. consistent with other paragraphs of the AD and the service bulletin.

The Air Transport Association (ATA) of America commented on behalf of its members. One member operator stated that paint thickness should not be a consideration in conducting the NDI inspections required by paragraph C. if the fastener outline is clearly visible. The FAA concurs. The final rule has been revised accordingly. This is consistent with similar requirements in previously issued AD's applicable to other airplane models.

The same commenter also requested that blind fasteners be allowed as a modification action with an inspection, if required. The FAA does not concur. Testing of blind fasteners resulted in inspection intervals specified in Boeing Service Bulletin 737-53A1039, Revision 4. The FAA has determined that these fasteners do not provide an adequate fatigue life, and it would be inappropriate to permit their installation in general. However, in certain isolated cases, blind fasteners have been allowed to be installed on the Model 737 airplane fuselage where the skin thickness and geometry permit. It is the FAA's intention to continue to address this issue on a case by case basis through alternate means of compliance procedures.

Since the issuance of the NPRM, Boeing has issued Service Bulletin 737-53-1089, Revision 2, dated August 31, 1989, and Revision 3, dated November 2, 1989. The FAA has reviewed and approved Revision 3. The final rule has been revised to also allow compliance in accordance with Revision 3.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously noted. These changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 55 additional Model 737 series airplanes of the affected design in the worldwide fleet. It is estimated that 12 additional airplanes of U.S. registry will be affected by this amendment, that it will take approximately 2,798 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the amendment on U.S. operators is estimated to be $1,343,040.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

PART 39—[AMENDED]

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

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by amending Amendment 39-6059 (53 FR

44156; November 1, 1988), AD 88-22-11, as follows:

BOEING: Applies to Model 737 series airplanes, line number 001 through 519, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent rapid decompression of the airplane, accomplish the following:

A. For airplanes line number 001 through 291, prior to the accumulation of 40,000 landings, or within 10 calendar days after November 21, 1988 (the effective date of Amendment 39-6059), whichever occurs later, restrict all flight operations to a maximum cabin pressure differential of 5.67 psi until the inspections required by paragraph B.1., below, are accomplished.

B. 1. For airplanes line number 001 through 291, within the next 1,500 landings after November 21, 1988, or prior to the accumulation of 40,000 landings, whichever occurs later, unless previously accomplished within the last 3,000 landings; and thereafter at intervals not to exceed 4,500 landings or 15 months, whichever occurs first; accomplish the requirements of paragraph C., below, along the skin at all fuselage lap joints between body station (BS) 259 and BS 1016.

2. At the initial interval indicated in Table 1, below, unless previously accomplished within the last 4,000 landings, accomplish the requirements of paragraph C., below, along the skin at stringer (S) 17 between BS 360 and BS 540 and between BS 727 and BS 927.

TABLE 1

Airplane line number	Initial inspection
001 through 291	Within 500 landings after November 21, 1988, or prior to the accumulation of 40,000 landings, whichever occurs later.
292 through 464	Within 500 landings after November 21, 1988, or prior to the accumulation of 60,000 landings, whichever occurs later.
465 through 519	Within 500 landings after the effective date of this amendment, or prior to the accumulation of 60,000 landings, whichever occurs later.

Repeat the inspection at intervals not to exceed 4,500 landings or 15 months, whichever occurs first.

C. For airplanes identified in paragraphs B.1. and B.2., above, remove paint with an approved chemical stripper, or ensure that the fastener head is clearly visible prior to the inspections required by this paragraph:

1. Perform a high frequency eddy current inspection for cracks along the upper rivet line at the lap joints and along both rivet lines at S-17, in accordance with Boeing Service Bulletin 737-53A1039, Revision 4, dated April 14, 1988, or Revision 5, dated May 25, 1989, or Boeing Service Bulletin 737-53-1089, Revision 1, dated October 13, 1988, or Revision 3, dated November 2, 1989, accordingly.

NOTE: No credit will be given for previous inspections accomplished on a painted surface where the fastener head was not clearly visible.

2. Perform a detailed external visual inspection, using adequate lighting for evidence of corrosion or delamination. Inspect for small cracks, bulging skin between fasteners, blistered paint, dished or popped rivet heads, or loose fasteners. If evidence of corrosion or delamination is found, prior to further flight, perform a low frequency eddy current inspection for corrosion to determine material loss, of the entire length of the affected panel, in accordance with Boeing Alert Service Bulletin 737-53A1039, Revision 4, dated April 14, 1988, or Revision 5, dated May 25, 1989, or Boeing Service Bulletin 737-53-1089, Revision 1, dated October 13, 1988, or Revision 3, dated November 2, 1989.

3. Repair cracks, corrosion, and delamination prior to further flight (except as permitted by paragraph G., below), in accordance with Boeing Alert Service Bulletin 737-53A1039, Revision 4, dated April 14, 1988, or Revision 5, dated May 25, 1989, or Boeing Service Bulletin 737-53-1089, Revision 1, dated October 13, 1988, or Revision 3, dated November 2, 1989.

a. All upper row fasteners at the lap joint and both rows of fasteners at S-17 of any skin panel in which cracks are found, must be replaced with standard protruding head solid fasteners, in accordance with the applicable service bulletin, within 3,000 cycles following the repair.

b. Blind fasteners are to be used as an interim repair only, and must be replaced with protruding head solid fasteners within 3,000 cycles following installation.

(1) For airplanes line numbers 001 through 464: Repairs installed with blind fasteners prior to November 21, 1988, must be inspected for loose or missing fasteners within 1,000 cycles after that date; and all upper row fasteners and stringer 17 fasteners in the affected panel must be replaced with standard protruding head solid fasteners within 3,000 cycles after that date.

(2) For airplanes line numbers 465 through 519: Repairs installed with blind fasteners prior to the effective date of this amendment, must be inspected for loose or missing fasteners within 1,000 cycles after the effective date of this amendment; and all upper row fasteners and stringer 17 fasteners in the affected panel must be replaced with standard protruding head solid fasteners within 3,000 cycles after the effective date of this amendment.

c. (1) For airplanes line numbers 001 through 464: Repairs of the skin installed with countersunk fasteners at any fuselage lap joint or along S-17 prior to November 21, 1988, must be inspected and verified as FAA-approved within 1,000 cycles after that date. Repairs determined not to be FAA-approved must be replaced or modified in accordance with an FAA-approved method prior to further flight.

(2) For airplanes line numbers 465 through 519: Repairs of the skin installed with countersunk fasteners at any fuselage lap joint or along S-17 prior to the effective date of this amendment, must be inspected and verified as FAA-approved within 1,000 cycles after the effective date of this amendment. Repairs determined not to be FAA-approved must be replaced or modified in accordance with an FAA-approved method prior to further flight.

D. For airplanes line number 001 through 291, within the next 2,250 landings or within 6 months after November 21, 1988, whichever occurs first, or prior to the accumulation of 40,000 landings, whichever occurs later, unless accomplished within the last 9,750 landings; and thereafter at intervals not to exceed 12,000 landings or 4 years, whichever occurs first; accomplish the inspections described in paragraph F., below. If the inspections required by paragraph C., above, are repeated at intervals not to exceed 2,250 landings or 7½ months, whichever occurs first, then the requirements of paragraph F., below, may be deferred until the accumulation of 7,000 landings or 24 months after November 21, 1988, whichever occurs first.

E. For airplanes line number 292 through 464, within the next 12,000 landings or 4 years after November 21, 1988, whichever occurs first, and for airplanes line number 465 through 519, within the next 12,000 landings or 4 years after the effective date of this amendment, whichever occurs first, or prior to the accumulation of 40,000 landings, whichever occurs later, and thereafter at intervals not to exceed 12,000 landings or 4 years, whichever occurs first, accomplish the inspections described in paragraph F., below.

F. As required by paragraph D. and E., above, perform a detailed internal visual inspection of tearstraps (circumferential portion of the bonded waffle doubler), not mechanically fastened to the skin between BS 360 and BS 1016 two bays above and one bay below the lap joints at S-4 and S-10, and between BS 259 and BS 360 two bays above and one bay below the lap joint at S-4 for delamination and corrosion, in accordance with Boeing Alert Service Bulletin 737-53A1039, Revision 4, dated April 14, 1988, or Revision 5, dated May 25, 1989. Adequate lighting must be used for this inspection. Inspect for bulges in the doubler, white powder or a thin black line at the edges of the doubler, and missing or dished fasterners. Check for disbond by pushing outward on the skin while attempting to insert a feeler gage between the doubler and skin. If inspection areas are obscured by sealant, dirt, etc., these areas must be cleaned. If disbond or corrosion is found, inspect entire skin panel as described above, in addition to one bay of the adjacent skin panel (above and below), and repair prior to further flight, in accordance with Boeing Alert Service Bulletin 737-53A1039, Revision 4, dated April 14, 1988, or Revision 5, dated May 25, 1989, or Boeing Service Bulletin 737-53-1089, Revision 1, dated October 13, 1988, or Revision 3, dated November 2, 1989, as appropriate.

G. If corrosion found as a result of the external inspection does not exceed 10 percent of the skin thickness, reinspect for corrosion in accordance with paragraphs C.2. or I., of this AD, as appropriate, at intervals not to exceed 2,250 cycles or 6 months, whichever occurs first, until a repair is

accomplished. If such corrosion exceeds 10 percent of skin thickness or if cracking is found, repair prior to further flight, in accordance with Boeing Alert Service Bulletin 737-53A1039, Revision 4, dated April 14, 1988, or Revision 5, dated May 25, 1989, for the skin along the lap joints; or Boeing Service Bulletin 737-53-1089, Revision 1, dated October 13, 1988, or Revision 3, dated November 2, 1989, for the skin along S-17. Following such repair, resume inspections in accordance with paragraphs C.2. or I., of this AD, as appropriate.

H. The accomplishment of the following two subparagraphs constitutes terminating action for the inspections indicated:

1. a. For airplanes line number 001 through 291, accomplishment of the terminating repair at all lap joints between BS 259 and BS 1016, in accordance with Boeing Alert Service Bulletin 737-53A1039, revision 4, dated April 14, 1988, or Revision 5, dated May 25, 1989, constitutes terminating action for paragraphs A., C., and F., as they apply to lap joint areas. This repair includes replacing all upper row fasteners with standard protruding head solid fasteners and assuring the tearstraps are functional 2 bays above and 1 bay below each lap joint, by the use of mechanical fasteners where disbonding of the tearstraps has occurred.

b. For airplanes line number 292 through 519, perform a detailed internal visual inspection of the tearstraps for delamination and corrosion 2 bays above and 1 bay below all lap joints between BS 259 and BS 1016, in accordance with Boeing Alert Service Bulletin 737-53A1039, Revision 4, dated April 14, 1988, or Revision 5, dated May 25, 1989. Repair delamination and corrosion in accordance with the service bulletin using mechanical fasteners, as necessary. In skin panels where delamination is detected, accomplish the lap joint modification in accordance with the service bulletin. This subparagraph constitutes terminating action for paragraph F., above.

2. Accomplishment of the preventative modification as described in Boeing Service Bulletin 737-53-1089, Revision 1, dated October 13, 1988, or Revision 3, dated November 2, 1989, constitutes terminating action for the requirements of paragraphs A., C., and F., as they apply to the skin at S-17. The repair requires using standard protruding head solid fasteners, and assuring that the tearstraps are functional one bay above and below S-17, by the use of mechanical fasteners where disbonding of the tearstraps has occurred, in accordance with the Structural Repair Manual.

I. For aircraft on which the procedures described in paragraph H.1., above, have been accomplished in accordance with part IV, A.2., of Boeing Alert Service Bulletin 737-53A1039, Revision 4, dated April 14, 1988, or part II, B., of Boeing Service Bulletin 737-53A1039, Revision 5, dated May 25, 1989, within 15 months after accomplishment, or within 6 months after the effective date of this AD, whichever occurs later, perform and external visual inspection of the skin for corrosion and delamination at all lap joints in accordance with that service bulletin. If corrosion is found, prior to further flight, perform a low frequency eddy current inspection of the entire length of the affected panel to determine material loss. If cracks are found, prior to further flight, perform a high frequency eddy current inspection of the entire length of the affected skin panel in accordance with the service bulletin. Repair cracks, corrosion, and delamination, prior to further flight (except as permitted by paragraph G., above), in accordance with the service bulletin. Inspections are to continue at intervals not to exceed 15 months.

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

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Seattle Aircraft Certification Office.

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

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

This amendment amends Amendment 39-6059, AD 88-22-11.

This amendment becomes effective January 31, 1990.

Issued in Seattle, Washington, on December 14, 1989.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-29962 Filed 12-26-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-NM-108-AD; Amdt. 39-6431]

Airworthiness Directives; McDonnell Douglas Model DC-10-30, -30F, -40, and KC-10A (Military) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to McDonnell Douglas Model DC-10-30, -30F, -40, and KC-10A (Military) series airplanes, which currently requires all landing gear brakes be inspected for wear, replaced if the wear limit prescribed in the existing AD is not met, and also requires modification of short piston sleeve brakes to long piston sleeve brakes. This amendment requires that all long piston sleeve brakes be modified, and that all landing gear brakes be inspected for wear and replaced if the new wear limits prescribed in this amendment are not met. This amendment is prompted by reports of further testing and analysis of the brakes, which revealed that the wear limits specified in the existing AD and the long piston sleeves brakes are inadequate to provide enough piston travel to accomplish a maximum energy rejected takeoff stop. This condition, if not corrected, could result in the loss of landing gear effectiveness.

EFFECTIVE DATE: January 31, 1990.

ADDRESSES: The applicable service information may be obtained from Douglas Aircraft Company, P.O. Box 1771, Long Beach, California, ATTN: Manager, Service Changes, Mail Code 73-30. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Robert T. Razzeto, Aerospace Engineer, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5335.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 88-16-02R1, Amendment 39-6034 (53 FR 37542; September 27, 1988), applicable to Model DC-10-30, -30F, -40, and KC-10A (Military) series airplanes, to require that all long sleeve brakes be modified, and that all landing gear brakes be inspected for wear and replaced if the new wear limits prescribed by this amendment are not met, was published in the Federal Register on August 14, 1989 (53 FR 33235).

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

One commenter requested that proposed paragraph D. be changed to delete the -4R, -6R, and -10R brakes from the applicability. This commenter stated that these part number brakes, which have extra-long piston sleeves, can sustain maximum energy rejected

takeoff (RTO) when worn beyond .50 inch. The FAA has evaluated this information and concurs with the commenter. Paragraphs D. and E. have been revised to delete –4R, –6R, and –10R brakes from the applicability.

Another commenter requested that paragraph F., which requires installation of extra-long piston sleeves, be made voluntary. This commenter indicated that this requirement is based purely on economic reasons and should be considered optional. The FAA does not concur. The FAA has determined that the extra-long piston sleeve installation provides assurance that the piston will not unseat from the sleeve, a condition which could result in loss of the landing gear brake's effectiveness.

Several commenters requested that the rule allow increased brake wear limits for reduced energy operations. Operators pointed out that they are being unduly restricted since their route structures do not require maximum energy operations. The FAA does not concur with granting general relief to this limitation, but will consider alternate means of compliance, under the provisions of paragraph H., on a case-by-case basis.

One commenter suggested there is no justification for the proposed additional reduction in allowable brake wear limits. This commenter contended that very little testing has been done on worn Model DC–10–30 brakes, and that testing is premature to the worn brake RTO criteria being developed by the Aerospace Industries of America (AIA) and the FAA. This commenter requested that the proposed rule be delayed until further, more conclusive data on the subject is obtained by AIA and approved by the FAA. The FAA does not concur. The FAA has determined that sufficient data and analysis currently exist to demonstrate that existing brake wear limits (and short piston sleeve brakes) are inadequate to provide enough brake mass to accomplish a maximum energy RTO stop. As explained in the preamble to the NPRM, this condition is considered unsafe since it could result in the loss of the landing gear brake effectiveness. The FAA has determined that revision of the brake wear limits to a more stringent dimension, as required by this AD action, will adequately address the unsafe condition. However, if new information becomes available at a later date that would justify a revision of this action, the FAA may consider further rulemaking at that time.

One commenter requested an increase of the compliance time from 30 to 90 days for paragraphs D. and E. The commenter stated that reduction of brake wear limits on spare brakes must be completed prior to modifying the aircraft, and its spare brakes are located around the world. This commenter indicated that its flight schedules will be disrupted if compliance is required within the proposed 30 days. The FAA does not concur. Previous inquiries to McDonnell Douglas Corporation and Loral have established that the brakes parts supply will support a 30-day compliance time. Further, the FAA considers that the magnitude of the potential problem dictates a 30-day compliance time.

One commenter requested the inspection requirement of paragraph D. be changed to specify a 60-day compliance time for aircraft with the –4R, –6R, or –10R brakes installed in at least 50 per cent of the brake positions. The FAA does not concur. Paragraph D. has been changed to apply to only –4, –6, and –10 brakes, and paragraph F. presently allows 180-day compliance time for installation of the –4R, –6R, or –10R brakes.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed with changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 160 Model DC–10–30, –30F, –40, and KC–10A (Military) series airplanes of the affected design in the worldwide fleet. It is estimated that 128 airplanes of U.S. registry will be affected by this AD, that it will take approximately 19 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. The cost of parts for this modification is approximately $6,400 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $916,480.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

PART 39—[AMENDED]

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

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding Amendment 39–6034 (53 FR 37542; September 27, 1988), AD 88–16–02R1, with the following new airworthiness directive:

McDonnell Douglas: Applies to Model DC–10–30, –30F, –40, and KC–10A (Military) series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent the loss of main landing gear brake effectiveness, accomplish the following:

A. Within 90 days after October 14, 1988 (effective date of Amendment 39–6034), replace all Aircraft Braking Systems (formerly Loral Systems, formerly Goodyear) brakes, part numbers 5000758–2, –3, and –5 with Aircraft Braking Systems brakes, part numbers 5000758–4, –6, and –10. The maximum wear limit is 0.75 inch.

B. Within 90 days after October 14, 1988 (effective date of Amendment 39–6034), inspect the brakes for wear. Any brake that is worn more than 0.75 inch must be replaced, prior to further flight, with one within this limit. These limits must be maintained until the requirements of paragraphs D. and E., or F. and G., below are accomplished.

C. Within 90 days after October 14, 1988 (effective date of Amendment 39–6034), incorporate the 0.75 inch brake wear limit into the FAA-approved maintenance inspection program.

D. Within 30 days after the effective date of this amendment, inspect all Aircraft Braking Systems (formerly Loral Systems, formerly Goodyear) brakes, part numbers 5000758–4, –6, and –10, for wear. Any brake worn more than 0.50 inch must be replaced, prior to further flight, with one within this limit.

E. Within 30 days after the effective date of this amendment, incorporate the 0.50 inch brake wear limit into the FAA-approved maintenance inspection program for all Aircraft Braking Systems (formerly Loral Systems, formerly Goodyear) brakes, part numbers 5000758–4, –6, and –10.

F. Within 180 days after the effective date of this amendment, modify and replace all Aircraft Braking Systems (formerly Loral Systems, formerly Goodyear) brakes, part numbers 5000758–4, –6, and –10, or any brake modified in accordance with AD 88–16–02R1, Amendment 39–6034, paragraphs C.2. or D.2., with new extra-long piston sleeves and dust seal boots, and reidentify them as –4R, –6R, and –10R brake assemblies, respectively, in accordance with Douglas Aircraft Company DC–10 Service Bulletin Number 32–218, dated March 17, 1989. For Aircraft Braking Systems (formerly Loral Systems, formerly Goodyear) brakes, part numbers 5000758–4R, –6R, and –10R, the maximum wear limit is 0.90 inch.

G. When the modifications required by paragraph F., above, are accomplished, incorporate the 0.90 inch brake wear limit in the FAA-approved maintenance inspection program.

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

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment, and then send it to the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Douglas Aircraft Company, P. O. Box 1771, Long Beach, California 90801, ATTN: Manager, Service Changes, Mail Code 73–30. These documents may be examined at the FAA, Northwest Moutain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

This amendment supesedes Amendment 39–6034, AD 88–16–02R1.

This amendment becomes effective January 31, 1990.

Issued in Seattle, Washington, on December 14, 1989.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–29963 Filed 12–26–89; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200 and 201

[Release Nos. 33–6849; 34–27532; 35–24995; 39–2233; IC–17262; IA–1212]

Equal Access to Justice Act Rules

AGENCY: Securities and Exchange Commission.

ACTION: Adoption of rules.

SUMMARY: The Securities and Exchange Commission is adopting revised procedural rules implementing the Equal Access to Justice Act ("EAJA"), 5 U.S.C. 504, as amended by Public Law No. 99–80 (1985). The Act, in relevant part, provides for the award of attorney fees and other expenses to certain parties who prevail against the federal government in adversary adjudications before agencies. In connection with its implementation of the EAJA, the Commission is also amending its delegation of authority to its Chief Administrative Law Judge.

EFFECTIVE DATE: December 27, 1989.[1]

FOR FURTHER INFORMATION CONTACT: David C. Mahaffey, Assistant General Counsel, or Kerry F. Hemond, Attorney, Office of the General Counsel, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549; (202) 272–2428.

SUPPLEMENTARY INFORMATION: On May 6, 1986, the Administrative Conference of the United States ("ACUS") issued model regulations for federal agency implementation of the EAJA, as amended in 1985 by Public Law No. 99–80 (1985). See 51 FR 16659 (May 6, 1986). The EAJA allows eligible litigants who prevail against the federal government in civil actions and administrative proceedings to recover attorney fees and other expenses, unless the government can show that its position was substantially justified or that special circumstances exist that would make an award unjust. Among other things, the 1985 amendments removed "sunset" provisions from the EAJA as originally enacted in 1980, broadened the class of litigants financially eligible to seek EAJA awards, and clarified several interpretive points.

On March 23, 1989, the Commission published for comment proposed revised rules implementing the EAJA, 17 CFR 201.31 *et seq.*, to conform with the 1985 statute. For the most part, the rules which the Commission now intends to adopt depart from the 1986 Model Rules only where the Commission's existing EAJA rules already differed from the 1981 Model Rules [2] or where the 1986 Model Rule revisions were not applicable to Commission proceedings or were otherwise unnecessary. In addition, the Commission proposed two new provisions not in the Model Rules: first, one that would delegate authority to the Chief Administrative Law Judge to assign EAJA applications to particular administrative law judges; and second, one that would add a sentence to the EAJA rule on settlements making it explicit that settlements may include a waiver of all EAJA fees. The Commission's release proposing the revised rules included a section-by-section analysis, explaining, among other matters, the principal differences between the 1986 Model Rules and the Commission's EAJA rules.

The comment period for the proposed revised rules closed on April 24, 1989. No comment letters were received. Accordingly, the Commission finds it appropriate and in the public interest to adopt the rules as proposed. Moreover, the Commission finds good cause under 5 U.S.C. 553(d)(3) for the action to become effective immediately upon publication in the **Federal Register**, since implementing the rule changes will affect the provisions of the EAJA, as amended. Accordingly, the foregoing action becomes effective immediately upon publication in the **Federal Register**.

List of Subjects

17 CFR Part 200

Administrative practice and procedure, Freedom of Information, Privacy, Securities.

17 CFR Part 201

Administrative practice and procedure, Investigations, Securities.

Text of Amendments

Chapter II, title 17 of the Code of Federal Regulations, is hereby amended as follows:

[1] Although the Commission provided a notice of proposed rule-making and sought public comment on the proposed rule revisions, 54 FR 11961 (March 23, 1989), it regards the proposed revisions as affecting rules of agency practice and therefore not required by 5 U.S.C. 553 to be proposed for public comment. For the same reason, it did not regard the proposed revised rules as subject to the Regulatory Flexibility Act, 5 U.S.C. 603, 604, although the Chairman of the Commission has executed a certification conforming to that Act.

[2] *See* Securities Act Release No. 6368 (Dec. 18, 1981), 47 FR 609 (1982).

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

1. The authority citation for part 200, subpart A, continues to read as follows:

Authority: Secs. 19, 23, 48 Stat. 85, 901, as amended; sec. 20, 49 Stat. 833; sec. 319, 53 Stat. 1173; secs. 38, 211, 54 Stat. 841, 855; sec. 308, 101 Stat. 1254 (15 U.S.C. 77s, 78d–1, 78d–2, 78w, 79t, 77sss, 80a–37, 80b–11), unless otherwise noted.

2. By amending § 200.30–10 by redesignating paragraph (b) as paragraph (c) and adding a new paragraph (b) as follows:

§ 200.30–10 Delegation of authority to Chief Administrative Law Judge.

* * * * *

(b) With respect to proceedings under the Equal Access to Justice Act, 5 U.S.C. 504, to make assignments as provided in § 201.37(b) of this chapter, respecting applications made pursuant to that Act.

* * * * *

PART 201—RULES OF PRACTICE

3. The authority citation for part 201, subpart B, continues to read as follows:

Authority: Sec. 19, Securities Act of 1933, 15 U.S.C. 77r; secs. 23 and 24, Securities Exchange Act of 1934, 15 U.S.C. 78w and 78x; sec. 20, Public Utility Holding Company Act of 1935, 15 U.S.C. 79t; sec. 319, Trust Indenture Act of 1939, 15 U.S.C. 77sss; sec. 38, Investment Company Act of 1940, 15 U.S.C. 80a–37; sec. 211, Investment Advisers Act of 1940, 15 U.S.C. 80b–11; and sec. 203(a)(1), Equal Access to Justice Act, 5 U.S.C. 504(c)(1).

4. By revising § 201.31 to read as follows:

§ 201.31 Purpose of these rules.

The Equal Access to Justice Act, 5 U.S.C. 504 (called "the Act" in this subpart B), provides for the award of attorney fees and other expenses to eligible individuals and entities who are parties to certain administrative proceedings (called "adversary adjudications") before the Commission. An eligible party may receive an award when it prevails over the Commission, unless the Commission's position was substantially justified or special circumstances make an award unjust. The rules in this subpart describe the parties eligible for awards and the proceedings that are covered. They also explain how to apply for awards, and the procedures and standards that the Commission will use in ruling on those applications.

5. By revising § 201.32 to read as follows:

§ 201.32 When the Act applies.

The Act applies to adversary adjudications described in § 201.33 pending or commenced before the Commission on or after August 5, 1985. It also applies to any adversary adjudication commenced on or after October 1, 1984, and finally disposed of before August 5, 1985, provided that an application for fees and expenses, as described in these rules, has been filed with the Commission within 30 days after August 5, 1985. Proceedings which have been substantially concluded are not deemed pending under these rules although officially pending for purposes such as concluding remedial actions found in Commission orders or private undertakings.

6. By amending § 201.33 by redesignating paragraph (b) as paragraph (c) and adding a new paragraph (b) as follows:

§ 201.33 Proceedings covered.

* * * * *

(b) The fact that the Commission has not identified a type of proceeding as an adversary adjudication shall not preclude the filing of an application by a party who believes the proceeding is covered by the Act; whether the proceeding is covered will then be an issue for resolution in proceedings on the application.

* * * * *

7. By amending § 201.34 by revising paragraph (b) to read as follows:

§ 201.34 Eligibility of applicants.

* * * * *

(b) The types of eligible applicants are as follows:

(1) An individual with a net worth of not more than $2 million;

(2) The sole owner of an unincorporated business who has a net worth of not more than $7 million, including both personal and business interests, and not more than 500 employees;

(3) A charitable or other tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) with not more than 500 employees;

(4) A cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)) with more than 500 employees; and

(5) Any other partnership, corporation, association, unit of local government, or public or private organization with a new worth of not more than $7 million and not more than 500 employees.

* * * * *

8. By amending § 201.35 by revising paragraph (a) to read as follows:

§ 201.35 Standards for awards.

(a) A prevailing applicant may receive an award for fees and expenses incurred in connection with a proceeding or in a significant and discrete substantive portion of the proceeding, unless the position of the Office or Division over which the applicant has prevailed was substantially justified. The position of the Office or Division includes, in addition to the position taken by the Office or Division in the adversary adjudication, the action or failure to act by the Office or Division upon which the adversary adjudication is based. The burden of proof that an award should not be made to an eligible prevailing applicant is on counsel for an Office or Division of the Commission, which must show that its position was reasonable in law and fact.

* * * * *

9. By amending § 201.36 by revising paragraph (b) to read as follows:

§ 201.36 Allowable fees and expenses.

* * * * *

(b) No award of the fee of an attorney or agent under these rules may exceed $75.00 per hour. No award to compensate an expert witness may exceed the reasonable rate at which the Commission pays witnesses with similar expertise. However, an award may also include the reasonable expenses of the attorney, agent or witness as a separate item, if the attorney, agent or witness ordinarily charges clients separately for such expenses.

* * * * *

10. By revising § 201.37 to read as follows:

§ 201.37 Delegations of authority.

(a) The Commission may by order delegate authority to take final action on matters pertaining to the Equal Access to Justice Act in particular cases.

(b) Unless the Commission shall order otherwise, applications for awards of fees and expenses made pursuant to this subject shall be assigned by the Chief Administrative Law Judge to an administrative law judge for determination.

11. By amending § 201.41 by revising paragraph (b) to read as follows:

§ 201.41 Contents of application.

* * * * *

(b) The application shall also include a statement that the applicant's net worth does not exceed $2 million (if an individual) or $7 million (for all other applicants, including their affiliates). However, an applicant may omit this statement if:

(1) It attaches a copy of a ruling by the Internal Revenue Service that it qualifies as an organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) or, in the case of a tax-exempt organization not required to obtain a ruling from the Internal Revenue Service on its exempt status, a statement that describes the basis for the applicant's belief that it qualifies under such section; or

(2) It states that it is a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)).

* * * * *

12. By amending § 201.44 by removing paragraph (c), redesignating paragraph (b) as paragraph (c), and adding a new paragraph (b) to read as follows:

§ 201.44 When an application may be filed.

* * * * *

(b) For purposes of this rule, final disposition means the date on which a decision or order disposing of the merits of the proceeding or any other complete resolution of the proceeding, such as a settlement or voluntary dismissal, becomes final and unappealable, both within the Commission and to the courts.

* * * * *

13. By revising § 201.54 to read as follows:

§ 201.54 Settlement.

The applicant and counsel for the Office or Division of the Commission may agree on a proposed settlement of the award before final action on the application, either in connection with a settlement of the underlying proceeding or after the underlying proceeding has been concluded, in accordance with the Commission's standard settlement procedure. See 17 CFR 201.8. If a prevailing party and counsel for the Office or Division of the Commission agree on a proposed settlement of an award before an application has been filed, the application shall be filed with the proposed settlement. If a proposed settlement provides that each side shall bear its own expenses, and the settlement is accepted, no application may be filed.

14. By amending § 201.55 by revising paragraph (a) to read as follows:

§ 201.55 Further proceedings.

(a) Ordinarily, the determination of an award will be made on the basis of the written record. However, on request of either the applicant or counsel for the Office or Division of the Commission, or on his or her own initiative, the administrative law judge may order further proceedings, such as an informal conference, oral argument, additional written submissions or, as to issues other than substantial justification (such as the applicant's eligibility or substantiation of fees and expenses) an evidentiary hearing. The administrative law judge may order all proceedings that are otherwise available under Rule 8(d) of the Commission's Rules of Practice. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application, and shall be conducted as promptly as possible. Whether or not the Commission's position was substantially justified shall be determined on the basis of the administrative record, as a whole, which is made in the adversary adjudication for which fees and other expenses are sought.

* * * * *

15. By revising § 201.59 to read as follows:

§ 201.59 Payment of award.

An applicant seeking payment of an award shall submit to the Comptroller of the Commission a copy of the Commission's final decision granting the award, accompanied by a sworn statement that the applicant will not seek review of the decision in the United States courts. The Commission will pay the amount awarded to the applicant as authorized by law, unless judicial review of the award has been sought by the applicant.

By the Commission.
Dated: December 12, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-29937 Filed 12-26-89; 8:45 am]
BILLING CODE 8010-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs Not Subject To Certification; Polysulfated Glycosaminoglycan

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Luitpold Pharmaceuticals, Inc. The NADA provides for the intramuscular use of polysulfated glycosaminoglycan in horses for the treatment of noninfectious degenerative and/or traumatic joint dysfunction and associated lameness of the carpal joint.

EFFECTIVE DATE: December 27, 1989.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Center for Veterinary Medicine (HFV-114), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3420.

SUPPLEMENTARY INFORMATION: Luitpold Pharmaceuticals, Inc., Animal Health Division, Shirley, NY 11967, has submitted NADA 140-901 for Adequan® i.m. (polysulfated glycosaminoglycan). The NADA provides for the intramuscular use of polysulfated glycosaminoglycan in horses for the treatment of noninfectious degenerative and/or traumatic joint dysfunction and associated lameness of carpal joint. The application is approved and the regulations are amended by revising 21 CFR 522.1850 to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. Section 522.1850 is revised to read as follows:

§ 522.1850 Polysulfated glycosaminoglycan.

(a) *Specifications.* Each 1-milliliter ampule of sterile aqueous solution contains 250 milligrams of polysulfated glycosaminoglycan; each 5-milliliter ampule or vial contains 500 milligrams.

(b) *Sponsor.* See No. 010797 in § 510.600(c) of this chapter.

(c) *Conditions of use—horses.* (1) *Indications for use.* Polysulfated glycosaminoglycan is for the treatment of noninfectious degenerative and/or traumatic joint dysfunction and associated lameness of the carpal joint in horses.

(2) *Amount* (i) *Intra-articular use:* 250 milligrams once a week for 5 weeks. The joint area must be shaved, cleaned, and sterilized as in a surgical procedure prior to injection. If the joint reacts with excessive inflammation, after intra-articular treatment, cease therapy.

(ii) *Intramuscular use:* 500 milligrams every 4 days for 28 days. Injection site must be thoroughly cleansed prior to injection.

(3) *Limitations.* Not for use in horses intended for food. Safe use in breeding animals has not been established. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: December 19, 1989.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 89-30015 Filed 12-26-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 55 and 178

[T.D. ATF-290]

Commerce in Explosives and Commerce in Firearms and Ammunition (89-200F)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Final rule (Treasury decision).

SUMMARY: This final rule amends regulations in 27 CFR parts 55 and 178 to change the authority to issue Federal firearms and explosives licenses and permits from the regional director (compliance) to the Chief, Firearms and Explosives Licensing Center to take advantage of a more efficient technology in processing firearms and explosives materials industry applications. Authority to deny and revoke such licenses and permits will remain with the regional director (compliance).

EFFECTIVE DATE: December 27, 1989.

FOR FURTHER INFORMATION CONTACT: J. Barry Fields, ATF Specialist, Firearms and Explosives Operations Branch, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue NW., Washington, DC 20226; (202) 789-3026.

SUPPLEMENTARY INFORMATION: Since passage of the Gun Control Act of 1968 and the Organized Crime Control Act of 1970, licenses and permits have been issued from Bureau of Alcohol, Tobacco and Firearms (ATF) regional offices. ATF now believes it will be more efficient and less costly to issue licenses and permits from one location. The changes made by this Treasury decision will administratively consolidate this function into one office, the Chief, Firearms and Explosives Licensing Center, thereby allowing ATF to take advantage of technology. The regional offices will continue to provide assistance to the affected public in all matters. The change being made does not affect the authority of the regional director (compliance) to deny or revoke licenses or permits.

Executive Order 12291

It has been determined that this document is not a major regulation as defined in E.O. 12291 and a regulatory impact analysis is not required because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, and it will not have 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 foreign markets.

Administrative Procedures Act

Because this Treasury decision relates to agency management, is procedural in nature and, among other minor changes, merely transfers the authority to issue firearms and explosives licenses and permits from regional directors (compliance) to the Chief, Firearms and Explosives Licensing Center, notice and public procedure are inapplicable pursuant to (a)(2), (6)(A) and (6)(B), 5 U.S.C. and a delayed effective date is not required pursuant to 5 U.S.C. 553 (a)(2) and (d)(3).

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this final rule, the provisions of the Regulatory Flexibility Act do not apply.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Public Law 96-511, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply because no additional requirement to collect information is proposed. There is no collection of information burden hours associated with this final rule.

Drafting Information

The principal author of this Treasury decision is J. Barry Fields, ATF Specialist, Firearms and Explosives Operations Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Part 55

Administrative practice and procedure, Authority delegation, Customs duties and inspection, Explosives, hazardous materials, Imports, Penalties, Reporting and recordkeeping requirements, Safety, Security measures, Seizures and forfeitures, Transportation, and Warehouses.

27 CFR Part 178

Administrative practice and procedure, Arms and munitions, Authority delegations, Customs duties and inspection, Exports, Imports, Military personnel, Penalties, Reporting requirements, Research, Seizures and forfeitures, and Transportation.

Authority and Issuance

27 CFR part 55—Commerce in Explosives and 27 CFR part 178—Commerce in Firearms and Ammunition, are amended as follows:

PART 55—[AMENDED]

Par. 1. The authority citation for part 55 continues to read as follows:

Authority: 18 U.S.C. 847.

§ 55.11 [Amended]

Par. 2. Section 55.11 is amended by adding the following definition:

* * * * *

Business premises. * * *

Chief, Firearms and Explosives Licensing Center. The AFT official

responsible for the issuance and renewal of licenses and permits under this part.

Crime punishable by imprisonment for a term * * *

Par. 3. Section 55.23 is revised to read as follows:

§ 55.23 List of explosive materials.

The Director shall compile a list of explosive materials, which shall be published and revised at least annually in the **Federal Register**. The "List of Explosive Materials" (AFT Publication 5400.8) is available at no cost upon request from the ATF Distribution Center, 7943 Angus Court, Springfield, Virginia 22153.

Par. 4. Section 55.54 is amended by revising paragraphs (a) and (b) to read as follows:

§ 55.54 Change of address.

* * * * *

(a) Give notification of the new location of the business or operations to the Chief, Firearms and Explosives Licensing Center at least 10 days before the move; and

(b) Submit the license or permit to the Chief, Firearms and Explosives Licensing Center. The Chief, Firearms and Explosives Licensing Center will issue an amended license or permit, which will contain the new address (and new license or permit number, if any).

§§ 55.46, 55.49, 55.50, 55.55, 55.57, 55.60 [Amended]

Par. 5. The following sections are amended by removing the words "regional director (compliance)" and by replacing them with the words "Chief, Firearms and Explosives Licensing Center": 55.46(a); 55.49(a); 55.49(b); 55.50(a); 55.50(b); 55.55; 55.57; and, 55.60.

Par. 6. Section 55.49(c) is amended by revising the first sentence to read as follows:

§ 55.49 Issuance of license or permit.

* * * * *

(c) The Chief, Firearms and Explosives Licensing Center shall approve or the regional director (compliance) shall deny any application for a license or permit within the 45-day period beginning on the date a properly executed application was received. * * *

§ 55.56 [Amended]

Par. 7. Section 55.56 is amended by removing the words "regional director (compliance) for the region in which the licensee or permittee conducts his business or operations," and by replacing them with "Chief, Firearms and Explosives Licensing Center."

§ 55.59 [Amended]

Par. 8. Section 55.59(b) is amended by removing the words "regional director (compliance) for the region in which the business or operations are conducted," and by replacing them with "Chief, Firearms and Explosives Licensing Center."

§ 55.61 [Amended]

Par. 9. Section 55.61 is amended by removing the words "regional director (compliance) for the region in which his business or operation was located" and by replacing them with "Chief, Firearms and Explosives Licensing Center."

§ 55.76 [Amended]

Par. 10. Section 55.76(b) is amended as follows:

(1) The first sentence is amended by removing the words "he shall approve the application," and by replacing them with "the regional director (compliance) shall cause the application to be approved,"; and (2) by removing the words "he shall issue the license or permit" in the third and last sentences and by replacing them with "the regional director (compliance) shall cause the license or permit to be issued."

55.76 [Amended]

Par. 11. Section 55.76(b) is amended by removing the word "issue" in paragraphs (b)(1) and (b)(2) and by replacing it with the words "cause to be issued."

§ 55.104 [Amended]

Par. 12. Section 55.104(c) is amended as follows: (1) The phrase in the first sentence which reads "regional director (compliance) for the region in which the license or permit was issued" is replaced with "Chief, Firearms and Explosives Licensing Center"; and (2) "regional director (compliance)" in the third sentence is replaced with "Chief, Firearms and Explosives Licensing Center."

Par. 13. Section 55.128 is revised to read as follows:

§ 55.128 Discontinuance of business.

Where an explosive materials business or operations is discontinued and succeeded by a new licensee, the records prescribed by this subpart shall appropriately reflect such facts and shall be delivered to the successor. Where discontinuance of the business or operations is absolute, the records required by this subpart shall be delivered within 30 days following the business or operations discontinuance to any ATF office located in the region in which the business was located, or to the ATF Firearms Out-of-Business Records Center, 3361F 75th Avenue, Landover, Maryland 20785. Where State law or local ordinance requires the delivery of records to other responsible authority, the Chief, Firearms and Explosives Licensing Center may arrange for the delivery of the records required by this subpart to such authority. (See also, § 55.61.)

PART 178—[AMENDED]

Par. 14. The authority citation for part 178 continues to read as follows:

Authority: 18 U.S.C. 926.

§ 178.11 [Amended]

Par. 15. Section 178.11 is amended by adding the following definition:

* * * * *

Business premises. * * *

Chief, Firearms and Explosives Licensing Center. The ATF official responsible for the issuance and renewal of licenses under this part.

Collector. * * *

§§ 178.41, 178.45, 178.47, 178.48, 178.54, 178.60 [Amended]

Par. 16. The following sections are amended by replacing "regional director (compliance)" with "Chief, Firearms and Explosives Licensing Center": 178.41(b); 178.41(c); 178.45; 178.47(a); 178.47(b); 178.48(a); 178.48(b); 178.54; and 178.60.

§ 178.47 [Amended]

Par. 17. Section 178.47(c) is amended by removing the following language: "The regional director (compliance) shall approve or deny an application for license within the 45-day period beginning on the date the properly executed application was received" and by replacing it with "The Chief, Firearms and Explosives Licensing Center shall approve or the regional director (compliance) shall deny an application for a license within the 45-day period beginning on the date the properly executed application was received".

Par. 18. Section 178.47(d) is revised to read as follows:

§ 178.47 Issuance of license.

* * * * *

(d) When the regional director (compliance) or the Chief, Firearms and Explosives Licensing Center fails to act on an application for a license within the 45-day period prescribed by paragraph (c) of this section, the applicant may file an action under section 1361 of title 28, United States Code, to compel ATF to act upon the application.

Par. 19. Section 178.52 is revised to read as follows:

§ 178.52 Change of address.

Licensees may during the term of their current license remove their business or activity to a new location at which they intend regularly to carry on such business or activity, without procuring a new license. However, in every case, notification of the new location of the business or activity must be given not less than 10 days prior to such removal to the Chief, Firearms and Explosives Licensing Center. In each instance, the license must be submitted for endorsement to the Chief, Firearms and Explosives Licensing Center. After endorsement of the license to show the new address and the new license number, if any, the license will be returned to the licensee.

§ 178.53 [Amended]

Par. 20. Section 178.53 is amended by removing the words "Regional director (compliance) for the region in which the licensee conducts his business" and by replacing them with "Chief, Firearms and Explosives Licensing Center."

§ 178.56 [Amended]

Par. 21. Section 178.56(b) is amended be removing the words "Regional director (compliance) for the region in which the business is conducted" and by replacing them with "Chief, Firearms and Explosives Licensing Center."

§ 178.57 [Amended]

Par. 22. Section 178.57 is amended by removing the words "Regional director (compliance) for the region in which his business was located" and by replacing them with "Chief, Firearms and Explosives Licensing Center."

§ 178.95 [Amended]

Par. 23. Section 178.95 is amended by removing the words "regional director (compliance) for the region in which the premises is located" and by replacing them with "Chief, Firearms and Explosives Licensing Center."

Par. 24. Section 178.127 is revised to read as follows:

§ 178.127 Discontinuance of Business.

Where a licensed business is discontinued and succeeded by a new licensee, the records prescribed by this subpart shall appropriately reflect such facts and shall be delivered to the successor. Where discontinuance of the business is absolute, the records shall be delivered within 30 days following the business discontinuance to the ATF Out-of-Business Records Center, 3361F 75th Avenue, Landover, Maryland 20785, or any ATF office in the region in which the business was located; *Provided, however,* Where State law or local ordinance requires the delivery of records to other responsible authority, the Chief, Firearms and Explosives Licensing Center may arrange for the delivery of the records required by this subpart to such authority.

Signed: November 17, 1989.

Stephen E. Higgins,

Director.

Approved: December 7, 1989.

John P. Simpson,

Acting Assistant Secretary (Enforcement).

[FR Doc. 89-29819 Filed 12-26-89; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

[Docket No. S-204]

RIN 1218-AA36

Occupational Safety and Health Standards—Excavations

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Final rule; delay of effective date.

SUMMARY: OSHA's final rule for Excavations, which was published in the **Federal Register** (54 FR 45894) on October 31, 1989, was originally scheduled to become effective on January 2, 1990, 60 days after publication. For reasons set forth below, OSHA is hereby further delaying the effective date of that final rule to provide additional time for employers to come into compliance with the final rule.

DATES: The final rule will become effective on March 5, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, Occupational Safety and Health Administration, room N3649, U.S. Department of Labor, Frances Perkins Building, Washington, DC 20210, (202) 523-8148).

SUPPLEMENTARY INFORMATION: On October 31, 1989, OSHA published in the **Federal Register** (54 FR 45894) its final rule for Excavations, 29 CFR part 1926, subpart P. The final rule was scheduled to become effective on January 2, 1990, 60 days after publication. Since the final rule was published, OSHA received a request from Mr. Jay Matricciani, President of the National Utility Contractors Association, for a delay of the effective date of the standard in order to allow time for the development and delivery of training seminars and publications intended to assist employers in complying with the new standard and to assure that competent persons are properly trained. The request was presented at the December 13, 1989, meeting of the Advisory Committee on Construction Safety and Health (ACCSH) and that Committee unanimously recommended that the delay be granted.

After careful consideration of the request and the reasons therefor, OSHA has determined that there is good cause to delay the effective date beyond the original date of January 2, 1990. Accordingly, the requirements of the revised excavation standard, 29 CFR part 1926, subpart P, will become effective March 5, 1990. The existing standard will continue in effect during the delayed implementation period for the revised standard.

This document was prepared under the direction of Gerard F. Scannell, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. It is issued under the authority of sections 4, 6(b), and 8(c) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), Secretary of Labor's Order No. 9-83 (48 FR 35736), and 29 CFR part 1911.

Signed at Washington, DC this 21st day of December 1989.

G.F. Scannell,

Assistant Secretary of Labor.

[FR Doc. 89-29974 Filed 12-26-89; 8:45 am]

BILLING CODE 4510-26-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD8-89-12]

Drawbridge Operation Regulations; Teche Bayou, LA

AGENCY: U.S. Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of St. Mary Parish and the Louisiana Department of Transportation and Development (LDOTD), the Coast Guard is changing the regulations governing the operations of two parish owned and two state owned drawbridges over Teche Bayou, Louisiana. The bridges with new regulations are:

(1) The swing span bridge, mile 27.0, at Baldwin, St. Mary Parish, Louisiana (St. Mary Parish owned).

(2) The swing span bridge, mile 32.5, on LA 324, at Charenton, St. Mary Parish, Louisiana.

(3) The swing span bridge, mile 37.0, on LA 670, at Adeline, St. Mary Parish, Louisiana.

(4) The swing span bridge, mile 38.9, at Sorrel, St. Mary Parish, Louisiana (St. Mary Parish owned).

The changes for these bridges require that the draws of all four bridges open on at least four hours advance notice at all times. These changes are being made because of infrequent requests to open the draws of the bridges. This action will relieve the bridge owners of the burden of having bridgetenders constantly on duty between the hours of 10 a.m. and 6 p.m. for openings of the draws, while still providing for the reasonable needs of navigation.

EFFECTIVE DATE: This regulation becomes effective on February 12, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. John Wachter, Bridge Administration Branch, Eighth Coast Guard District, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: On 18 September 1989, the Coast Guard published a proposed rule (54 FR 38389) concerning this amendment. The Commander, Eighth Coast Guard District, also published the proposal as a Public Notice dated 29 September 1989. In each notice interested parties were given until 2 November 1989 to submit comments.

Drafting information: The drafters of this regulation are Mr. John Wachter, project officer, and Commander J. A. Unzicker, project attorney.

Discussion of comments: Two letters were received in response to Public Notice No. CGD8–12–89. The Federal Emergency Management Agency and the National Marine Fisheries Service offered no objections to the proposed change.

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

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

The economic impact of these regulations is expected to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is that the average number of vessels passing these bridges between the hours of 10 a.m. and 6 p.m. as evidenced by the bridge openings from January through December 1988 is well below one opening per day. With some planning by vessel operators that use the waterway, openings on a regulated basis will cause only minimal delay, or no delay, for boaters. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have significant economic impact on a substantial number of small entities.

The advance notice for opening the draws of the St. Mary Parish owned bridges may be given by placing a collect call anytime to St. Mary Parish at Franklin, Louisiana, telephone (318) 828–1960. For an opening of the state owned bridges, call collect at any time to the LDOTD District Office in Lafayette, Louisiana, telephone (318) 233–7404. These collect calls may be made by radiotelephone through a public coast station. The bridge owners recognize that there may be an unusual occasion to open the bridges on less than four hours notice for an emergency, or to operate the bridges on demand for an isolated but temporary surge in waterway traffic, and have committed to doing so if such an event should occur.

List of Subjects in 33 CFR Part 117

Bridges.

Regulation

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

2. Section 117.501 is amended by removing paragraph (a); by redesignating existing paragraphs (b) through (e) as paragraphs (a) through (d); by redesignating newly redesignated paragraphs (a)(6) through (a)(19) as paragraphs (a)(10) through (a)(23); by adding new paragraphs (a)(6) through (a)(9); and by amending newly redesignated paragraph (d) by removing "paragraphs (a) and (b)" and adding "paragraph (a) of this section" to read as follows:

§ 117.501 Teche Bayou.

(a) * * *

(6) St. Mary Parish bridge, mile 27.0 at Baldwin.

(7) S324 bridge, mile 32.5 at Charenton.

(8) S670 bridge, mile 37.0 at Adeline.

(9) St. Mary Parish bridge, mile 38.9 at Sorrel.

* * * * *

Dated: 1 December 1989.

W.P. Merlin,

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

[FR Doc. 89–29821 Filed 12–26–89; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AD47

Providing Emergency Hospital Care to Community Nursing Home Patients

AGENCY: Department of Veterans Affairs.

ACTION: Final regulations.

SUMMARY: This regulation provides the authority for the Department of Veterans Affairs (VA) to authorize non-VA hospital care to obtain diagnostic services in connection with observation and examination (O&E) of a person to determine eligibility for VA benefits or services and to provide for the authorization for emergent non-VA hospital care for nonservice-connected veterans receiving contract nursing home care at VA expense. This action will permit VA to obtain O&E at non-VA facilities and to authorize non-VA treatment for nonservice-connected veterans in contract nursing homes.

EFFECTIVE DATE: January 26, 1989.

FOR FURTHER INFORMATION CONTACT: Paul C. Tryhus, Chief, Policies and Precedures Division (136F), Medical Administration Service, Veterans Health Services and Research Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–2504.

SUPPLEMENTARY INFORMATION: The Veterans' Benefits and Services Act of 1988, Public Law 100–322, expands the authority for VA to authorize contract hospitalization or medical services for the treatment of medical emergencies which pose a serious threat to the life or health of a nonservice-connected veteran receiving contract nursing home care under VA auspices, and expands the authority for providing non-VA hospital care for certain persons. Clinic directors, or their designees, may authorize necessary services at non-VA facilities (on an inpatient or outpatient basis) in order to complete requests from VA Regional Offices for O&E of a

person to determine eligibility for VA benefits or services.

VA finds that for good cause, advance publication for public notice and comment is unnecessary and not required by law. These provision are promulgated by Congress, as contained in the Veterans' Benefits and Services Act of 1988, Public Law 100–322. Accordingly, the changes are now published as final regulations.

These final regulations are considered nonmajor under the criteria of Executive Order 12291, Federal Regulation. They will not have an annual effect on the economy of $100 million or more; will result in no significant increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. They will have no 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.

These final regulations will impose no regulatory, paperwork or administrative burdens on small entities since the change concerns the expansion of contract care authority to provide emergent non-VA hospital care to community nursing home patients and to authorize non-VA hospital care to obtain diagnostic services in connection with O&E of a person to determine eligibility for VA benefits or services.

The Catalog of Federal Domestic Assistance Numbers are 64.009 and 64.001.

List of Subjects in 38 CFR Part 17

Alcoholism, Claims, Dental health, Drug abuse, Foreign relations, Government contracts, Grants programs—health, Health care, Health facilities, Health professions, Medical devices, Medical research, Mental health programs, Nursing home care, Philippines, Veterans.

Approved:

Edward J. Derwinski,

Secretary.

PART 17—[AMENDED]

In 38 Part 17, Medical, § 17.50b is amended by adding paragraphs (a)(10) and (a)(11) to read as follows:

§ 17.50b Use of public or private hospitals for veterans.

(a) * * *

(10) For any disability of a veteran receiving VA contract nursing home care. The veteran is receiving contract nursing home care and requires emergency treatment in non-VA facilities.

(Authority: 38 U.S.C. 603(a))

(11) For completion of evaluation for observation and examination (O&E) purposes, clinic directors or their designees will authorize necessary diagnostidc services at non-VA facilities (on an inpatient or outpatient basis) in order to complete requests from VA Regional Offices for O&E of a person to determine eligibility for VA benefits or services.

* * * * *

[FR Doc. 89–29840 Filed 12–26–89; 8:45 am]
BILLING CODE 6320–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 116, 117, 302, and 355

[SW H–FRL–3700–2]

Reportable Quantity Adjustments; Correction

AGENCY: U.S. Environmental Protection Agency [EPA].

ACTION: Final rule; technical corrections.

SUMMARY: On August 14, 1989, the U.S. Environmental Protection Agency (EPA) published a final rule (54 FR 33426) to adjust reportable quantities (RQs) for certain substances designated as hazardous under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. That final rule included a complete table of CERCLA hazardous substances and RQs, including certain technical corrections. EPA published the corrected table in the August 14, 1989 final rule to make these corrections available to the regulated community and other members of the public as soon as possible. The primary purpose of this notice is to identify the technical corrections that were made in the August 14, 1989 final rule and to explain the reasons for the corrections. This notice also makes further corrections to the table published in the August 14, 1989 final rule; makes conforming changes to RQs published in 40 CFR Part 355; and corrects a statement concerning notification of releases of polychlorinated biphenyls (PCBs) under the Toxic Substances Control Act (TSCA) that was made in the preamble to the August 14, 1989 final rule.

EFFECTIVE DATE: December 27, 1989.

ADDRESSES: The toll-free telephone number of the National Response Center is 1–800/424–8802; in the Washington, DC metropolitan area, the number is 1–202/267–2675.

Docket. Copies of materials relevant to this notice are contained in Room M2427 at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The docket is available for inspection between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Federal holidays. To review docket materials, you may make an appointment by calling 1–202/382–3046. The public may copy a maximum of 50 pages from any regulatory docket at no cost. Additional copies cost $.20 per page.

FOR FURTHER INFORMATION CONTACT: Ivette O. Vega, Response Standards and Criteria Branch, Emergency Response Division (OS–210), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, or the RCRA/Superfund Hotline at 1–800/424–9346; in the Washington, DC metropolitan area, 1–202/382–3000.

SUPPLEMENTARY INFORMATION:

Background. Under CERCLA sections 103(a) and (b), persons, in charge of vessels or facilities from which hazardous substances have been released in quantities equal to or greater than their RQs are required to immediately notify the National Response Center of the release. In addition, section 304 of the Superfund Amendments and Reauthorization Act of 1986 (SARA) Title III requires that releases of hazardous substances in quantities greater than or equal to their RQs (or one pound if a reporting trigger is not established by regulation) be reported to State and local authorities.

Section 102(b) of CERCLA sets a statutory RQ of one pound for CERCLA hazardous substances, except those substances for which different RQs have been established pursuant to section 311(b)(4) of the Clean Water Act (CWA). Section 102(a) of CERCLA authorizes the U.S. Environmental Protection Agency (EPA) to adjust all of these RQs by regulation. EPA has adjusted RQs for most CERCLA hazardous substances in final rules published on April 4, 1985 (50 FR 13456), September 29, 1986 (51 FR 34534), May 24, 1989 (54 FR 22524), and August 14, 1989 (54 FR 33418 and 54 FR 33426).

Explanation of Corrections Already Published. In the final rule published on August 14, 1989 (54 FR 33426), EPA promulgated RQ adjustments for 258 substances designated as hazardous under CERCLA, changed the name of the hazardous substance "Kelthane" to "dicofol" in the list of CERCLA hazardous substances, and removed

ammonium thiosulfate from the CERCLA list. These changes, which are explained in the preamble to the August 14, 1989 final rule, become effective on October 13, 1989. The changes made amendments to Table 302.4 and Appendix A in 40 CFR part 302, as well as Table 117.3 in 40 CFR part 117. Table 302.4 lists each CERCLA hazardous substance along with its statutory RQ, its final adjusted RQ (if any), its regulatory synonyms, and its Chemical Abstracts Service Registry Number (CASRN). Appendix A to Table 302.4 lists individual CERCLA hazardous substances, sequentially according to their CASRNs. Table 117.3 lists substances originally designated as hazardous under section 311(b)(2)(A) of the CWA (all of which also are CERCLA hazardous substances).

In the same August 14, 1989 final rule, EPA made certain technical revisions of Table 302.4, its Appendix A, and Table 117.3 that also became effective on October 13, 1989. Most of these technical revisions have been made to reflect recent changes to the hazardous waste listing regulations promulgated at 40 CFR part 261 under the Resource Conservation and Recovery Act (RCRA) so as to maintain the consistency of the RQ regulations with the RCRA regulations. Consistency between the lists of RCRA hazardous wastes and the CERCLA RQ regulations is important because, under CERCLA section 101(14)(C), listed RCRA hazardous wastes are also CERCLA hazardous substances. The RCRA regulations were themselves revised on April 22, 1988 (53 FR 13382) to reflect the Chemical Abstracts Service (CAS) Ninth Collective Index nomenclature as used in the CAS Registry Handbook. The other RCRA regulatory changes requiring corresponding changes to the RQ regulations are revisions on January 4, 1985 (50 FR 614) and December 31, 1985 (50 FR 53315) to make desired changes in the scope of EPA's RCRA program, and on August 3, 1987 to correct an error in the description of waste stream KO62 (52 FR 28967).

The remaining technical revisions promulgated in the August 14, 1989 final rule—and identified in this notice—were made to achieve consistency of the RQ regulations with related regulations promulgated under SARA Title III (40 CFR part 355), and the CWA (40 CFR part 116).

The technical revisions published in the August 14, 1989 final rule may be grouped into four categories: (1) Revisions to the names of individual hazardous substances; (2) revisions to the descriptions of hazardous waste streams; (3) deletions of regulatory synonyms; and (4) additions of CASRNs. The specific revisions made in each of these categories are described below and are listed in Tables 1 through 4 at the end of this preamble.

Technical revisions in the first category—those that have been made to the names of individual CERCLA hazardous substances (as opposed to hazardous waste streams) to be consistent with the names used in other regulations—are described in Table 1. These revisions affect the "Hazardous Substance" and "Regulatory Synonyms" columns of Table 302.4, the "Hazardous Substance" column of Appendix A, and the "Material"column of Table 117.3. Some of the "new names" listed in Table 1 replace the "previous names" listed; other new names are additions to the previous names (i.e., new regulatory synonyms). For example, the new name, "acetic acid, lead (2+) salt" replaces the previous name, "acetic acid, lead salt"; however, the new name, "arsenic acid H3AsO4" is an addition to the previous name, "arsenic acid" (i.e., "arsenic acid H3AsO4" is new regulatory synonym for "arsenic acid."

Revisions to the descriptions of certain hazardous waste streams in the "Hazardous Substance" column of Table 302.4 have been made based on the January 4, 1985, December 31, 1985, and August 3, 1987 RCRA rules mentioned above. The "previous description" and "new description" for each of these waste streams are shown in Table 2.

Certain regulatory synonyms for CERCLA hazardous substances have been deleted from the "Regulatory Synonyms" and "Hazardous Substance" columns of Table 302.4 and the "Hazardous Substance" column of Appendix A to correspond with changes to the RCRA regulations made by the April 22, 1988 rule described above. The "synonym(s) deleted" for each "chemical name" are indicated in Table 3.

Lastly, CASRNs for certain CERCLA hazardous substances have been added to the "CASRN" columns of Table 302.4 and its Appendix A to achieve and maintain consistency with the RCRA, SARA Title III, and CWA regulations described above. The added CASRNs and the hazardous substances to which they apply are shown (along with any existing CASRNs for these substances) in Table 4.

Additional Technical Revisions to Table 302.4. A revision to the description of waste stream F011 (based on the December 31, 1985 RCRA rule mentioned above) was inadvertently omitted from Table 302.4 as published on August 14, 1989. In addition, a revision to the description of waste stream F003 was inadvertently included in Table 302.4 of the August 14, 1989 final rule. The descriptions of waste streams F011 and F003 are corrected by this notice.

Conforming Revisions to 40 CFR Part 355. RQ revisions were made to Table 302.4, Appendix A, and Table 117.3 in the August 14, 1989 RQ adjustment final rule mentioned above, and in a separate RQ adjustment final rule published on the same date (54 FR 33418). However, conforming revisions to the RQs listed in appendices A and B of 40 CFR part 355 also must be made. These appendices, which list extremely hazardous substances (EHSs) and their threshold planning quantities (TPQs) under SARA Title III, also show RQs for EHSs. Twenty-four conforming changes to Appendices A and B are required by the RQ adjustments published on August 14, 1989. In addition, five erroneous RQs in appendices A and B must be corrected. These twenty-nine changes to 40 CFR part 355 are made by this notice, and are presented in Table 5.

Correction of Statement Concerning Notification of PCB Releases Under TSCA. In the preamble to the August 14, 1989 RQ adjustment final rule mentioned above, EPA stated that, "Under TSCA, spills of more than 10 pounds of *PCB-containing material* must be reported to the appropriate EPA Regional Administrator (40 CFR 761.125)" (emphasis in original) (54 FR 33437). Although this is a correct statement of prior requirements, the requirements were changed in a final rule published in the Federal Register on October 19, 1988 (53 FR 40882). Currently, as is stated in the October 19, 1988 final rule, spills of 10 pounds or more by weight of PCBs, not PCB-containing material, must be reported to the appropriate EPA Regional Office (53 FR 40883).

The statement in the preamble to the August 14, 1989 final rule referring to the TSCA reporting requirement for PCB releases was made to support the Agency's determination that a one-pound RQ for PCBs (which was promulgated in the August 14, 1989 final rule) is not duplicative of the TSCA requirement. Although the TSCA reporting requirement has been changed, EPA believes that CERCLA and TSCA reporting of PCB releases is still not duplicative, because, as stated in the preamble to the August 14, 1989 final rule, the explicit Federal cleanup authority for releases of PCBs under CERCLA does not exist under TSCA. Therefore, the correction made in this notice does not affect the RQ adjustment for PCBs promulgated in the August 14, 1989 final rule.

TABLE 1.—NEW NAMES OF INDIVIDUAL HAZARDOUS SUBSTANCES

Previous name*	New name
Acetic acid, lead salt	Acetic acid, lead (2+) salt.
Acetic acid, thallium(1) salt	Acetic acid, thallium(1+) salt.
Acetimidic acid, N-[(methyl-carbamoyl)oxy]thio-, methyl ester	Ethanimidothioic acid, N-[[(methylamino)carbonyl] oxy]-, methyl ester.
Aldrin	1,4,5,8-Dimethanonaphthalene, 1,2,3,4,10,10-10-hexachloro-1,4,4a,5,8,8a-hexahydro-, (1alpha,4alpha,4abeta,5alpha,8alpha, 8abeta)-.
Alanine, 3[p-bis(2-chloroethyl)amino]phenyl-, L-	L-Phenylalanine, 4-[bis(2-chloroethyl)aminol].
3-(alpha-Acetonylbenzyl)-4-hydroxycoumarin and salts	2H-1-Benzopyran-2-one, 4-hydroxy-3-(3-oxo-1-phenyl-butyl)-, & salts, when present at concentrations greater than 0.3%.
2-Amino-1-methyl benzene	Benzenamine, 2-methyl-.
4-Amino-1-methyl benzene	Benzenamine, 4-methyl-.
5-(Aminomethyl)-3-isoxazolol	Muscimol.
Arsenic acid	Arsenic acid H3As04.
Arsenic (III) oxide	Arsenic oxide As203.
Arsenic (V) oxide	Arsenic oxide As205.
Azirino(2'3':3,4)pyrrolo (1,2-a)indole-4,7-dione,6-amino-8-[((aminocarbonyl) oxy) methyl]- 1,1a,2,8,8a,8b-hexahydro-8a-methoxy-5-methyl.	Azirino(2'3':3,4)pyrrolo[1,2-a]indole-4,7-dione,6-amino-8-[((aminocarbonyl)oxy] methyl]-1,1a,2,8,8a,8b-hexahydro-8a-methoxy-5-methyl-,[1aS-(1aalpha, 8beta,8aalpha,8balpha))]-.
1,2-Benzanthracene, 7,12-dimethyl-	Benz[a]anthracene, 7,12-dimethyl-.
1,2-Benzenedicarboxylic acid anhydride	1,3-Isobenzofurandione.
1,2-Benzenedicarboxylic acid, [bis(2-ethylhexyl)]ester	Diethylhexyl phthalate.
1,2-Benzenedicarboxylic acid,di-n-octyl ester	1,2-Benzenedicarboxylic acid, dioctyl ester.
Benzene, 2,4-diisocyanatomethyl-	Benzene, 1,3-diisocyanatomethyl.
Benzene, dimethyl	Benzene, dimethyl:
m-	m-Xylene.
o-	o-Xylene.
p-	p-Xylene.
Benzene, 1-methyl-2,6-dinitro	Benzene, 1-methyl-1,3-dinitro-.
Benzene, 1,2-methyylenedioxy-4-allyl-	1,3-Benzodioxole, 5-(2-propenyl)-.
Benzene, 1,2-methlenedioxy-4-propenyl	1,3-Benzodioxole, 5-(1-propenyl)-.
Benzene, 1,2-methylenedioxy-4-propyl-	1,3-Benzodioxole, 5-propyl-.
Benzene, trichloromethyl	Benzene, (trichloromethyl).
1,2-Benzisothiazolin-3-one, 1,1-dioxide, and salts	1,2-Benzisothiazol-3-(2H)-one, 1,1-dioxide.
Bis(2-chloroisopropyl)ether	Propane, 2,2'-oxybis [2-chloro-.
Bis(2-chloroethoxy)methane	Dichloromethoxy ethane.
Bis(chloromethyl)ether	Dichloromethyl ether.
Bis(dimethylthiocarbamoyl) disulfide	Thioperoxydicarbonic diamide [(H2N)C(S)2S2, tetramethyl-.
Bromide cyanide	Cyanogen bromide (CN)Br.
Butanoic acid, 4-[bis(2-chloroethyl)amino]benzene	Benzenebutanoic acid, 4-[bis(2-chloroethyl)amino]-.
Calcium Cyanide	Calcium Cyanide Ca(CN)2.
Carbamide, N-ethyl-N-nitroso-	Urea, N-ethyl-N-nitroso-.
Carbamide, N-methyl-N-nitroso-	Urea, N-methyl-N-nitroso-.
Carbamoyl chloride, dimethyl-	Carbamic chloride, dimethyl-.
Carbonic acid, dithallium(1) salt	Carbonic acid, dithallium(1+) salt.
Carbonochloridic acid, methyl ester	Methyl chloroformate.
Carbonyl chloride	Carbonic dichloride.
Carbonyl fluoride	Carbonic difluoride.
Chromic acid, calcium salt	Chromic acid H2Cr04, calcium salt.
Chlordane, technical	Chlordane, alpha & gamma isomers.
Chlorine cyanide	Cyanogen chloride (CN)C1.
Creslyic acid	Phenol, methyl-.
Cresol(s)	
m-	m-Cresol.
o-	o-Cresol.
p-	p-Cresol.
Copper cyanide	Copper cyanide CuCN.
Cyanides (soluble cyanide salts), not elsewhere specified	Cyanides (soluble salts and complexes) not otherwise specified.
Cyanogen	Ethanedinitrile.
1,4-Cyclohexadieneione	2,5-Cyclohexaidene-1,4-dione.
Decachloroctahydro-1,3,4-metheno-2H-cyclobuta[c,d]-pentalen-2-one	1,3,4-Metheno-2H-cyclobutal [cd]pentalen-2-one, 1,1a,3,3a,4,5,5,5a,5b,6-decachloroc-tahydro-.
Diaminotoluene	Benzenediamine, ar-methyl-.
1,2:7,8-Dibenzopyrene	Benzo [rst]pentaphene.
S-(2,3Dichloroallyl) diisopropyl-thiocarbamate	Carbamothioic acid, bis(1-methylethyl)-, S-(2,3-dichloro-2-propenyl) ester.
Dichlorobenzene (mixed)	Dichlorobenzene.
Dichlorodiphenyl dichloroethane	Benzene, 1,1'-(2,2-dichloroethylidene)bis[4-chloro.
Dichlorodiphenyl trichloroethane	Benzene, 1,1'-(2,2,2-trichloroethylidene)bis[4-chloro-.
1,2-trans-Dichloroethylene	1,2-Dichloroethylene.
3,5-Dichloro-N-(1,1-dimethyl-2-propynyl)benzamide	Benzamide, 3,5-dichloro-N-(1,1-dimethyl-2-propynyl)-.
1,2-Dichloropropane	Propane, 1,2-dichloro-.
Dichloropropene(s)	Dichloropropene.
2,3-Dichloropropene (isomer)	2,3-Dichloropropene.
1,4-Diethylene dioxide	1,4-Diethylenedioxide.
0,0-Diethyl S-[2-(ethylthio) ethyl] phosphorodithioate	Phosphorodithioic acid, O-)-diethyl S-[2-(ethylthio) ethyl]ester.
1,2-Dihydro-3,6-pyridazinedione	3,6-Pyridazinedione, 1,2-dihydro-.
Dimethylaminoazobenzene	p-Dimethylaminoazobenzene.
Dimethylnitrosamine	Methanamine, N-methyl-N-nitroso-.

TABLE 1.—NEW NAMES OF INDIVIDUAL HAZARDOUS SUBSTANCES—Continued

Previous name[a]	New name
3,3-Dimethyl-1-(methylthio)-2-butanone, O-[(methylamino) carbonyl] oxime	2-Butanone, 3,3-dimethyl-1-(methylthio)-,O[(methylamino) carbonyl] oxmine.
0,0-Dimethyl O-p-nitrophenyl phosphorothioate	Phosphorothioic acid, 0,0-dimethyl O-(4-nitrophenyl) ester.
4,6-Dinitro-o-cyclohexylphenol	2-Cyclohexyl-4,6-dinitrophenol.
2,4-Dithiobiuret	Dithiobiuret.
Dithiopyrophosphoric acid, tetraethyl ester	Thiodiphosphoric acid, tetraethyl ester.
Endrin	Endrin, & metabolites.
2,4-D Esters	2,4-D Ester.
Ethanamine, 1,1-dimethyl-2-phenyl	Benzeneethanamine, alpha,alpha-dimethyl-.
1,2-Ethanediylbiscarbamo-dithioic acid	Carbamodithioic acid, 1,2-ethanediylbis, salts & esters.
Ethane, 1,1,1,2,2,2-hexachloro	Ethane, hexachloro-.
Ethane, 1,1,1-trichloro-2,2-bis(p-methoxyphenyl)-	Benzene, 1,1'-(2,2,2-trichloroethylidene)bis[4-methoxy-.
Ethenamine, N-methyl-N-nitroso-	Vinylamine, N-methyl-N-nitroso.
Ethene, 1,1,2,2-tetrachloro-	Ethene, tetrachloro-.
Ethene, trans-1,2-dichloro-	Ethene, 1,2-dichloro- (E).
2-Ethoxyethanol	Ethanol, 2-ethoxy-.
Ethyl 4,4'-dichlorobenzilate	Chlorobenzilate.
Ethylenebis(dithiocarbamic acid)	Ethylenebisdithiocarbamic acid, salts & esters.
Ethyleneoxide	Ethylene oxide.
Fulminic acid, mercury(II) salt	Fulminic acid, mercury(2+) salt.
gamma-BHC	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1alpha,2alpha, 3beta,4alpha,5alpha,6beta)-
D-Glucopyranose, 2-deoxy-2-(3-methyl-3-nitrosoureido)	Glucopyranose, 2-deoxy-2-(3-methyl-3-nitrosoureido).
Guanidine, N-nitroso-N-methyl-N'-nitro	Guanidine, N-methyl-N'-nitro-N-nitroso-.
1,2,3,4,10,10-Hexachloro-6,7-epoxy-1,4,4a,5,6,7,8,8a-octahydro-endo,exo-1,4:5,8-dimethanonaphthalene.	2,7:3,6-Dimethanonaphth[2,3-b]oxirene, 3,4,5,6,9,9-hexachloro-1,a,2,2a,3,6,6a, 7,7a-octa-hydro-, (1aalpha, 2beta,2abeta,3alpha,6alpha,6abeta,7beta,7aalpha)-.
1,2,3,4,10,10-Hexachloro-6,7-epoxy-1,4,4a,5,6,7,8,8a-octahydro-endo,exo-1,4:5,8-dimethanonaphthalene.	2,7:3,6-Dimethanonaphth[2,3-b]oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a, 7,7a-octahydro-,(1aalpha,2beta, 2aalpha, 3beta,-6beta,6aalpha, 7beta,7aalpha)-.
1,2,3,4,10,10-Hexachloro-1,4,4a,5,8,8a-hexahydro- 1,4,5,8-endo,endodimethanonaphthalene.	1,4,5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a-hexahydro, (1alpha,4alpha,4abeta,5beta, 8beta,8abeta)-.
Hexachlorohexahydro-endo, endodimethanonaphthalene	Isodrin.
Hydrochloric acid	Hydrogen chloride.
Hydrogen sulfide	Hydrogen sulfide H2S.
Hydroxydimethylarsine oxide	Arsinic acid, dimethyl-.
Isocyanic acid, methyl ester	Methane, isocynato-.
Lasiocarpine	2-Butenoic acid, 2-methyl-, 7[[2,3-dihydroxy-2-(1-methoxyethyl)-3-methyl-1-oxobutoxy]methyl]-2,3,5,7a-tetrahydro-1H-pyrrolizin-1-yl ester, [1S-[1alpha(Z), 7(2S*, 3R*),7aal-pha]]-.
Lead subacetate	Lead, bis(acetato-O-)tetra hydroxytri.
4,7-Methanoindan, 1,2,4,5,6,7,8,8-octachloro- 3a,4,7,7a-tetrahydro-	4,7-Methano-1H-indene, 1,2,4,5,6,7,8,8-octaochloro-2,3,3a,4,7,7a-hexahydro-.
2-Methylaziridine	Aziridine, 2-methyl-.
Methyl chloroform	Ethane, 1,1,1-trichloro-.
2,2[1]-Methylenebis(3,4,6-trichlorophenoi)	Phenol, 2,2[1]-methylenebis[3,4,6-trichloro-.
Methyl ethyl ketone	Methyl ethyl ketone (MEK).
N-Methyl-N[1]-nitro-N-nitroso-guanidine	MNNG.
5.12-Naphthacenedione, (8S-cis)-8-acetyl-10-[3-amino-2,3,6-trideoxy-alpha-L-lyxo-hexopyranosyl)oxy]-7,8,9,10-tetrahydro-6,8,11-trihydroxy-1-methoxy-.	5,12-Naphthacenedione, 8-acetyl-10-[3-amino-2,3,6-trideoxy-alpha-L-lyxo-hexopyranosyl)oxy]-7,8,9,10-tetrahydro-6,8,11-trihydroxy- 1-methoxy-, (8S-cis)-.
2-Naphthylamine, N,N-bis(2-chloroethyl)-	Naphthalenamine, N,N[1]-bis(2-chloroethyl)-.
Nickel carbonyl	Nickel carbonyl Ni(CO)4, (T-4)-.
Nickel cyanide	Nickel cyanide Ni(CN)2.
Nitrogen(II) oxide	Nitrogen oxide NO.
Nitrogen(IV) oxide	Nitrogen oxide NO2.
2-Nitrophenol	o-Nitropheno1.
N-Nitrosodi-n-propylamine	1-Propanamine, N-nitroso-N-propyl-.
5-Norbornene-2,3-dimethanol, 1,4,5,6,7,7-hexachloro, cyclic sulfite	6,9-Methano-2,4,3-benzo-dioxathiepin, 6,7,8,9,20,20-hexachloro-1,5,5a,6,9,9a-hexahydro-, 3-oxide.
Osmium oxide	Osmium oxide OsO4 (T-4)-.
2H-1,3,2-Oxazaphosphorine,2-[bis(2-chloroethyl)amino] tetrahydro-2-oxide	2H-1;3,2-Oxazaphosphorin, 2-amine, N,N-bis((2-chloroethyl) tetrahydro-, 2-oxide.
Oxirane, 2-(chloromethyl)-	Oxirane, (chloromethyl)-.
Pentachloronitrobenzene	Pentachloronitrobenzene (PCNB).
Phenol,2,4-dinitro-6-methyl-, and salts	Phenol, 2-methyl-4,6-dinitro-.
Phenol,2,4,-dinitro-6(1-methylpropyl)-	Phenol, 2-(1-methylpropyl)-4,6-dinitro.
Phenyl dichloroarsine	Arsonous dichloride, phenyl-.
N-Phenylthiourea	Phenylthiourea.
Phosphoric acid, diethyl p-nitrophenyl ester	Phosphoric acid, diethyl 4-nitrophenyl ester.
Phosphoric acid, lead salt	Phosphoric acid, lead(2+) salt (2:3).
Phosphorodithioic acid, 0,0-diethyl S-methyl ester	Phosphorodithioic acid, O[1]O-diethyl S-methyl ester.
Phosphorothioic acid, 0,0-diethyl O-(p-nitrophenyl) ester	Phosphorothioic acid, O,O-diethyl O-(4-nitropheny) ester.
Phosphorothio9ic acid, 0,0-dimethyl-O-[p-[(dimethylamino)-sulfonyl]phenyl] ester	Phosphorothioic acid, O,[4-[(dimethylamino) sulfonyl]phenyl]O,O-dimethyl ester.
Potassium cyanide	Potassium cyanide K(CN).
Potassium silver cyanide	Argentate(1-), bis(cyano-C)-, potassium.
1-Propanal, 2,3-epoxy-	Oxiranecarboxyaldehyde.
Propene, 1,3-dichloro-	1-Propene, 1,3-dichloro-.
Pyridine,2-[(2-dimethylamino)ethyl)-2-thenylamino]-	1,2-Ethanediamine, N-N-dimethyl-N[1]2-pyridinyl-N[1]-(2-thienylmethyl)-.
Pyridine, hexahydro-N-nitroso-	Piperidine, 1-nitroso-.
Pyridine, (S)-3-(1-methyl-2-pyrrolidinyl)-, and salts	Pyridine, 3-(1-methyl-2-pyrrolidinyl)-, (S)-.
Pyrophosphoric acid, tetraethyl ester	Diphosphoric acid, tetraethyl ester.
Pyrrole, tetrahydro-N-nitroso-	Pyrrolidine, 1-nitroso-.
2,4-D, salts and esters	Acetic acid (2,4-dichloro-phenoxy)-.
Selenium disulfide	Selenium sulfide.
Selenium disulfide	Selenium sulfide SeS2.

TABLE 1.—NEW NAMES OF INDIVIDUAL HAZARDOUS SUBSTANCES—Continued

Previous name[a]	New name
Silver cyanide	Silver Cyanide Ag(CN).
Silvex	Silvex (2,4,5-TP).
Sodium cyanide	Sodium cyanide Na(CN).
4,4¹-Stilbenediol, alpha, alpha¹-diethyl-	Phenol, 4,4¹-(1,2-diethyl-1,2-ethenediyl)bis-, (E).
Streptozotocin	D-Glocose, 2-deoxy-2-[[(methylnitrosoamino)-carbonyl]amino]-.
Strychnidin-10-one, and salts	Strychnidin-10-one.
Sulfuric acid, thallium(1) salt	Sulfuric acid, dithallium(1+) salt.
Tetrachloroethylene	Perchloroethylene.
Tetrachloroethylene	Tetrachlorethene.
Thallium(I) chloride	Thallium chloride T1C1.
Thallium(I) nitrate	Nitric acid, thallium(1+) salt.
Thallium (III) oxide	Thallium oxide T1203.
Thallium (1) selenide	Selenious acid, dithallium(1+) salt.
Thallium (1) selenide	Thallium selenite.
Thioimidodicarbonic diamide	Thioimidodicarbonic diamide [(H2N)C(S)]2NH.
Trichloroethene	Ethene, trichloro-.
2,4,5-Trichlorophenoxyacetic acid	Acetic acid, (2,4,5-trichlorophenoxy).
sym-Trinitrobenzene	1,3,5-Trinitrobenzene.
Uracil, 5-[bis(2-chloroethyl)amino]-	2,4-(1H,3H)-Pyrimidinedione, 5-[bis(2-chloroethyl)amino]-.
Vanadium (V) oxide	Vanadium oxide V205.
Vinyl acetate	Vinyl acetate monomer.
Warfarin	Warfarin, & salts, when present at concentrations greater than 0.3%.
Xylene	Xylene (mixed).
Xylene (mixed)	Xylene (mixed):
m-	m-Benzene, dimethyl.
o-	o-Benzene, dimethyl.
p-	p-Benzene, dimethyl.
Yohimban-16-carboxylic acid, 11,17-dimethoxy-18-[(3,4,5-trimethoxybenzoyl)oxy]-, methyl ester.	Yohimban-16-carboxylic acid, 11,17-dimethoxy-18-[(3,4,5-trimethoxybenzoyl)oxy]-, methyl ester (3beta, 16beta, 17alpha, 18beta, 20 alpha)-.
Zinc cyanide	Zinc cyanide Zn(CN)2.
Zinc phosphide	Zinc phosphide Zn3P2, when present at concentrations greater than 10%.

[a] These names are currently codified in Table 302.4, its Appendix A, and Table 117.3; the changes and additions to the names made by the August 14, 1989 final rule take effect on October 13, 1989.

TABLE 2.—CHANGES IN DESCRIPTIONS OF WASTE STREAMS

Previous description	New description
F001 The following spent halogenated solvents used in degreasing and sludges from the recovery of these solvents in degreasing operations:	F001 The following spent halogenated solvents used in degreasing; all spent solvent mixtures/blends used in degreasing containing, before use, a total of ten percent or more (by volume) of one or more of the above halogenated solvents or those solvents listed in F002, and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures.
(a) Tetrachloroethylene	(a) Tetrachloroethylene
(b) Trichloroethylene	(b) Trichloroethylene
(c) Methylene chloride	(c) Methylene chloride
(d) 1,1,1-Trichloroethane	(d) 1,1,1-Trichloroethane
(e) Carbon tetrachloride	(e) Carbon tetrachloride
(f) Chlorinated fluorocarbons	(f) Chlorinated fluorocarbons
F002 The following spent halogenated solvents and the still bottoms from the recovery of these solvents:	F002 The following spent halogenated solvents; all spent solvent mixtures/blends containing, before use, a total of ten percent or more (by volume) of one or more of the above halogenated solvents or those listed in F001, F004, or F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures.
(a) Tetrachloroethylene	(a) Tetrachloroethylene.
(b) Methylene chloride	(b) Methylene chloride.
(c) Trichloroethylene	(c) Trichloroethylene.
(d) 1,1,1-Trichloroethane	(d) 1,1,1-Trichloroethane.
(e) Chlorobenzene	(e) Chlorobenzene.
(f) 1,2,2-Trichloro-1,2,2-trifluoroethane	(f) 1,2,2-Trichloro-1,2,2-trifluoroethane.
(g) o-Dichlorobenzene	(g) o-Dichlorobenzene.
(h) Trichlorofluoromethane	(h) Trichlorofluoromethane.
	(i) 1,1,2-Trichloroethane.

TABLE 2.—CHANGES IN DESCRIPTIONS OF WASTE STREAMS—Continued

Previous description	New description
F007 Spent cyanide plating bath solutions from electroplating operations (except for precious metals electroplating spent cyanide plating bath solutions)	F007 Spent cyanide plating bath solutions from electroplating operations.
F008 Plating bath sludges from the bottom of plating baths from electroplating operations where cyanides are used in the process (except for precious metals electroplating bath sludges)	F008 Plating bath residues from the bottom of plating baths from electroplating operations where cyanides are used in the process.
F009 Spent stripping and cleaning bath solutions from electroplating operations where cyanides are used in the process (except for precious metals electroplating spent stripping and cleaning bath solutions)	F009 Spent stripping and cleaning bath solutions from electroplating operations where cyanides are used in the process.
F010 Quenching bath sludge from oil baths from metal heat treating operations where cyanides are used in the process (except for precious metals heat treating quenching bath sludges)	F010 Quenching bath residues from oil baths from metal heat treating operations where cyanides are used in the process.
F012 Quenching wastewater treatment sludges from metal heat treating operations where cyanides are used in the process (except for precious metals heat treating quenching wastewater treatment sludges)	F012 Quenching wastewater treatment sludges from metal heat treating operations where cyanides are used in the process.
K062 Spent pickle liquor from steel finishing operations	K062 Spent pickle liquor generated by steel finishing operations of facilities within the iron and steel industry (SIC Codes 331 and 332).

TABLE 3.—REGULATORY SYNONYMS DELETED

Chemical name	Synonym(s) deleted
Acetonitrile	Ethanenitrile.
Acetyl Chloride	Ethanoyl Chloride.
Benz[c]acridine	3,4-Benzacridine.
Carbon disulfide	Carbon bisulfide.
Cyanogen Bromide	Bromine Cyanide.
Formaldehyde	Methylene oxide.
Formic acid	Methanoic acid.
Phosphine	Hydrogen phosphide.
Selenourea	Carbamimidoselenoic acid.
Thiourea	Carbamide, thio.
2,4-D Acid	2,4-Dichlorophenoxyacetic acid, salts and esters.
Epichlorohydrin	1-Chloro-2,3-epoxypropane.
Hydrogen sulfide	Hydrosulfuric acid, Sulfur hydride.
Nickel carbonyl	Nickel tetracarbonyl.
Nickel cyanide	Nickel (II) cyanide.
Selenium disulfide	Sulfur selenide.

TABLE 4.—ADDITIONS TO CASRNS

Chemical name	Existing CASRN	Added CASRN
Mercurous nitrate	10415755	7782867
Uranyl nitrate	10102064	36478769
Zinc ammonium chloride	5262858	14639975
		14639986
F004		
The following spent non-halogenated solvents and the still bottoms from the recovery of these solvents:		
(a) Cresols, Cresylic acid		1319773
(b) Nitrobenzene		98953
F005		
The following spent non-halogenated solvents and the still bottoms from the recovery of these solvents:		
(a) Toluene		108883
(b) Methyl ethyl ketone		78933
(c) Carbon disulfide		75150
(d) Isobutanol		78831
(e) Pyridine		110861

TABLE 4.—ADDITIONS TO CASRNS—Continued

Chemical name	Existing CASRN	Added CASRN
bottoms from the recovery of these solvents:		
(a) Toluene		108883
(b) Methyl ethyl ketone		78933
(c) Carbon disulfide		75150
(d) Isobutanol		78831
(e) Pyridine		110861

TABLE 5.—REVISIONS TO REPORTABLE QUANTITIES LISTED IN APPENDICES A AND B OF 40 CFR PART 355 [a]

Hazardous substance	Previous RQ (pounds)	New RQ (pounds)
Arsenic pentoxide	5000	1
Arsenous oxide	5000	1
Arsenous trichloride	5000	1
Benzotrichloride	1	10
Calcium arsenate	1000	1
Chloroform	5000	10
Chloromethyl ether	1	10
Chloromethyl methyl ether	1	10
Dichloroethyl ether	1	10
Diepoxybutane	1	10
Dimethyl sulfate	1	100
Dimethylhydrazine	1	10
Epichlorohydrin	1000	100
Ethylene oxide	1	10
Formaldehyde	1000	100
Hexachlorocyclopentadiene	1	10
Hydrogen chloride [b]	1	5000
Methacrylonitrile [b]	1	1000
Mitomycin C	1	10
Nickel carbonyl	1	10
Nicotine sulfate [b]	1	100
Nitrosodimethylamine	1	10
Parathion	1	10
Paris green	100	1
Potassium arsenite	1000	1
Sodium arsenate	1000	1
Sodium arsenite	1000	1
Strychnine, sulfate [b]	1	10
Warfarin sodium [b]	1	100

[a] Five of the RQs being changed in 40 CFR Part 355 were proposed to be further adjusted on August 30, 1989 (54 FR 35988). These proposed RQ adjustments are: hydrogen chloride, 100 pounds; methacrylonitrile, 100 pounds; nickel carbonyl, one pound; nicotine sulfate, 10 pounds; and strychnine sulfate, 100 pounds.

[b] The change in the RQ for this hazardous substance is necessary to correct an error in Appendices A and B 40 CFR Part 355.

Dated: December 19, 1989.

Mary A. Gade,

Acting Assistant Administrator.

For the reasons set forth in this notice, Chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

1. The authority citation for part 302 is revised to read as follows:

Authority: 42 U.S.C. 9602; 33 U.S.C. 1321 and 1361.

2. Section 302.4 is amended by revising the following entries in Table 302.4 to read as set forth below.

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES

Hazardous substance	CASRN	Regulatory synonyms	Statutory RQ	Statutory Code†	Statutory RCRA waste number	Final RQ Category	Final RQ Pounds (Kg)
• • • •		•		•		•	
F003			1*	4	F003	B	100 (45.4)
The following spent non-halogenated solvents and the still bottoms from the recovery of these solvents:							
(a) Xylene	1330207					C	1000 (454)
(b) Acetone	67641					D	5000 (2270)
(c) Ethyl acetate	141786					D	5000 (2270)
(d) Ethylbenzene	100414					C	1000 (454)
(e) Ethyl ether	60297					B	100 (45.4)
(f) Methyl isobutyl ketone	108101					D	5000 (2270)
(g) n-Butyl alcohol	71363					D	5000 (2270)
(h) Cyclohexanone	108941					D	5000 (2270)
(i) Methanol	67561					D	5000 (2270)
• • • •		•		•		•	
F011			1*	4	F011	A	10 (4.54)
Spent cyanide solution from salt bath pot cleaning from metal heat treating operations.							
• • • •		•		•		•	

PART 355—EMERGENCY PLANNING AND NOTIFICATION

1. The authority citation for part 355 continues to read as follows:

Authority: 42 U.S.C. 11002 and 11048.

2. Part 355 is amended by revising the following entries in Appendices A and B to read as set forth below.

Appendix A—The List of Extremely Hazardous Substances and Their Threshold Planning Quantities

[Alphabetical Order]

CAS No.	Chemical name	Notes	Reportable quantity* (pounds)	Threshold planning quantity (pounds)
• • • •		•	•	•
1303-28-2	Arsenic pentoxide	d		1 100/10,000
1327-53-3	Arsenous oxide	d,h		1 100/10,000
7784-34-1	Arsenous trichloride	d		1 500
• • • •		•	•	•
98-07-7	Benzotrichloride	d		10 500
• • • •		•	•	•
7778-44-1	Calcium arsenate	d		1 500/10,000
• • • •		•	•	•
67-66-3	Chloroform	d,1		10 10,000
542-88-1	Chloromethyl ether	d,h		10 100
107-30-2	Chloromethyl methyl ether	e,d		10 100
• • • •		•	•	•
111-44-4	Dichloroethyl ether	d		10 10,000
• • • •		•	•	•
1464-53-5	Diepoxybutane	d		10 500
• • • •		•	•	•
77-78-1	Dimethyl sulfate	d		100 500
• • • •		•	•	•
57-14-7	Dimethylhydrazine	d		10 1,000
• • • •		•	•	•
106-89-8	Epichlorohydrin	d,1		100 1,000
• • • •		•	•	•
75-21-8	Ethylene oxide	d,1		10 1,000
• • • •		•	•	•
50-00-0	Formaldehyde	d,1		100 500
• • • •		•	•	•
77-47-4	Hexachlorocyclopentadiene	d,h		10 100
• • • •		•	•	•
7647-01-0	Hydrogen chloride (gas only)	e,1		5,000 500
• • • •		•	•	•
126-98-7	Methacrylonitrile	h		1,000 500
• • • •		•	•	•
50-07-7	Mitomycin C	d		10 500/10,000

[Alphabetical Order]

CAS No.	Chemical name	Notes	Reportable quantity* (pounds)	Threshold planning quantity (pounds)
*	* * * *	*	*	*
13463-39-3	Nickel carbonyl	d	10	1
*	* * * *	*	*	*
65-30-5	Nicotine sulfate	e	100	100/10,000
*	* * * *	*	*	*
62-75-9	Nitrosodimethylamine	d,h	10	1,000
*	* * * *	*	*	*
56-38-2	Parathion	c,d	10	100
*	* * * *	*	*	*
12002-03-8	Paris Green	d	1	500/10,000
*	* * * *	*	*	*
10124-50-2	Potassium arsenite	d	1	500/10,000
*	* * * *	*	*	*
7784-46-5	Sodium arsenite	d	1	500/10,000
*	* * * *	*	*	*
60-41-3	Strychnine sulfate	e	10	100/10,000
*	* * * *	*	*	*
129-06-6	Warfarin sodium	e,h	100	100/10,000

Appendix B—The List of Extremely Hazardous Substances and Their Threshold Planning Quantities

[CAS Number Order]

CAS No.	Chemical name	Notes	Reportable quantity* (pounds)	Threshold planning quantity (pounds)
*	* * * *	*	*	*
50-00-0	Formaldehyde	d,1	100	500
50-07-0	Mitomycin C	d	10	500/10,000
*	* * * *	*	*	*
56-38-2	Parathion	c,d	10	100
*	* * * *	*	*	*
57-14-7	Dimethylhydrazine	d	10	1,000
*	* * * *	*	*	*
60-41-3	Strychnine sulfate	e	10	100/10,000
*	* * * *	*	*	*
62-75-9	Nitrosodimethylamine	d,h	10	1,000
*	* * * *	*	*	*
65-30-5	Nicotine sulfate	e	100	100/10,000
*	* * * *	*	*	*
67-66-3	Chloroform	d,l	10	10,000
*	* * * *	*	*	*
75-21-8	Ethylene oxide	d,l	10	1,000
*	* * * *	*	*	*
77-47-4	Hexachlorocyclopentadiene	d,h	10	100
77-78-1	Dimethyl sulfate	d	100	500
*	* * * *	*	*	*
98-07-7	Benzotrichloride	d	10	500
*	* * * *	*	*	*
106-89-8	Epichlorohydrin	d,l	100	1,000
*	* * * *	*	*	*
107-30-2	Chloromethyl methyl ether	e,d	10	100
*	* * * *	*	*	*
111-44-4	Dichloroethyl ether	d	10	10,000
*	* * * *	*	*	*
126-98-7	Methacrylonitrile	h	1,000	500
*	* * * *	*	*	*
129-06-6	Warfarin sodium	e,h	100	100/10,000
*	* * * *	*	*	*
542-88-1	Chloromethyl ether	d,h	10	100
*	* * * *	*	*	*
1303-28-2	Arsenic pentoxide	d	1	100/10,000

[CAS Number Order]—Continued

CAS No.	Chemical name	Notes	Reportable quantity* (pounds)	Threshold planning quantity (pounds)
1327-53-3	Arsenous oxide	d,h	1	100/10,000
1464-53-5	Diepoxybutane	d	10	500
7647-01-0	Hydrogen chloride	e,l	5,000	500
7778-44-1	Calcium arsenate	d	1	500/10,000
7784-34-1	Arsenous trichloride	d	1	500
7784-46-5	Sodium arsenite	d	1	500/10,000
10124-50-2	Potassium arsenite	d	1	500/10,000
12002-03-8	Paris Green	d	1	500/10,000
13463-39-3	Nickel carbonyl	d	10	1

[FR Doc. 89-29976 Filed 12-26-89; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 180

[PP4E3048/R1047; FRL-3664-1]

Pesticide Tolerance for Oxamyl

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes a tolerance for the combined residues of the insecticide/nematicide oxamyl in or on the raw agricultural commodity non-bell peppers and that the oxamyl tolerance expression be modified to include the oxime metabolite. This regulation to establish a maximum permissible level for residues of the pesticide in or on the commodity was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

DATE: This regulation becomes effective December 27, 1989.

ADDRESS: Written objections, identified by the document control number, [PP4E3048/R1047], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Emergency Response and Minor Use Section (H7505C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716C, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-2310.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 1, 1989 (54 FR 36328), EPA issued a proposed rule that gave notice that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition (PP) 4E3048 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project, and the Agricultural Experiment Stations of Arizona, Georgia, Louisiana, North Carolina, and Puerto Rico.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for the combined residues of the insecticide/nematicide oxamyl (methyl N',N'-dimethyl-N-[(methylcarbamoyl)oxy]-1-thiooxamimidate) in or on the raw agricultural commodity peppers at 3.0 parts per million (ppm). The petition was later revised to propose a residue level of 5.0 ppm in or on non-bell peppers. Tolerances are currently established at 3.0 ppm in or on bell peppers.

The Agency has determined that the tolerance expression for oxamyl in 40 CFR 180.303 should reflect the sum of the residues of the insecticide oxamyl (methyl N',N'-dimethyl-N-[(methylcarbamoyl)oxy]-1-thiooxamimidate) and its oxime metabolite N',N'-dimethyl-N-hydroxy-1-thiooxamimidate calculated as oxamyl.

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

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

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

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

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

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities,

Pesticides and pests, Recording and recordkeeping requirements.

Dated: December 1, 1989.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

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

Authority: 21 U.S.C. 346a and 371.

2. In § 180.303, the introductory text is revised by modifying the tolerance expression to include the oxamyl metabolite, and the table is amended by adding and alphabetically inserting the raw agricultural commodity non-bell peppers, to read as follows:

§ 180.303 Oxamyl; tolerances for residues.

(a) Tolerances are established for the sum of the residues of the insecticide oxamyl (methyl N'-N'-dimethyl-N-[(methylcarbamoyl)-oxy]-1-thiooxamimidate) and its oxime metabolite N',N'-dimethyl-N-hydroxy-1-thiooxamimidate calculated as oxamyl in or on the following raw agricultural commodities:

Commodities	Parts per million
* * * * *	
Peppers, non-bell	5.0
* * * * *	

* * * * *

[FR Doc. 89-29891 Filed 12-26-89; 8:45 am]

BILLING CODE 6560-50-D

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40 CFR Part 180

[OPP-300204A; FRL-3664-2]

Pome Fruits; Expanded Definition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document amends 40 CFR 180.34(f)(9)(xi) to include mayhaws in the subject pome fruits group. This regulation, which will expand and redefine the definition of pome fruits group, was requested by petition from the Interregional Research Project No. 4.

DATE: This regulation becomes effective December 27, 1989.

ADDRESS: Written objections, identified by the document control number, [OPP-300204A], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Emergency Response and Minor Use Section (H7505C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716C, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-2310.

SUPPLEMENTARY INFORMATION: In the **Federal Register** ofSeptember 1, 1989 (54 FR 36329), EPA issued a proposed rule giving notice that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted this request to EPA on behalf of the IR-4 Project.

IR-4 requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose that 40 CFR 180.34(f)(9)(xi) be amended by adding *Crataegus aestivalis* and *C. opaca* (mayhaws) to the subject 'pome fruits group,' thereby expanding its definition. The Agency also recommended in the proposed rule that *Crataegus rufula* (mayhaw) also be included in this grouping.

The amendment was requested in order to clarify and update the relationship between the subject pome fruits group and the specific raw agricultural commodities defined therein. There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the regulation established by amending 40 CFR 180.34(f)(9)(xi) will protect the public health. Therefore, 40 CFR 180.34(f)(9)(xi) is being amended by adding and alphabetically inserting 'mayhaws (*Craetaegus aestivalis, C. opaca*, and *C. rufula*)' to the subject pome fruits group as set forth below.

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

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

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

List of Subjects in 40 CFR Part 180

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

Dated: December 1, 1989.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

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

Authority: 21 U.S.C. 346a and 371.

§ 180.34 [Amended]

2. Section 180.34 *Tests on the amount of residue remaining* is amended in paragraph (f)(9)(xi) by adding and alphabetically inserting in the entry "pome fruits group" the raw agricultural commodity 'mayhaws (*Crataegus aestivalis, C. opaca,* and *C. rufula);*".

[FR Doc. 89-29889 Filed 12-26-89; 8:45 am]

BILLING CODE 6560-50-D

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40 CFR Part 180, 185 and 186

[PP8F3606, 8F3660, 8H5553, 8H5561/R1052; FRL-3684-1]

Pesticide Tolerances for 2-[1-(Ethoxyimino)Butyl]-5-[2-(Ethylthio)Propyl]-3-Hydroxy-2-Cyclohexene-1-One

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for the combined residues of the herbicide 2-[1-(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one (sethoxydim) and its metabolites containing the 2-cyclohexene-1-one moiety, calculated as parent, in or on the raw agricultural commodities (RACs) citrus fruits at 0.5 part per million (ppm), blueberries at 4.0 ppm, and grapes at 0.2 ppm, the processed food commodity raisins at 1.0 ppm, and the animal feed commodities dried citrus pulp at 1.5 ppm, citrus molasses at 1.5 ppm, raisin waste at 1.0 ppm, and grape pomace (wet and dry) at 6.0 ppm. These regulations were requested by BASF Wyandotte Corp. and establish the maximum permissible level for residues of the herbicide in or on these RACs, animal feed commodities, and the processed food commodity.

DATES: Effective on December 8, 1989.

ADDRESSES: Written objections, identified by the document control number, [PP8F3606, 8F3660, 8H5553, and 8H5561/R1052], may be submitted to: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Robert J. Taylor, Product Manager (PM) 21, Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 243, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703–557–1800.

SUPPLEMENTARY INFORMATION: EPA issued notices in the Federal Register that announced that BASF Wyandotte Corp., P.O. Box 181, 100 Cherry Hill Rd., Parsippany, NJ 07054, posposed amending 40 CFR 180.412, 185.2800, 186.2800, and 21 CFR part 561 by establishing tolerances for the combined residues of the herbicide 2-[(1-(ethoxyimino)butyl]-5-[2-ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one and its metabolites containing the 2 cyclohexene-1-one moiety (calculated as the parent) in or on the following RACs, animal feed commodities, and processed feed commodities: pesticide petition (PP) 8F3606 for citrus fruits and blueberries at 0.5 and 4.0 ppm, resepectively, in the Federal Register of March 30, 1988 (53 FR 10286); food additive petition (FAP) 8H5553 for citrus molasses and citrus dry pulp at 1.5 ppm in the Federal Register of March 30, 1988 (53 FR 10286); PP 8F3660 for grapes at 1.0 ppm in the Federal Register of October 12, 1988 (53 FR 39784); and FAP 8H5561 for raisins at 5.0 ppm, dried grape pomace at 30.0 ppm, and raisin waste at 5.0 ppm in the Federal Register of October 12, 1988 (53 FR 39785).

There were no comments or requests for referral to an advisory committee received in response to the notices of filing.

The Agency subsequently issued a recodification document, published in the Federal Register of June 29, 1988 (53 FR 24686) redesignating 21 CFR part 561 as 40 CFR part 186 and assigning the chemical as 40 CFR 186.2800. The petitioner subsequently amended PP 8F3660 and FAP 8H5561 by submitting revisions of Section F proposing the establishment of tolerances for residues of the herbicide 2-[(1-(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one and its metabolites containing the 2-cyclohexene-1-one moiety, calculated as the parent on the RAC grapes at 0.2 ppm, the processed commodity raisins at 1.0 ppm, the animal feeds raisin waste at 1.0 ppm, and grape pomace (wet and dry) at 6.0 ppm. Because these revisions result in lower tolerances than those previously proposed, there is no potential increase in risk to humans from these revisions; therefore, no period of public comment is needed.

The data submitted in the petition and other relevant material have been evaluated. The toxicology data listed below were considered in support of these tolerances.

1. Several acute toxicology studies placing technical-grade sethoxydim in Toxicity Category III.

2. A subchronic feeding study in dogs fed dosages of 0, 20, and 200 milligrams per kilogram of body weight per day (mg/kg bwt/day) with a no-observed-effect level (NOEL) of 20 mg/kg/day based on liver effects and nonspecific anemia at 200 mg/kg/day.

3. A 1–year feeding study with dogs fed dosages (based on consumption) of 0, 8.86/9.41, and 17.5/19.9, and 110/129 mg/kg/day (males/females) with a NOEL of 8.86/9.41 mg/kg/day (males/females) based on equivocal anemia in males and females at 17.5/19.9 mg/kg/day, respectively.

4. A 2–year chronic feeding/oncogenicity study with mice fed dosages of 0, 6, 18, 54, and 162 mg/kg/day with no oncogenic effects observed under the conditions of the study at dose levels up to and including 162 mg/kg/day (highest dose tested [HDT]) and a systemic NOEL of 18 mg/kg/day based on nonneoplastic liver lesions at 54 mg/kg/day.

5. A 2–year chronic feeding/oncogenicity study with rats fed dosages of 0, 2, 6, and 18 mg/kg/day (HDT) with no oncogenic effects observed under the conditions of the study at dose levels up to and including 18 mg/kg/day (HDT) and a systemic NOEL greater than or equal to 18 mg/kg/day.

6. A developmental toxicity study in rats fed dosages of 0, 40, 100, and 250 mg/kg/day with no teratogenic effects occurring at 250 mg/kg/day (HDT), a maternal NOEL of 40 mg/kg/day based on significantly decreased adrenal weights at 100 mg/kg/day, and a fetotoxic NOEL of 250 mg/kg/day (HDT).

7. A developmental toxicity study in rabbits fed dosages of 0, 40, 160, and 480 mg/kg/day with a maternal toxicity NOEL of 160 mg/kg/day (severe weight loss, an excess number of maternal deaths, abortions, and fetal resorptions occurred at 480 mg/kg/day [HDT]); and a fetotoxicity/teratogenicity NOEL of 160 mg/kg/day (decreased litter sizes, low fetal weight, an increase in fetal resorptions and abortions occurred at 480 mg/kg/day [HDT]). Due to the extreme maternal toxicity of the chemical at the 480 mg/kg/day dose, it was difficult to determine whether the increased resportions and absorptions were due to maternal toxicity or to fetoxicity.

8. Mutagenic studies including a host-mediated assay (mouse) with *S. typhimurium*, negative at 2.5 grams/kg/day of chemical, and recombinant assay and forward mutations in *B. subtilis*, *E. coli*, and *S. typhimurium* (all negative at concentrations of the chemical up to 100 percent).

The acceptable daily intake (ADI), based on a 1–year feeding study in dogs (NOEL=8.86 mg/kg/bwt/day) and using a hundredfold safety factor is calculated to be 0.09 mg/kg/day. The theoretical maximum residue contribution (TMRC) for published tolerances is 0.023917 mg/kg/day. The current action will contribute 0.001307 mg/kg/day to the TMRC and will utilize 1.5 percent of the ADI. Published tolerances utilize 26.6 percent of the ADI. Other proposed tolerances utilize 7.9 percent of the ADI.

Data lacking are a repeat of a rat primary hepatocyte unscheduled DNA synthesis assay on a hydroxylated plant metabolite of the parent compound. The company has been notified of this deficiency and has agreed to repeat the study.

The pesticide is useful for the purposes for which these tolerances are sought. The nature of the residue is adequately understood for the purpose of establishing the tolerances. Adequate analytical methodology (gas chromatogrpahy using sulfur-specific flame photometric detection) is

available for enforcement purposes. The method is listed in the *Pesticide Analytical Manual,* Vol. II (PAM II), as Method I. There are currently no actions pending against the registration of this chemical. Any secondary residues occurring in meat, milk, poultry (fat), and poultry (meat) resulting from these uses will be covered by existing tolerances on these commodities. Higher tolerances for poultry (meat byproducts) and eggs are being proposed under PP 8F3640 (peas and beans), published elsewhere in this issue of the **Federal Register**, to cover residues occurring in these commodities resulting from those uses.

Based on the information cited above, the Agency has determined that the establishment of the tolerances by amending 40 CFR parts 180, 185 and 186 will protect the public health. Therefore, the tolerances are established as set forth below.

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

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

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

List of Subjects in 40 CFR parts 180, 185, and 186

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

Dated: December 8, 1989.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180–[AMENDED]

1. In part 180:

a. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

b. In § 180.412(a), by adding and alphabetically inserting entries for the following raw agricultural commodities, to read as follows:

§180.412 2-[1-(Ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one; tolerances for residues.

(a) * * *

Commodities	Parts per million
* * * * *	
Blueberries	4.0
* * * * *	
Citrus fruits	0.5
* * * * *	
Grapes	0.2
* * * * *	

* * * * *

2. In part 185:

a. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 348.

§185.2800 [Amended]

b. In § 185.2800 *2-[1-(Ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one*, by deleting the period at the end of the section, substituting a comma, and adding the following phrase: "* * * and the commodity raisins at 1.0 part per million."

3. In Part 186:

a. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C. 348.

b. In § 186.2800, by adding and alphabetically inserting in the list of commodities the following entries, to read as follows:

§ 186.2800 2-[1-(Ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one; tolerances for residues.

* * * * *

Feed	Parts per million
* * * * *	
Citrus molasses	1.5
* * * * *	
Dried citrus pulp	1.5
* * * * *	
Grape pomace, wet and dry	6.0
* * * * *	
Raisin waste	1.0
* * * * *	

* * * * *

[FR Doc. 89–29890 Filed 12–26–89; 8:45 am]

BILLING CODE 6560–50–D

40 CFR Part 271

[FRL–3700–1]

Massachusetts; Schedule of Compliance for Modification of Hazardous Waste Program

AGENCY: Environmental Protection Agency, Region I.

ACTION: Notice of Massachusetts' Compliance Schedule to Adopt Program Modifications.

SUMMARY: On September 22, 1986, EPA promulgated amendments to the deadlines for State program modifications and published requirements for States to be placed on a compliance schedule to adopt the necessary program modifications. EPA is today publishing a compliance schedule for Massachusetts to modify its program by adopting the Federal program revisions. This extension is provided in accordance with § 271.21(g). As required, Massachusetts previously received a good faith extension, has made progress towards adopting Federal changes, and has submitted a proposed timetable to complete the necessary revisions.

FOR FURTHER INFORMATION CONTACT: Stephanie Goodwin, Massachusetts RCRA Coordinator, EPA Region I, HRR-CAN3, J.F.K. Federal Building, Boston, Massachusetts 02203, (617) 573–5740.

SUPPLEMENTARY INFORMATION:

A. Background

Final authorization to implement the Federal hazardous waste program within the State is granted by EPA if the Agency finds that the State program (1) is "equivalent" to the Federal program (2) is "consistent" with the Federal program and other State programs, and (3) provides for adequate enforcement (Section 3006(b), 42 U.S.C. 6926(b)). EPA regulations for final authorization appear at 40 CFR 271.1—271.25. In order to retain authorization, a State must revise its program to adopt now Federal requirements by the cluster deadlines and procedures specified in 40 CFR 271.21. See 51 FR 33712, September 22, 1986 for a complete discussion of these procedures and deadlines.

B. Massachusetts

Final authorization of the Massachusetts hazardous waste program became effective on February 7, 1985. (See 50 FR 3344, dated January 24, 1985.) Today EPA is publishing a compliance schedule for Massachusetts to obtain authorization for program revisions for the following Federal program requirements. These requirements comprise Non-HSWA Cluster III:

(1) Radioactive Mixed Waste, 51 FR 24504, July 3, 1986.

(2) Liability Coverage, 51 FR 25350, July 11, 1986.

(3) Hazardous Waste Tank Systems, 51 FR 25422, , July 14, 1986.

(4) Correction to Listing of Commercial Chemical Products and Appendix VIII Constituents, 51 FR 28296, August 6, 1986.

(5) Hazardous Waste Tank Systems; Correction, 51 FR 29430, August 15, 1986.

(6) Revised Manual SW–846; Amended Incorporation by Reference, 52 FR 8072, March 16, 1987.

(7) Closure/Post-Closure Care for Interim Status Surface Impoundments, 52 FR 8704, March 19, 1987.

(8) Definition of Solid Waste; Technical Corrections, 52 FR 21306, June 5, 1987.

(9) Amendments to part B Information Requirements for Land Disposal Facilities, 52 FR 23447, June 22, 1987.

It should be noted that while the regulations contained in Non-HSWA Clusters I and II have already been promulgated by the State, authorization application components have not been received. It is anticipated that the authorization application subject to this compliance schedule will cover Non-HSWA Clusters I, II and III inclusively.

The State has agreed to obtain the needed program revisions, presently excluding the State Availability of Information requirements under the Hazardous and Solid Waste Amendments contained in Non-HSWA Cluster I, and to develop an authorization application according to the following schedule:

(1) Submittal of a complete draft application (including Memorandum of Agreement, Program Description, regulations, checklists and the Attorney General's Statement), November 7, 1989.

(2) Submittal of a complete final application, March 1, 1990.

Authority

This notice is issued under the authority of Sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the RCRA of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Dated: December 12, 1989.

Paul G. Keough,

Acting Regional Administrator.

[FR Doc. 89–29977 Filed 12–26–89; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 81–11; Notice 29]

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule; response to petitions for reconsideration.

SUMMARY: This notice responds to petitions for reconsideration of the final rule published on June 29, 1989, permitting an additional standardized replaceable light source known as Type HB2.

EFFECTIVE DATE: January 26, 1990. The lens marking requirements of S5.1.1.29 are further deferred to September 1, 1990.

FOR FURTHER INFORMATION CONTACT: Jere Medlin, Office of Rulemaking, NHTSA (202–366–5276).

SUPPLEMENTARY INFORMATION: On June 29, 1989, NHTSA amended Federal Motor Vehicle Safety Standard No. 108 *Lamps, Reflective Devices, and Associated Equipment* to adopt an additional type of a standardized replaceable light source to be used in replaceable bulk headlamps on motor vehicles (Notice 27, 54 FR 27362). Thereafter, on August 2, 1989, pursuant to a petition for reconsideration by BMW of North America, Inc., NHTSA published a notice delaying the effective date of the lens marking requirements to January 1, 1990, for motorcycle headlamps that had been specified in the June notice (Notice 28, 54 FR 31840).

Petitions for reconsideration of various aspects of the final rule were also filed by Hella, K.G. ("Hella"), American Honda Motor Co., Inc. ("Honda"), GTE Sylvania Miniature Lighting ("Sylvania"), Motorcycle Industry Council ("MIC"), and Koito Manufacturing Co., Ltd. ("Koito").

Discussion of Petitions

Issue of Marking of Motorcycle Headlamps

As noted above, on August 2, 1989, NHTSA amended section S5.1.1.29 to defer the effective date for the marking of motorcycle lenses to January 1, 1990. This section requires the word "motorcycle" to be marked on the headlamp lens if the light source is other than one of Standard No. 108's specified HB Types (*e.g.*, an H–4). In addition to BMW, comments were received from Hella, Honda, MIC, and Koito. Hella requested an extension of the effective date, citing tooling difficulties, as did Koito, which specifically requested a year's grace. In the alternative, Hella requested permission to mark according to SAE J759, and Koito, to mark only those motorcycle headlamps which are of the same size as sealed beam headlamps types A through D. Honda and MIC also requested a delayed effective date, to the beginning of the 1991 model year, arguing that this was the most efficient way for the industry to proceed. Both also asked for a clarification that the requirement did not extent to the marking of replacement lenses intended for use on headlamps on pre-1991 model year motorcycles.

The agency wishes to clarify that the marking requirement applies only to lenses manufactured to replace those on headlamps whose lenses were marked in accordance with S5.1.1.29. The requirement will not apply retroactively to any other motorcycle headlamps lens. Although the primary intent of the marking requirement is to minimize the possibility that a motorcycle headlamp could be used on a passenger car should it contain an H–4 light source, NHTSA notes that no "motorcycle" lens marking would be required were the manufacturer to install the corresponding Type HB2 light source that meets the automotive photometrics of Figure 17 of Standard No. 108.

Koito's petition that would restrict marking only to motorcycle headlamps that are physically interchangeable with sealed beam headlamps of specified sizes might have been more appropriate before the agency amended Standard No. 108 to specify the integral beam headlamp system. Replaceable bulb and integral beam headlamps that do not have standardized dimensional specifications will be produced. Thus, it is important that motorcycle headlamps that are not equipped with HB Type light sources be distinguishable from these headlamps. Retaining marking requirements unchanged from the final rule will help achieve this goal. Therefore, Koito's petition is denied.

Finally, the agency has considered the arguments for a further extension of the effective date of the lens marking requirement. In view of the necessity to use present stock, and of the industry practice in orderly changes at the beginning of model years, the agency is granting the petitions for a deferred effecitve date, until the beginning of the next model year, and is amending S5.1.1.29 to specify September 1, 1990 as the date on which the lens marking requirement becomes effective.

Issue of Bulb Ratings

Koito commented that the bulb wattage and luminous flux values differ from the H–4 bulb, that they are inappropriate, and that the agency provided no explanation for this. The agency agrees with this comment. The values established related to the test voltage of 13.2V initially proposed for HB2, rather than the 12.8V which was the basis of the second proposal. The agency is correcting S7.6(b) to specify that the maximum power of the HB2 on lower beam shall be 65 watts and 72 watts on the upper beam. The luminous flux of HB2 shall be 910 plus or minus 10% on the lower beam, and 1500 plus or minus 10% on the upper beam.

Issue of Safety of Bulb Substitution

Sylvania petitioned that the rule be deferred, pending a fuller analysis of safety issues involving "substitution for the HB2 of high-wattage H4 motorcycle and off-road vehicle headlamp bulbs not sanctioned for highway use." The crux of petitioner's argument is that the agency originally proposed to differentiate the base of the HB2 from that of the H-4, so as to reduce the risk of illegal substitution of the H-4 with its high glare potential. It argues that the abandonment of that proposal merits reconsideration in the public interest, and, in essence, that the agency return to its former position.

In response to this petition, Volkswagen of America, though not a petitioner for reconsideration, filed a rebuttal which stated that the HB2 light source uses a base similar to the European P43t base, while the high wattage or rally bulb that is similar in design to the H-4 that will be supplied by major manufacturers of the H-4 to the US market is designed with the PU43t base. Because of a projection in the PU43t base, it cannot be installed in lamps designed to use bulbs with the P43t base. Two major suppliers of the H-4 to the American market had previously confirmed to NHTSA that, notwithstanding the lack of a requirement for bulb differentiation, they will supply high wattage or rally H-4 type bulbs with bases that are designed not to fit headlamps that accept the HB2. The agency believes that this undertaking by bulb manufacturers is sufficient to address the concern of Sylvania, and denies its petition.

Effective Date

This rule becomes effective January 26, 1990, with certain marking requirements deferred from January 1, 1990, to September 1, 1990. Since the amendment does not impose any new requirements but relieves a restriction, and provides clarifications, the agency finds for good cause shown that an effective date earlier than 180 days is in the public interest.

Impacts

NHTSA has considered this rule and has determined that it is not major within the meaning of Executive Order 12291 "Federal Regulation", nor significant under Department of Transportation regulatory policies and procedures. Readers are referred to the regulatory evaluation of the original final rule for a discussion of costs and impacts. The impacts of the changes made by this rule are so minimal that the conclusions about costs and other impacts in that evaluation remain valid. The further postponement of the effective date for the lens marking requirements to accord with the beginning of a new model year will reduce the economic impact upon manufacturers of certain types of motorcycle headlamps who, absent such amendment, would have had to institute such a change in the middle of a model year.

NHTSA has analyzed this rule for the purposes of the National Environmental Policy Act. The minor amendments of the rule will have no effect upon the human environment.

The agency has also considered the impacts of this rule in relation to the Regulatory Flexibility Act. I certify that this rule would not have a significant economic impact on a substantial number of small entities. Accordingly, no initial regulatory flexibility analysis has been prepared. Manufacturers of motor vehicles and motor vehicle headlamps, those affected by the rule, are generally not small businesses within the meaning of the Regulatory Flexibility Act. Finally, small organizations and governmental jurisdictions would not be significantly affected since the price of new vehicles, and headlamps will be minimally impacted.

Finally, the agency has considered this rule as it relates to Executive Order 12612 "Federalism." The rule will preempt any State law that differs from the rule, but will not preempt any State law that is identical to the rule, according to the express preemption provision of 15 U.S.C. 1392(d).

List of subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles

PART 571—[AMENDED]

In consideration of the foregoing, 49 CFR 571.108 Motor Vehicle Safety Standard No. 108 *Lamps, Reflective Devices, and Associated Equipment,* is amended as follows:

1. The authority citation continues to read:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.10 [Amended]

2. In section S5.1.1.29, the date "January 1, 1990" is revised to read "September 1, 1990".

3. In section S7.6(b), the numbers "66", "75", "1000", and "1650" are removed and the numbers "65', "72", "910", and "1500", respectively, are inserted in their place.

4. In section S7.6(f), the phrase "Type HB1 and HB4" is revised to read "Types HB1, HB2, and HB4".

Issued on December 20, 1989.

Jeffrey R. Miller,

Deputy Administrator.

[FR Doc. 89–29966 Filed 12–26–89; 8:45 am]

BILLING CODE 4910–59–M

Proposed Rules

Federal Register
Vol. 54, No. 247
Wednesday, December 27, 1989

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

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 7 and 23

[Docket No. 89-16]

Lease Financing Transactions

AGENCY: Office of the Comptroller of the Currency, Treasury.
ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (the "OCC") is publishing for comment a new regulation on the lease financing transactions of national banks. This action is prompted by an amendment to Revised Statute 5136 (12 U.S.C. 24) by section 108 of the Competitive Equality Banking Act ("CEBA"), Pub. L. 100-86, 101 Stat. 579 (August 10, 1987). The proposed regulation is designed to balance a national bank's interest in exercising its statutory authority with the national interest in a safe and sound national banking system. The regulation will provide uniform and publicly available answers to some commonly asked questions which the OCC has received on lease financing transactions.

The OCC is also proposing to re-issue its current Interpretive Ruling on lease financing transactions, presently codified at 12 CFR 7.3400, as a subpart of this new regulation. The OCC had issued this Interpretive Ruling earlier, recognizing that, incidental to the authority to make loans, national banks were also authorized to enter into lease financing transactions. See 44 FR 22393 (April 13, 1979). Re-issuing the Interpretive Ruling as part of this proposed regulation will consolidate the OCC's substantive lease financing regulations and clarify the two types of lease financing authority available to national banks.

In order to achieve this consolidation, the OCC is proposing a regulation in three subparts. Subpart A applies to all lease financing transactions, whether entered into under the authority of 12 U.S.C. 24(7), as incidental to banking, or under the specific authority of section 108 of CEBA. Subpart B addresses additional requirements applicable only to lease financing transactions entered into under section 108 of CEBA. Subpart C brings the OCC's Interpretive Ruling into this proposed regulation, and addresses additional requirements applicable only to lease financing transactions entered into under the general authority of 12 U.S.C. 24(7).

To bring the provisions of Interpretive Ruling 7.3400 within the framework of this proposed regulation, the OCC is markedly reorganizing it. However, the OCC is proposing only two substantive changes to the Interpretive Ruling: first, to address the re-leasing of property acquired for lease financing transactions; and second, the applicability of 12 U.S.C. 371c-1 to lease financing transactions. Each of these changes is affected through the generally applicable provisions of subpart A.

DATE: Comments must be received by February 26, 1990.

ADDRESSES: Comments should be directed to: Docket No. 89-16, Communications Division, Fifth Floor, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East, SW., Washington, DC 20219; Attn: Jackie England. Comments will be available for public inspection and photocopying at the same location.

FOR FURTHER INFORMATION CONTACT: Noel A. Cain, Multinational and Regional Bank Analysis (202) 447-1747; William C. Kerr, National Bank Examiner, Supervision Policy/Research Division (202) 447-1164; Richard Shack, Bank Accounting (202) 447-0471; or Ellen C. Starr, Attorney, Legal Advisory Services Division (202) 447-1883.

SUPPLEMENTARY INFORMATION:

Background and Analysis

Section 108 of CEBA, Public Law 100-86, 101 Stat. 579 (August 10, 1987), expanded the activities expressly authorized to national banks by adding the following paragraph to 12 U.S.C. 24: "Tenth: To invest in tangible personal property, including, without limitation, vehicles, manufactured homes, machinery, equipment or furniture, for lease financing transactions on a net lease basis, but such investment may not exceed 10 percent of the assets of the association." The OCC believes that section 108 of CEBA grants new leasing authority to national banks, separate and distinct from that which the OCC had previously interpreted as existing within 12 U.S.C. 24(7). See 12 CFR 7.3400; see also H. Rep. No. 261, 100th Cong., 1st Sess. 140 (1987). Specifically, the Conference Report for CEBA states that "Section 108 provides leasing authority in addition to that already possessed by national banks, and would not limit the existing authority of national banks to engage in leasing transactions that are the functional equivalent of loans and satisfy the residual value and other limitations in the Comptroller's regulations." *Id.*

In addition to stating that the authority conferred in section 108 is not merely a codification of existing authority, the Conference Report provides a partial description of the lease financing transactions envisioned by section 108. See H. Rep. No. 261 at 140. The new authority "would permit national banks to enter into such transactions on a 'net' lease basis, as defined in the regulations of the Comptroller of the Currency (12 CFR 7.3400) up to ten percent of the bank's assets." *Id.* The Conference Report continues that "Section 108 is not intended to allow national banks to engage in the daily or short-term equipment or automobile rental business." *Id.*

In contrast to the Conference Report, section 108 itself places few statutory restrictions or limitations on the new authority it confers. Section 108 is also self-executing, requiring no regulation to implement the authority conferred by the section. Although the OCC recognizes that section 108 was intended to liberalize a national bank's authority to engage in lease financing transactions, the OCC also considers that some guidelines, designed to balance a national bank's interest in exercising its statutory authority with the national interest in maintaining a safe and sound national banking system, may be helpful to the banking community. As a result, the OCC has decided to issue a regulation on lease financing transactions under the authority of section 108.

This regulation will aid the banking community in determining the prudential limits which the OCC feels are appropriate for this activity, and will

provide uniform and publicly available answers to many of the questions which the OCC has received on section 108's lease financing authority.

In conjunction with the decision to issue a regulation on lease financing transactions under section 108, the OCC has also reviewed its previously issued Interpretive Ruling on lease financing, presently codified at 12 CFR 7.3400 ("Interpretive Ruling 7.3400"). See 12 CFR 7.3400; see also 44 FR 22,388 (1979). The OCC first considered whether there was any practical need to retain the provisions of Interpretive Ruling 7.3400, or whether its interpretation of a national bank's general authority to enter into lease financing transactions had been overtaken by the specific authority provided by section 108.

The present version of Interpretive Ruling 7.3400 was issued by the OCC in response to *M & M Leasing Corporation* v. *Seattle First National Bank*, 563 F.2d 1377 (9th Cir. 1977), cert. denied, 436 U.S. 956 (1978) ("M & M Leasing"). In M & M Leasing, the Ninth Circuit Court of Appeals affirmed an OCC interpretation that 12 U.S.C. 24(7) authorized a national bank to become the owner and lessor of personal property as an "incidental power * * * necessary to carry on the business of banking." *Id.*; see also 12 U.S.C. 24(7). M & M Leasing held, however, that such lease transactions were authorized only "when, in the light of all relevant circumstances, the transactions constitute the loan of money secured by the properties leased." 563 F.2d at 1380.

Interpretive Ruling 7.3400 allows a national bank to make "net, full-payout" leases of personal property. These leases meet the functional equivalency standard articulated by M & M Leasing in that (1) a national bank is generally prohibited from undertaking responsibilities to service or maintain the leased property, and (2) a national bank must expect to recover 75 percent of its cost of the property, plus the cost of financing the property, from rentals and estimated tax benefits. This latter requirement effectively ensures that, in making a lease under the authority of Interpretive Ruling 7.3400, a national bank is looking more to the creditworthiness of the lessee than to the residual market value of the property leased in order to recover its full investment in the leased property.

After reviewing Interpretive Ruling 7.3400, the OCC determined that it does provide national banks a distinct authority to engage in lease financing transactions which has not been overtaken by section 108. Specifically, Interpretive Ruling 7.3400 provides broader authority than that provided by section 108 in at least two areas. First, Interpretive Ruling 7.3400 does not restrict a national bank to the acquisition, for the purpose of lease financing transactions, of tangible personal property. Second, Interpretive Ruling 7.3400 does not impose an aggregate limitation on the volume of a national bank's lease financing transactions. As Interpretive Ruling 7.3400 is broader than section 108 in these two areas, the OCC has decided to retain its interpretation of a national bank's general authority to engage in lease financing transactions.

The OCC next considered whether it was constructive to have both an interpretive ruling and a regulation addressing lease financing transactions; in this regard, the OCC has decided that it is most beneficial to address a national bank's authority to enter into lease financing transactions in one place. Thus, the OCC is proposing to move Interpretive Ruling 7.3400 into part 23.

Although Interpretive Ruling 7.3400 has been substantially reorganized to fit within the framework of proposed part 23, the OCC is proposing only two substantive changes to its interpretation. For the first time, the OCC addresses the re-leasing of personal property acquired pursuant to a lease financing transaction entered into under the general authority of 12 U.S.C. 24(7) by regulation. Additionally, the proposed rule makes the requirements of 12 U.S.C. 371c–1, added to the Federal Reserve Act as part of CEBA, applicable to lease financing transactions between national banks and their affiliates.

To achieve the consolidation intended, the OCC is proposing a three part rule. Subpart A applies to all lease financing transactions, whether entered into under the general authority of 12 U.S.C. 24(7) or the specific authority of Section 108 of CEBA. This subpart (1) notes that there are two lines of authority, each with distinct requirements, under which a national bank may enter into lease financing transactions; (2) defines "net lease basis," a term made applicable to all lease financing transactions, whether entered into under 12 U.S.C. 24 (7) or (10); (3) addresses a national bank's acquisition and retention of personal property, for the purposes of lease financing transactions; (4) requires the segregation of a bank's records on its lease financing transactions; (5) discusses the applicability of statutory lending limits and affiliate restrictions to lease financing transactions; and (6) addresses the Consumer Leasing Act of 1976.

Subpart B addresses additional requirements applicable only to lease financing transactions entered into under section 108 of CEBA. Specifically, this subpart (1) restates the authority conferred by section 108 of CEBA; (2) proposes a minimum lease term; and (3) establishes a transition rule to accommodate lease financing transactions entered into prior to the effective date of a final regulation.

Subpart C addresses additional requirements applicable only to lease financing transactions entered into under the general authority of 12 U.S.C. 24(7). This subpart brings the OCC's previously issued Interpretive Ruling 7.3400 into proposed part 23, and (1) states the authority to enter into lease financing transactions generally conferred by 12 U.S.C. 24(7); (2) restates the maximum estimated residual value applicable to leases which are the functional equivalent of loans; and (3) carries into part 23 the transition rule established by Interpretive Rule 7.3400.

The major points of each subpart of the OCC's proposed lease financing regulation are discussed in the section-by-section analysis.

Discussion

Subpart A: General Provisions

As noted above, the requirements of subpart A will apply to all lease financing transactions, whether entered into under authority of 12 U.S.C. 24(7) or section 108 of CEBA. Subpart A contains the following sections:

23.1 Authority.
23.3 "Net Lease Basis".
23.3 Investment in Personal Property.
23.4 Segregation of Records.
23.5 Application of Lending Limits; Restrictions on Transactions with Affiliates.
23.6 Consumer Leasing Act of 1976.

Section 23.1: Authority

Subsection (a) of proposed § 23.1 notes that there are two distinct lines of authority under which a national bank may enter into lease financing transactions, *i.e.*, either under the specific authority of section 108 of CEBA, at 12 U.S.C. 24(10), or under the general authority of 12 U.S.C. 24(7). This subsection states that in order to enter into a lease financing transaction under the authority of section 108, a national bank must comply with the requirements of subparts A and B. For ease of reference, these lease financing transactions are called "CEBA Leases." In order to enter into a lease financing transaction under the authority of 12 U.S.C. 24(7), a national bank must

comply with the requirements of subparts A and C.

Subsection (b) of proposed § 23.1 requires that a national bank/lessor must expect to realize a return of its full investment in the leased property, plus the estimated cost of financing the property on entering into any lease financing transaction, whether under the general authority of 12 U.S.C. 24(7) or the specific authority of 12 U.S.C. 24(10). The bank's return on its investment may be realized through rentals, estimated tax benefits, and the estimated residual value of leased property at the end of the lease term. The estimate by the lessor of the total cost of financing the property over the term of the lease should reflect, among other factors, the term of the lease, the types of financing available to the lessor, the credit rating of the lessor and/or the lessee (if a factor in the financing) and prevailing rates in the money and capital markets. Where the calculation of the cost of financing according to this formula is not reasonably determinable, a lease may be considered to have met the test for recovering the cost of financing if the bank's yield from the lease is equivalent to what the yield would be on a loan having similar terms and conditions.

Subsection (b) is proposed as a matter of prudential guidance, and reflects a similar requirement which the OCC had already made applicable to leases entered into under Interpretive Ruling 7.3400. See 12 CFR 7.3400(b)(2). Although proposed subsection (b) extends this requirement to CEBA Leases, it is not intended to make lease financing transactions entered into under section 108 of CEBA the equivalent of a "full-payout lease" under Interpretive Ruling 7.3400. Section 108 of CEBA does not require that leases entered into under its authority be "full-payout" leases. Whether a lease is a "full-payout" lease is determined with regard to the maximum allowable estimated residual value of the leased property, which is addressed below at proposed § 23.11.

Section 23.2: "Net Lease Basis"

Section 23.2 defines the term "net lease basis." This definition of "net lease basis" is applicable to all lease financing transactions, whether entered into under the general authority of 12 U.S.C. 24(7) or the specific authority of section 108. Generally, a "net lease" is one in which a national bank does not agree to provide for the servicing of the leased personal property, including any required licenses or registration, insurance, repair or maintenance work, and will not provide or be obligated to provide for substitute property when leased property is being serviced. See 12 CFR 7.3400(b). When developed for Interpretive Ruling 7.3400, this definition was perceived to be consistent with the M & M Leasing requirement that leases entered into under the authority of 12 U.S.C. 24(7) be the functional equivalent of loans.

In specifically authorizing lease financing transactions to national banks, section 108 also uses the term "net lease." As suggested by the language of section 108, and by the accompanying Conference Report, the proposed regulation adopts the definition of "net lease" previously stated at 12 CFR 7.3400(b)(1), making this term equally applicable to lease financing transactions which are specifically authorized by section 108. As a result, subsection (a) of the proposed § 23.2 states that a national bank/lessor will not provide or be obligated to provide for servicing, repair or maintenance of the leased property during the term of the lease. A national bank/lessor may not be obligated to provide a lessee with a substitute for leased property while it is being serviced or repaired, or with additional parts or accessories for the leased property, unless under a separate lease which also meets the conditions of this proposed regulation. A national bank/lessor may not be obligated for the purchase of insurance for the lessee, except where the lessee has failed its obligation under the lease contract to purchase or maintain required insurance. Finally, a national bank/lessor may not be obligated to renew any license or registration for the leased property.

Although subsection (a) 23.2 generally prohibits a national bank/lessor from undertaking any servicing responsibilities for leased personal property, it does recognize that some circumstances may warrant the bank's undertaking some additional responsibilities in order to protect its interest in the property. Therefore, subsection (b) would allow a national bank/lessor to take on responsibilities otherwise prohibited by subsection (a), where the bank believes in good faith that an unexpected change in conditions has occurred which increases the bank's exposure to loss on the lease. Likewise, subsection (c) of proposed § 23.2 makes it clear that a national bank/lessor may include in the lease or in a separate agreement with the lessee provisions designed to protect the bank's financial position in the event of such an unexpected change in conditions. The OCC requests comments on whether subsections (b) and (c) provide a national bank/lessor sufficient flexibility to address a deteriorating lease financing transaction.

Notwithstanding the incoporation of Interpretive Ruling 7.3400's definition of a "net lease" in this proposed rule, the OCC is requesting comments on that definition as a whole. Specifically, having reviewed the definition of a "net lease," the OCC has some concern that it may place unnecessary restrictions on national banks, and may foreclose some activities that are appropriately incidental to lease financing transactions. Thus, the OCC is requesting comments on whether the definition of a "net lease" should be rewritten, to allow a bank to engage in various marketing, finder, or other activities, including insurance-related activities, that are similar to those which have been or may be determined to be incidental to the business of banking.

Section 23.3: Investment in Personal Property

Proposed § 23.3 addresses a national bank's acquisition and retention of personal property, for the purpose of entering into lease financing transactions. This proposed section considers personal property generally, whether tangible or intangible. National bank/lessors should note, however, that the lease financing authority conferred by section 108 of CEBA applies only to tangible personal property. That limitation on CEBA Leases is specifically noted at proposed § 23.7, discussed below.

Subsection (a) of proposed § 23.3 requires that a national bank acquire specific property to be leased only after the bank has entered into a legally binding commitment to lease the property on terms which comply with the proposed regulation. This subsection is intended to prevent a national bank from making speculative acquisitions of personal property, in the hope of subsequently leasing that property.

Subsection (b) of proposed § 23.3 generally addresses property which may be returned to a national bank/lessor by a lessee, whether at the expiration of a lease term or on default of the lessee. According to this subsection, a national bank must either sell the property, or re-lease it to another lessee in conformance with the requirements of proposed Subpart A and either subpart B or C within one year of its return to the bank. A national bank/lessor may retain property for longer than one year if it can establish that exceptional circumstances exist, and an extended retention period is approved by the OCC. Subsection (b) specifically states that property which is to be re-leased

must be marked to the lower of current fair market value or book value for the purpose of determining the maximum estimated residual value.

Notwithstanding the requirements of proposed subsection (b), the OCC also recognizes that a short term lease, *i.e.*, a bridge or interim lease, may be appropriate in some circumstances. For example, a short term bridge or interim lease may be appropriate at the end of a conforming lease, where the lessee needs additional time to arrange long term financing for its ultimate purchase of the property. Subsection (c) of the proposed § 23.3 authorizes a national bank/lessor to enter into an occasional short term lease financing transaction, but *only* at the conclusion of a lease which originally conformed with the requirements of subpart A and either subpart B or C, or which would have conformed with those provisions except for a default by the lessee. In this instance, the lease need only comply with the requirements of subpart A; the lease will not be subject to the more specific requirements of subpart B or C. This provision is intended to facilitate longer term transactions while maintaining cash flow from the asset. It is not intended to encourage such short term leases.

As Interpretive Ruling 7.3400 did not address re-leasing property returned to the bank, whether at the expiration of a lease or on the lessee's default, the application of subsection (b) of proposed § 23.3 to lease financing transactions entered into under the general authority of 12 U.S.C. 24(7) is one of two substantive changes to the OCC's treatment of such leases. At the specific request of individual national banks, the OCC has previously allowed a short term interim or bridge lease at the conclusion of a lease financing transaction pursuant to Interpretive Ruling 7.3400.

Section 23.4: Segregation of Records

Proposed § 23.4 recognizes that a national bank may enter into some CEBA Leases, complying with subparts A and B of this proposed regulation, and may also enter into some leases under the authority of 12 U.S.C. 24(7), complying with subparts A and C of proposed part 23. For ease of monitoring, § 23.4 requires that, where a national bank enters into both types of lease financing transactions, the records which it maintains on its CEBA Leases must be specifically identified from those maintained on its leases under the authority of 12 U.S.C. 24(7). Section 23.4 does not impose a new record-keeping requirement on national banks, but merely requires that the leasing records which a national bank normally maintains be segregated.

Section 23.5: Application of Lending Limits; Restrictions on Transactions with Affiliates

Proposed § 23.5 provides that lease financing transactions, whether entered into under section 108 of CEBA or 12 U.S.C. 24(7), are subject to the per borrower, or in this case, per lessee, limitations under 12 U.S.C. 84. Additionally, the restrictions on transactions with affiliates stated at 12 U.S.C. 371c and 371c–1 are made applicable to lease financing transactions.

Consistent with the interpretation that 12 U.S.C. 24(7) allows a national bank to enter into lease financing transactions which are the functional equivalent of loans, Interpretive Ruling 7.3400 required that the limitations on loans and extensions of credit prescribed by 12 U.S.C. 84 be applied to any lessee. See 12 CFR 7.3400(g). Paragraph (g) also imposed the restrictions on transactions with affiliates, at 12 U.S.C. 371c, on lease financing transactions. Although the OCC recognizes that lease financing transactions entered into under the statutory authority of Section 108 need not be justified as the functional equivalent of loans, the OCC nonetheless believes that the limitations provided by 12 U.S.C. 84 should apply, in order to limit the bank's risk of exposure to any one or a few lessees, and to encourage a diversity of lessees in a bank's portfolio. The restrictions on transactions between affiliates provided at 12 U.S.C. 371c and 371c–1 will protect a national bank/lessor from potential abuses by an affiliated lessee.

In applying the restrictions at 12 U.S.C. 371c–1 to lease financing transactions entered into under the general authority of 12 U.S.C. 24(7), proposed § 23.5 makes the second substantive change to Interpretive Ruling 7.3400. Section 371c–1 was added to title 12 of the United States Code by CEBA, and generally requires that transactions between a member bank or its subsidiary, and any affiliate of the member bank, be "on terms and under circumstances, including credit standards, that are substantially the same, or at least as favorable to such bank or its subsidiary, as those prevailing at the time for comparable transactions with or involving other nonaffiliated companies." See Pub. L. 100–86, title I, § 102(a), 101 Stat. 564.

The OCC intends that the percentage limitations on loans and extensions of credit, at 12 U.S.C. 84, and on "covered transactions," at 12 U.S.C. 371c, be applied to the aggregate book value of all personal property leased to any lessee. The aggregate book value of a leased asset must approximate the lower of current market value or book value of the property at all times.

Nonrecourse debt may be subtracted from this value to determine the lessee's appropriate lending limit position.

Section 23.6: Consumer Leasing Act of 1976

Section 23.6 of the proposed regulation provides that nothing in proposed part 23 shall be construed to be in conflict with the duties, liabilities, and standards of the Consumer Leasing Act of 1976. This section incorporates a similar statement in Interpretive Ruling 7.3400, and makes it applicable to lease financing transactions entered into under section 108 of CEBA or under the general authority of 12 U.S.C. 24(7).

The Consumer Leasing Act of 1976 applies to leases of personal property by a natural person, for a term in excess of four months and for a total contractual obligation not exceeding $25,000, primarily for personal, family or household purposes. See 15 U.S.C. 1667(1). The Act imposes certain disclosure responsibilities on the lessor, *i.e.*, it requires certain information be provided to the lessee prior to the consummation of the lease, and also addresses statements made in advertisements of consumer leases. *Id.* at 1667a and 1667c. The Act also considers the lessee's liability on termination of the lease, and the lessor's civil liability on failure to comply with the requirements of the Act. *Id.* at 1667b and 1667d.

Subpart B: CEBA Leases

Subpart B, entitled "CEBA Leases," contains additional requirements that a national bank must meet in order to enter into a lease financing transaction under section 108 of CEBA. Specifically, subpart B contains the following sections:

23.7 General Rule
23.8 Lease Term
23.9 Transition Period.

Section 23.7: General Rule

Proposed section § 23.7 generally restates the authority conferred by section 108 of CEBA, but conditions the exercise of that authority on a national bank's complying with the further restrictions of subparts A and B of part 23. Section 23.7 also modifies "assets," as that term is used in section 108, to make clear that the 10 percent volume limitation imposed by statute is computed with reference to a national bank's total consolidated assets. The

OCC intends that the 10 percent volume limitation be applied to the aggregate book value of all tangible personal property held for lease financing transactions under section 108. Nonrecourse debt is not to be subtracted in calculating this volume limitation.

Section 23.8: Lease Term

Proposed § 23.8 addresses the Conference Report statement that section 108 of CEBA is not intended to allow national banks to engage in short term leases or personal property. Thus, this section of the proposed regulation requires that lease financing transactions under section 108 have a minimum term of 90 days.

Section 23.9: Transition Period

As section 108 of CEBA is self-executing, some national banks may have entered into lease financing transactions which comply with the few statutory requirements of section 108, but which do not comply with proposed subparts A and B. The OCC proposes that lease financing transactions which were consumed prior to the effective date of a final regulation be administered in accordance with the lease financing terms agreed to by the bank/lessor and lessee. Lease financing transactions which are entered into, or which are renewed or extended by the bank/lessor, on or after the effective date of any final regulation, must be made in compliance with the requirements of subparts A and B.

Maximum Estimated Residual Value

The OCC seriously considered the imposition of a maximum residual value for lease financing transactions under section 108 of CEBA. The OCC has decided not to propose such a limitation by regulation at this time, however. Notwithstanding this decision, the OCC requests comments on the appropriateness of a residual value limitation. The OCC would also be interested in comments from those national banks that have already entered into lease financing transactions under section 108 of CEBA, on any bank-developed policies addressing the appropriate level of reliance on residual value in recovering an investment in property acquired for a lease financing transaction.

The estimated residual value of leased personal property is the estimated value of the property at the end of a lease term. A stated *maximum* residual value effectively requires a bank to expect to recover a certain percentage of its investment through lease payments and estimated tax benefits. For example, if the OCC imposed a maximum estimated residual value of 70 percent on tangible personal property leased under the authority of section 108 of CEBA, a bank entering into such a lease must expect to receive an amount equal to 30 percent of its investment in the leased property, including its cost of financing the property, through lease payments and estimated tax benefits during the lease term.

Section 108 of CEBA does not specifically provide for a maximum estimated residual value. The Conference Report accompanying the Act states that lease financing transactions under section 108 need not be held to the 25 percent maximum estimated residual value of Interpretive Ruling 7.3400, indicating that the authority to engage in lease financing transactions under section 108 is broader than that provided by 12 U.S.C. 24(7). Nonetheless, the OCC has considered whether the imposition of a maximum estimated residual value is necessary or desirable to promote the safety and soundness of these lease financing transactions.

The imposition of a maximum estimated residual value may enhance the safety and soundness of lease financing transactions under section 108 of CEBA, in that it may encourage a national bank/lessor to enter into longer term leases, rather than rely on a series of shorter term leases with various lessees to recover its investment in the leased property. Further, if a lease financing transaction is analogized to a loan, a maximum estimated residual value effectively requires that a lessee make some investment, and thus have some interest, in the property leased.

On the other hand, the imposition of a maximum estimated residual value does not guarantee safe and sound lease financing transactions, and may even reduce national bank competitiveness vis-a-vis other lessors. A stated maximum residual value may reduce flexibility in structuring the terms of a lease financing transaction, and may ultimately limit the types of property that a national bank acquires for lease financing transactions, as well as the number of prospective lessees or customers.

In attempting to balance the legislative history of Section 108 of CEBA, and the concern that a maximum residual value limitation may reduce national bank competitiveness in lease financing transactions, with competing concerns for the safety and soundness of national banks, the OCC has decided not to propose a maximum residual value limitation on CEBA Leases at this time. The OCC believes that it is bank management's responsibility to establish the appropriate level of dependence to be placed on residual value of property leased in any given transaction, ensuring that the residual value does not exceed prudent levels in relation to the realizable value of the leased property. The OCC also believes that, pursuant to its authority to monitor and supervise the activities of national banks generally, it has developed sufficient tools to monitor and supervise lease financing transactions under Section 108 of CEBA, and to take corrective actions where necessary on a case-by-case basis. If it appears in the future that national banks as a whole are not effectively supervising their own leasing activities, or are engaging in imprudent lease financing transactions, the OCC will determine whether to address such practices by regulation.

By not imposing a specific maximum estimated residual value, the OCC is not requiring a national bank/lessor, as a condition of entering into any single CEBA Lease, to expect to recover a certain percentage of its investment in the leased property, plus the estimated cost of financing the property over the term of the lease, from rentals and estimated tax benefits. As stated at proposed § 23.1(b), however, a national bank/lessor should still expect to recover its full investment in the leased property, plus its costs in financing the property, in lease financing transactions under section 108 of CEBA.

Subpart C: Leases Under the Authority of 12 U.S.C. 24(7)

Subpart C, entitled "Leases Under the Authority of 12 U.S.C. 24(7)," contains additional requirements which a national bank must meet in order to enter into a lease financing transaction under the general authority of 12 U.S.C. 24(7). The sections contained in Subpart C include:

23.10 General Rule.
23.11 Maximum Estimated Residual Value.
23.12 Transition Period.

Section 23.10: General Rule

This section repeats the leasing authority which the OCC had previously stated at Interpretive Ruling 7.3400(a), allowing national banks to acquire personal property for the purpose of "net, full-payout" leases which are the functional equivalent of loans.

Section 23.11: Maximum Estimated Residual Value

Proposed § 23.11 retains the requirement of Interpretive Ruling 7.3400 that a lease financing transaction under the authority of 12 U.S.C. 24(7) be a "full-payout" lease. Generally speaking,

a "full-payout" lease is one in which the national bank/lessor recovers a substantial portion of its investment in the personal property leased through rental payments and estimated tax benefits.

The requirement that a lease under the authority of 12 U.S.C. 24(7) be a "full-payout" lease is accomplished by the statement in subsection (a) that the maximum estimated residual value may not be greater than 25 percent of the value of the property acquired for lease. In other words, a national bank/lessor must expect to receive an amount equal to at least 75 percent of the original cost of the leased property, plus the estimated cost of financing the property over the term of the lease, from rentals and estimated tax benefits. Subsection (a) further provides that the estimated residual value relied upon by the bank may exceed 25 percent, where the excess is guaranteed by the manufacturer, the lessee, or a third party which is not an affiliate (as defined at 12 U.S.C. 371c) of the bank, and the bank has determined and can document that the guarantor has resources sufficient to meet the guarantee.

Proposed subsection (b) of § 23.11 provides a limited exception for Federal, state, or local governmental entities, stating that calculations of the estimated residual value on leases of personal property to these entities may be based on reasonably anticipated future transactions or renewals. This subsection recognizes that some Federal, state and local governmental entities are prohibited from entering into a lease with a term of greater than one year. When coupled with a stated maximum residual value, that prohibition may otherwise effectively foreclose lease financing transactions with such entities, by causing them to be prohibitively expensive. For example, the maximum residual value of 25 percent proposed for leases under the authority of 12 U.S.C. 24(7) may be read to require that the bank/lessor recover 75 percent of the value of the leased property from the governmental entity/lessee through rentals and estimated tax benefits within the one year lease term. Proposed subsection (b) of section 23.11 is designed to ensure that national bank/lessors are not effectively foreclosed from leasing personal property to domestic governmental entities.

Subsection (c) of proposed § 23.11 requires that in realizing its full investment in the leased property, plus its cost of financing the property, a national bank/lessor must primarily depend on the creditworthiness of the lessee or any guarantor of the residual value, and not on the residual market value of the leased item. This is a verbatim recitation of the last sentence of Interpretive Ruling 7.3400(b)(2), and ensures that leases under the authority of 12 U.S.C. 24(7) will be the functional equivalent of a loan.

Section 23.12: Transition Period

Proposed § 23.12 is a verbatim recitation of the provisions of Interpretive Ruling 7.3400(h).

Regulatory Flexibility Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601), it is certified that this notice of proposed rulemaking, if adopted as a final rule, will not have a significant impact on a substantial number of small entities.

Executive Order 12291

The OCC has determined that this proposed rule is not classified as a "major rule," and therefore does not require a regulatory impact analysis.

List of Subjects in 12 CFR Parts 7 and 23

National banks, Banking, Leasing, Lease financing transactions.

Authority and Issuance

For the reasons set forth in the Preamble, part 7 of chapter I of title 12 of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 7—[AMENDED]

1. Interpretive Ruling 7.3400, codified at 12 CFR 7.3400, is proposed to be removed effective [insert effective date of the final rule].

For the reasons set forth in the Preamble, title 12, chapter I, part 23 of the Code of Federal Regulations is proposed to be added as follows:

2. Part 23 is added to read as follows:

PART 23—LEASE FINANCING TRANSACTIONS

Subpart A—General Provisions

Sec.
23.1 Authority.
23.2 Net lease basis.
23.3 Investment in personal property.
23.4 Segregation of records.
23.5 Application of lending limits; restrictions on transactions with affiliates.
23.6 Consumer Leasing Act of 1976.

Subpart B—CEBA Leases

Sec.
23.7 General rule.
23.8 Lease term.
23.9 Transition period.

Subpart C—Leases Under the Authority of 12 U.S.C. 24(7)

Sec.
23.10 General rule.
23.11 Maximum estimated residual value.
23.12 Transition rule.

Authority: 12 U.S.C. 1; 12 U.S.C. 24 (7) and (10); 93a.

Subpart A—General Provisions

§ 23.1 Authority.

(a) A national bank may engage in lease financing transactions under either of two distinct lines of authority. In order to enter into a lease financing transaction as specifically authorized by 12 U.S.C. 24(10), *i.e.*, a "CEBA Lease," a national bank must comply with Subparts A and B of this part. In order to enter into a lease financing transaction as generally authorized by 12 U.S.C. 24(7), a national bank must comply with subparts A and C of this part.

(b) On entering into a lease financing transaction in compliance with this subpart, a bank must reasonably expect to realize a return of its full investment in the leased property, plus the estimated cost of financing the property over the term of the lease, from:

(1) Rentals;

(2) Estimated tax benefits; and

(3) The estimated residual value of the property at the expiration of the term of the lease.

§ 23.2 Net lease basis.

(a) A *"net lease"* is a lease under which the national bank will *not*, directly or indirectly, provide or be obligated to provide for:

(1) The servicing, repair or maintenance of the leased property during the lease term.

(2) The purchasing of parts and accessories for the leased property; however, improvements and additions to the leased property may be leased to the lessee upon its request in accordance with any applicable requirements for maximum estimated residual value.

(3) The loan of replacement or substitute property while the leased property is being serviced.

(4) The purchasing of insurance for the lessee, except where the lessee has failed in its contractual obligation to purchase or maintain the required insurance.

(5) The renewal of any license or registration for the property unless such action by the bank is necessary to protect its interest as owner or financer of the property.

(b) If, in good faith, a national bank believes that there has been an

unexpected change in conditions which threatens its financial position by significantly increasing its exposure to loss, the limitations contained in subsection (a) of this section shall not prevent the bank,

(1) As the owner and lessor under a net lease, from taking reasonable and appropriate action to salvage or protect the value of the property or its interests arising under the lease; or

(2) As the assignee of a lessor's interest in a lease, from becoming the owner and lessor of the leased property pursuant to its contractual right, or from taking any reasonable and appropriate action to salvage or protect the value of the property or its interests arising under the lease.

(c) The limitations contained in subsection (a) of this section do not prohibit a national bank from including any provisions in a lease, or from making any additional agreements, to protect its financial position or investment in the circumstances set forth in subsection (b) of this section.

§ 23.3 Investment in personal property.

(a) A national bank may acquire specific property to be leased only after the bank has entered into a legally binding written commitment to lease the property on terms which comply with the provisions of this subpart and either subpart B or C, below.

(b) At the expiration of the lease (including any renewals or extensions with the same lessee), or in the event of a default on a lease agreement prior to the expiration of the lease term, all of the bank's interest in the property shall either be liquidated or re-leased in conformance with this subpart and either subpart B or C, below, as soon as practicable, but in no event later than one year from the expiration of the lease, or, under exceptional circumstances, such additional time as the Comptroller of the Currency may permit. Property which the bank retains in anticipation of re-leasing must be re-valued at the lower of current fair market value or book value prior to any subsequent lease, for the purpose of determining the applicable maximum estimated residual value.

(c) Notwithstanding the provisions of paragraph (b), above, on the return of leased property at the expiration of a conforming lease term, or on the default of a lessee, a short term bridge or interim lease is permissible if it otherwise conforms with the requirements of this subpart A. Such a short term bridge or interim lease need not comply with the further requirements of subpart B or C, below. Short term bridge or interim leases may only be used to facilitate conforming long term lease financing transactions.

§ 23.4 Segregation of records.

Where a national bank enters into both CEBA Leases and leases under the authority of 12 U.S.C. 24(7), the bank must specifically identify any records it maintains on its CEBA Leases to distinguish them from those records which the bank maintains on its leases under the authority of 12 U.S.C. 24(7).

§ 23.5 Application of lending limits; Restrictions on transactions with affiliates.

Lease financing transactions entered into under this part are subject to the limitations on loans or extensions of credit under 12 U.S.C. 84 and to the restrictions on transactions with affiliates at 12 U.S.C. 371c and 371c–1. The Comptroller of the Currency reserves the right to determine that such leases are also subject to the limitations of any other law, regulation or ruling.

§ 23.6 Consumer Leasing Act of 1976.

Nothing in this part shall be construed to be in conflict with the duties, liabilities and standards imposed by the Consumer Leasing Act of 1976, 15 U.S.C. 1667 *et seq.*

Subpart B—CEBA leases

§ 23.7 General rule.

Pursuant to 12 U.S.C. 24(10), a national bank may (1) invest in tangible personal property including, without limitation, vehicles, manufactured homes, machinery, equipment, or furniture, for lease financing transactions on a net lease basis, or (2) may become the owner and lessor of such tangible personal property by purchasing the property from another lessor in connection with its purchase of the related lease; provided that (a) the requirements of subpart A and this subpart B of part 23 are met, and (b) the aggregate book value of all tangible personal property held for lease does not exceed 10 percent of the consolidated assets of the national bank.

§ 23.8 Lease term.

Lease financing transactions entered into under this subpart must have an initial term of not less than 90 days.

§ 23.9 Transition period.

(a) Lease financing transactions entered into under the authority of 12 U.S.C. 24(10) prior to [enter the effective date of a final rule] may continue to be administered in accordance with the lease financing terms agreed to by the bank/lessor and lessee. With respect to the applicability of § 23.5, when making new extensions of credit, including leases, to a customer, a national bank must consider all outstanding leases regardless of the date on which they were made.

(b) Any lease which was entered into in good faith prior to [insert the effective date of this regulation] which does not satisfy the requirements of subpart A and this subpart of part 23 may be renewed without violation of this Part only if there is a binding agreement in the expiring lease which requires the bank to renew it at the lessee's option, and the bank cannot otherwise reasonably or properly avoid its commitment to do so, and the bank in good faith determines and demonstrates, by full documentation, that renewal of the lease is necessary to avoid significant financial loss and recover its total investment in, plus the cost of financing, the property.

Subpart C—Leases Under the Authority of 12 U.S.C. 24(7)

§ 23.10 General rule.

Pursuant to 12 U.S.C. 24(7), a national bank may (1) become the legal or beneficial owner and lessor of specific personal property or otherwise acquire such property; or (2) become the owner and lessor of personal property by purchasing the property from another lessor in connection with its purchase of the related lease; and (3) incur obligations incidental to its position as the legal or beneficial owner and lessor of the leased property; provided that the lease is a net, full-payout lease representing a noncancelable obligation of the lessee, notwithstanding the possible early termination of that lease, and the requirements of Subpart A and this subpart C of part 23 are met.

§ 23.11 Maximum estimated residual value.

(a) Any unguaranteed portion of the estimated residual value relied upon by the bank to yield a full return under this subpart shall not exceed 25 percent of the original cost of the property to the lessor. The amount of any estimated residual value guaranteed by the manufacturer, the lessee, or a third party, which is not an affiliate (as defined by 12 U.S.C. 371c) of the bank, may exceed 25 percent of the original cost of the property, where the bank has determined, and can provide full, supporting documentation, that the guarantor has the resources to meet the guarantee.

(b) Calculations of estimated residual value on leases of personal property to Federal, state, or local governmental entities may be based on reasonably

anticipated future transactions or renewals.

(c) In all cases, both the estimated residual value of the property and that portion of the estimated residual value relied upon by the lessor to satisfy the requirements of a full-payout lease must be reasonable in light of the nature of the leased property and all relevant circumstances so that realization of the lessor's full investment plus the cost of financing the property primarily depends on the creditworthiness of the lessee and any guarantor of the residual value, and not on the residual market value of the leased item.

§ 23.12 Transition rule.

This part shall not apply to any leases executed prior to June 12, 1979. With respect to the applicability of § 23.5, when making new extensions of credit, including leases, to a customer, a national bank must consider all outstanding leases regardless of the date on which they were made. Any lease which was entered into in good faith prior to such date which does not satisfy the requirements of this part 23 may be renewed without violation of this Part only if there is a binding agreement in the expiring lease which requires the bank to renew it at the lessee's option, and the bank cannot otherwise reasonably or properly avoid its commitment to do so, and the bank in good faith determines and demonstrates, by full documentation, that renewal of the lease is necessary to avoid significant financial loss and recover its total investment in, plus the cost of financing, the property.

Dated: December 20, 1989.

Robert L. Clarke,

Comptroller of the Currency.

[FR Doc. 89-29936 Filed 12-26-89; 8:45 am]

BILLING CODE 4810-33-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900-AD48

Operation of Child Care Centers at VA Facilities

AGENCY: Department of Veterans Affairs.

ACTION: Proposed regulations.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its medical series of regulations (38 CFR part 17) to carry out provisions of the Veterans' Benefits and Services Act of 1988 which directs the Department to provide for the operation of child care centers at VA facilities. Under the new law, Veterans Canteen Service (VCS) is authorized to provide child care services based on the demand for care and to the extent that the operation of such centers is in the best interest of VA and to the extent that it is practical to do so. The effect of these regulations will be to make child care services available at VA facilities to those eligible under the law to receive such services.

DATES: Comments must be received on or before January 26, 1990. Comments will be available for public inspection until February 5, 1990. It is proposed to make these regulations, if promulgated, effective 30 days after final approval.

ADDRESSES: Interested persons are invited to submit comments, suggestions or objections regarding these proposed regulations to: Secretary of Veterans Affairs (217A), 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, Room 132 of the above address, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays), until February 5, 1990.

FOR FURTHER INFORMATION CONTACT: Brenda L. Jenkins, Acting Director, Office of Child Care Services, Veterans Canteen Services (133H), Department of Veterans Affairs, Veterans Health Services and Research Administration, (202) 376-8149.

SUPPLEMENTARY INFORMATION: The Secretary of Veterans Affairs proposes to amend applicable regulations in 38 CFR part 17 to implement sec. 412 of Public Law 100-322, Veterans' Benefits and Services Act of 1988, which authorizes the Veterans Canteen Service (VCS) to operate child care centers at VA facilities. Current VA policy supports the establishment of local child care centers at its facilities through the leasing of available space for child care services. The existing child care centers at several VA facilities are operating under this lease arrangement and are managed directly by non-VA entities, usually nonprofit employee organizations.

VA's only official association with these centers is established and sustained through a lease agreement for the space provided, as authorized under 38 U.S.C. 5022(a)(1). Under this provision, a VA facility may lease excess space for use as a child care center with a nonprofit or a for-profit organization. Leases to for-profit entities require competitive advertising and rent, based on fair market rental value. However, VA facilities have only limited authority to provide improvements and/or equipment to achieve compliance with safety, licensure or certification requirements under this code. Prior to the enactment of Public Law 100-322, VA lacked authority to directly operate child care centers or furnish such services. VA's authority was limited to leasing space to child care providers, without direct control over the services provided, or the fee charges.

Public Law 100-322 provided VA, through the VCS, specific authority to operate child care centers directly or by contract. Child care services would be provided at VA facilities based on the demand for the care involved, and to the extent that the Secretary determines that such operations are in the best interest of VA and that it is practical to do so. The new law also requires VA to establish reasonable charges for child care centers and requires that the operation of these centers is in compliance with all applicable State and local regulations. The law authorizes VCS to make child care services available to the children of VA employees and to the extent space is available, to the children of other Federal employees and to the children of employees of affiliated schools and authorized VA research corporation created under 38 U.S.C. 4161.

VCS was created under the authority of Public Law 79-636 (38 U.S.C. 4201-4208) for the convenience of veterans in VA medical centers and domiciliaries. VCS has the responsibility to be the sole provider of retail merchandise and services essential to patient comfort and well-being in VA facilities, particularly in hospitals and homes where veterans are hospitalized or domiciled. Under 38 U.S.C. 4208, VCS is authorized to make all necessary contracts or agreements to purchase or sell merchandise, fixtures, equipment, supplies and services without regard to section 5 of title 41 CFR. Also under 38 U.S.C. 4208, VCS is authorized exclusive control over all its activities, including procurement.

Pursuant to the provisions of section 412 of Public Law 100-322, the proposed regulations designate the Director, VCS, to be responsible for the management and coordination of all matters related to the provision of child care services under the authority of this section.

The proposed regulations would apply to all VA initiated and supported child care services except those child care centers at VA facilities in space made available under 38 U.S.C. 5022(a)(1) or 40 U.S.C. 490b. These regulations address the establishment of reasonable charges for child care services and the requirements and standards for the

health, safety and welfare of children in the provision of such services. The proposed regulations are designed to carry out the provisions of section 412 of Public Law 100–322 in order that VA facilities may provide child care services that will promote the safety, health and development of the children of their employees.

This amendment to VA regulations is considered nonmajor under the criteria of Executive Order 12291, entitled Federal Regulation. It will not have an annual effect on the economy of $100 million or more; will not result in major increases in costs for the consumer, individual industries, Federal, State or local government agencies, or geographic regions, nor will it have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary hereby certifies that these proposed regulatory admendments will not, if promulgated, have a significant economic impact on a significant number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), these regulatory amendments are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reason for this certification is that the demand for child care is greater than the supply of child care providers; therefore, VA will not be in competition with the private sector and would not have any adverse economic impact on or significantly increase costs to consumers, individual industries, Federal, State, and local government agencies, or geographic regions.

The Catalog of Federal Domestic Assistance Program numbers affected by these regulations are 64.009, 64.010, 64.011.

List of Subjects in 38 CFR Part 17

Alcoholism, Claims, Dental health, Drug abuse, Foreign relations, Government contracts, Grants program-health, Health care, Health facilities, Health professions, Incorporation by reference, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Veterans.

Approved:

Edward J. Derwinski,

Secretary.

Title 38 CFR Part 17, Medical, is proposed to be amended by adding § 17.162 and its authority citation to read as follows:

§ 17.162 Operation of child care centers at VA facilities.

The Veterans Canteen Service (VCS) shall provide for the operation of child care centers at Department of Veterans Affairs (VA) facilities in accordance with this section. The provisions of this section apply to all VA initiated and supported child care services except those child care centers at VA facilities in space made available under the authority of 38 U.S.C. 5022(a)(1) or 40 U.S.C. 490b. The provision of child care services under this section shall be governed by the following:

(a) *Definitions.* For the purposes of §§ 17.162a through 17.162i:

The term *"child care services"* shall include a daily program aimed at meeting the reasonable needs of working parents who require child care services on a regularly scheduled basis.

The term *"enrollment"* means the number of children expected to be in attendance for any day or for some period of time during the day.

The term *"parent"* means the legal custodian of the child who may be the child's natural, adopted, foster, step parent or guardian.

The term *"parent advisory committee"* means a committee comprised of and selected by the parents of children receiving care in a child care center operated under this section.

The term *"special services"* may include part-time or hourly child care, infant care, emergency or sick child care, extended hours of care and food services.

The term *"VA facilities"* means any facility or part thereof, either VA-owned or VA-operated, which is under the jurisdiction of the Secretary of Veterans Affairs for the provision of veterans' benefits and services.

The term *"volunteer"* means any person who provides services to, for, or at a child care center with no promise of compensation.

(b) *Eligibility for child care services.* The enrollment priority for child care centers established under this section shall be to children of VA employees. The children of other employees of the Federal government, and the children of employees of affiliated schools and authorized VA research corporations (under 38 U.S.C. 4161), shall be eligible for child care services at VA facilities to the extent that space is available and only to the extent necessary to make it economically feasible to operate the center.

(c) *Establishment of a center.* The Director, VCS, shall establish child care centers at VA facilities under this section to the extent that the Director, VCS, determines, based on the demand for the care involved, that such operation is in the best interest of VA and that it is practicable to do so. The Director, VCS, in making determinations regarding the establishment of child care centers under this section shall consider the following:

(1) *Needs assessment.* A VA facility, which proposes the establishment of a child care center under this section, shall assess the need for child care services based on quantifiable data obtained about the employee population that would be potential users of the services. Such assessment shall be conducted using a VCS-prescribed needs assessment survey instrument and methodology for data collection. Such instrument and methodology shall be designed to elicit data sufficient to enable projection of potential users, form a basis for setting space requirements and provide facts for making other pertinent child care progam decisions.

(2) *VA employee enrollment.* The projected total enrollment of a proposed child care center, based on the needs assessment, shall be the number of children of VA employees, sufficient to ensure that the center is cost effective to operate.

(3) *Space.* A VA facility shall have adequate space available to accommodate the demand for child care by VA employees, to include space that may be converted to meet applicable State and local facility requirements.

(4) *Economic feasibility.* The projected annual charge per child at a proposed child care center must be sufficient to cover the operating expenses of the center, including the expenses of personnel assigned to the center. In planning for the size of a center, the acceptance of non-VA employees' children, in accordance with the limitations set forth in paragraph (b) of this section, will be considered to the extent necessary to make it economically feasible to operate the center.

(d) *Child care facility operations.* (1) VCS may provide child care services under this section directly or by contract. A contract provider maybe a nonprofit or for-profit organization. The Director, VCS, may provide for differential emphasis on the type of care, child development, education programming, age groups or special services based on the demand for such care and also, its economic feasibility at VA facility proposing establishment of a center. VCS shall specify the contract performance requirements for child care

services at VA facilities established under this section.

(2) In the establishment and operation of any child care center, VA shall furnish to VCS, at no or nominal cost to the center, space in existing VA facilities, and utilities, custodial services, and other services and amenities necessary for the health and safety of the children provided care at the center.

(3) All child care center facilities established under this section shall meet applicable State and local laws, ordinances and regulations specifically relating to health, safety and child care. In addition to any State requirements, child care centers must meet applicable provisions of the 1988 edition of the National Fire Protection Association's (NFPA) Life Safety Code, "Section 1–7 Day Care Centers" (which is incorporated by reference). Incorporation of the 1988 edition of the Life Safety Code was approved by the Director of the Office of the Federal Register on _____. The Code is available for inspection at the Office of the Federal Register, Room 8301, 1100 L Street, NW., Washington, DC. Copies may be obtained from the National Fire Protection Association, Battery March Park, Quincy, MA 02269. If any changes in this Code are also to be incorporated by reference, a notice to that effect will be published in the **Federal Register**.

(e) *Contracts for child care services.* (1) Contracts for operating child care services under this section may be awarded by the Director, VCS or designee, but only to responsible contractors determined by that official to be fully capable of providing the required child care services.

(2) VCS may contract for the operation of a child care center with a nonprofit organization, comprised of VA employees whose children are cared for at the center. A VA employee organization may subcontract to a responsible child care provider for the required services, with the approval of the Director, VCS.

(3) Contracts for providing child care services authorized under this section shall be awarded by the Director, VCS or designee, in accordance with the exclusive procurement authority of 38 U.S.C. 4202(6).

(4) To be eligible for award of a contract under paragraph (e)(3) of this section, a provider of child care services shall:

(i) Demonstrate a commitment to furnishing child care services as evidenced in a statement of goals and procedures, by-laws, or mission statement.

(ii) Demonstrate by means of an established written protocol, plan or procedure, an existing capability to furnish those services which the facility requires.

(iii) Demonstrate, where incapable of furnishing directly all of the specific required services, the manner by which it will assure that those services, which it is not capable of furnishing directly, will be delivered when needed, and will be of satisfactory quality.

(iv) Have evidence, prior to submitting an application to contract under this section, that the provider has satisfactorily furnished child care services for which the provider seeks to contract.

(v) Provide evidence that the proposed child care services will comply with applicable State and local regulations for the operation of a child care center.

(vi) Provide evidence that adequate liability insurance coverage for child care services will be provided.

(5) In making and approving awards under this section, the Director, VCS or designee, shall give preference for the following factors:

(i) Experience in rendering child care services to children of the various required age-groups

(ii) Evidence of commitment to the purpose of 38 U.S.C. 4209 and to the interest of children generally.

(iii) The degree to which the anticipated quality of the proposed services appears favorable, in relation to the rates of compensation, as contrasted with comparable data from other providers.

(iv) Reliable evidence of competence of the provider's proposed staff and their ability to carry out the requirement for child care services.

(f) *Child care charges.* (1) The Director, VCS, shall establish reasonable charges for child care services in accordance with the provisions of this section. Such charge shall be set for each center at a rate comparable to the rate for like services in the community, to be determined through the use of local market surveys, provided, however, that such charges shall:

(i) In the case of a center operated directly by the VCS or by a nonprofit organization under contract with VCS, be sufficient to cover the center's operating expenses, to include consideration of costs VCS has incurred in establishing the facility,

(ii) In the case of a center operated by a for-profit organization under contract with VCS, take into account the value of space, utilities, custodial services and other amenities which VA has provided under 38 U.S.C. 4209(c)(1), in connection with establishing and operating the center, and

(iii) Take into account the center's projected total enrollment in determining the base rate.

(2) Charges may be reviewed annually by the Director, VCS, to determine the existence of any increase or decrease in comparable community rates based on local market surveys. Such reviews shall provide guidance for revising child care charges.

(g) *Child care personnel.* A child care provider under this section shall meet such staffing standards and such staff qualification, fitness, and suitability standards, as are established by applicable State and local regulations for employees and volunteers. Volunteers performing such duties under this section shall be subject to such fitness and suitability standards as are established by applicable State and local regulations.

(h) *Parental involvement.* Child care centers operating under this section shall provide for the participation (directly or through a parent advisory committee) of parents of children receiving care in the center, in the establishment of policies to govern the operation of the center, and in the oversight of the implementation of such policies.

(i) *Nutritional standards.* All meals and/or snacks planned for child care centers established under this section shall meet the nutritional standards required by applicable State and local regulations. The preparation and service of such meals and snacks (food service), shall comply with the requirements of applicable State and local sanitary codes. Such food service may be provided directly by the child care provider, or by contract. The food service contractor may be the Canteen Service or a private food service establishment.

Authority: 38 U.S.C. 4209.

[FR Doc. 89–29839 Filed 12–26–89; 8:45 am]
BILLING CODE 8320–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL 3699–1]

Approval and Promulgation of Implementation Plans

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: USEPA is today proposing to promulgate Federal revisions to the Reasonably Available Control Technology (RACT) rules for volatile organic compounds (VOC) contained in the Illinois State Implementation Plan (SIP) for ozone. These Federal revisions are intended to correct certain noted deficiencies in the existing Illinois RACT rules. USEPA is specifically requesting public comment on whether the resultant implementation plan for Illinois should consist of a mix of Federal and State rules or a comprehensive set of Federal rules. USEPA is proposing to promulgate the rules for the following six counties in the Chicago area: Cook, DuPage, Kane, Lake, McHenry, and Will. A public hearing on the proposed promulgation will be held at the time and place identified in this notice. In addition, USEPA is proposing rulemaking on revisions to the Illinois ozone SIP submitted by the State.

DATES: Comments on the proposed USEPA action must be received by February 16, 1990. A public hearing will be held on January 17, 1990, in the Federal Courtroom, room 2525, U.S. District Court, 219 S. Dearborn Street, Chicago, Illinois, starting at 9 a.m.

ADDRESSES: Written comments on this proposed action should be addressed to: Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604. (Please submit an original and three copies, if possible.)

Docket: Docket No. 5A–89–X, containing the complete documentation supporting the proposed regulations, is located for public inspection and copying at the following addresses. (It is recommended that you telephone Randolph O. Cano at (312) 886–6036 before visiting the Region V office.) A reasonable fee may be charged for copies.

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, Twenty Sixth Floor, Southeast, 230 South Dearborn Street, Chicago, Illinois 60604.

U.S. Environmental Protection Agency, Docket No. 5A–89–X, Air Dockt (LE–131), Room M1500, Waterside Mall, 401 M Street, SW., Washington, DC 20460.

A file on the proposed Federal regulations is available at the following location: Illinois Environmental Protection Agency, Division of Air Pollution Control, 1340 North Ninth Street, Springfield, Illinois 62702.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886–6036.

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I. Background

A. The Clean Air Act

The Clean Air Act, 42 U.S.C. 7401 *et seq.*, requires that USEPA establish National Ambient Air Quality Standards (NAAQS) for pollutants which cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare. 42 U.S.C. 7408, 7409. The Act further requires that each state develop and submit, to USEPA for approval, a State Implementation Plan (SIP), designed to achieve and maintain the NAAQS within that state. 42 U.S.C. 7410(a)(1). USEPA must approve the plan submitted by the state if the plan provides for the attainment and maintenance of air quality standards and otherwise meets the criteria set forth at 42 U.S.C. 7410(a)(2) (A)–(K).

In 1971, USEPA established a NAAQS for ozone (36 FR 8186), which it then revised in 1979 (44 FR 8202). Under the original provisions of the Act, the states were required to develop a SIP which ensured attainment of the ozone NAAQS by the mid to late 1970s. However, Congress recognized that many urban areas could not comply with that deadline. Thus, Congress amended the Act in 1977 by extending the ozone attainment deadline but imposing additional planning burdens (Part D of the Act) on the states to ensure that "nonattainment areas" would ultimately attain the standard by the revised deadline of December 31, 1982, or in some cases December 31, 1987. 42 U.S.C. 7501 *et seq.*

The 1977 amendments require that the states revise their existing SIPs to, among other things:

(1) Provide for the expeditious implementation of reasonably available control measures;

(2) In the interim require reasonable further progress toward attainment; and

(3) Require permits for the construction of new or modified major stationary sources.

42 U.S.C. 7502(b) (2) (3) and (6). If a state sought to extend the compliance deadline to December 31, 1987, then the SIP revision (referred to as the 1982 ozone plan) also had to include, among other things:

(1) A schedule for implementation of a vehicle inspection program; and

(2) An identification of all other measures necessary to provide for attainment.

42 U.S.C. 7502(b)(11).

Section 172(b)(3) specifically states that plans must provide for reasonable further progress towards attainment through the adoption of reasonably available control technology (RACT) regulations.[1] USEPA has established Control Techniques Guidelines (CTGs) to assist the states in determining RACT. The CTGs, which contain information on available air pollution control techniques, their costs, and effectiveness, provide recommendations on what USEPA calls the "presumptive norm" for RACT. USEPA has published three groups of CTGs (Group I, Group II, and Group III). Major sources for which a CTG has not been published are referred to as major non-CTG sources. SIPs setting emission limitations for sources in, for example, Group I of the CTGs are referred to as RACT I rules.

The 1977 amendments also added sanctions for a state's failure to adopt an adequate SIP. First, the amendments ban the construction or modification of all major stationary sources located in a nonattainment area which does not have an approved Part D plan. 42 U.S.C.

[1] USEPA has historically defined RACT as the lowest emission limitation that an emission source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility (see "Guidance for Determining Acceptability of SIP Regulations in Non-attainment Areas", December 9, 1976).

7410, 40 CFR 52.24.[2] Second, USEPA and the Secretary of Transportation must not award highway funds under certain circumstances.[3] 42 U.S.C. 7506(a).

In the event that the threat of sanctions is not sufficient to induce a state to adopt a timely and approvable SIP, USEPA must assume the state's obligation and promulgate the SIP. 42 U.S.C. 7410(c)(1). According to the Act, the Administrator shall promptly prepare and publish proposed regulations setting forth an implementation plan if:

(1) The state fails to submit a plan which meets the requirements of section 110 (section 110(c)(1)(A)),

(2) The plan submitted by the state is determined by the Administrator to not be in accordance with the requirements of section 110 (section 110(c)(1)(B)), or

(3) The state fails, within 60 days after notification by the Administrator or such longer period as prescribed by the Administrator, to revise the implementation plan as required pursuant to section 110(a)(2)(H) (section 110(c)(1)(C)).

B. History of Illinois' Effort to Adopt a SIP

In 1978, USEPA designated the Illinois counties of Cook, Lake, Kane, DuPage, McHenry, and Will as having failed to attain the ozone NAAQs. 43 FR 8962, 43 FR 45993.[4] This designation as a "nonattainment area" triggered the additional (Part D) planning requirements discussed above.

On February 21, 1980 (45 FR 11472), USEPA approved Illinois' RACT I rules. RACT II rules were submitted to USEPA on January 28, 1983. On July 11, 1985 (50 FR 28224), USEPA proposed to approve a portion and to disapprove a portion of the State's RACT II rules. For those portions that were approvable, USEPA issued its final approval on November 27, 1987 (52 FR 45333). The remaining rules, as well as State submittals to address the RACT III and Major non-CTG categories, are addressed in today's notice.

On June 30, 1982, Illinois submitted a draft ozone SIP which imposed or committed to impose additional controls in the Post-1982 extension counties of Cook, Lake, Kane, DuPage, McHenry, and Will. This submittal included a demonstration that purported to show that the controls would provide for attainment of the ambient ozone standard. On February 3, 1983 (48 FR 5110), USEPA proposed to disapprove the State's plan. In response to USEPA's proposed disapproval, the State submitted numerous corrections to its draft plan. On July 14, 1987 (52 FR 26424), USEPA again proposed to disapprove the Illinois plan. By this time it had become apparent that not all controls required by the Clean Air Act would be adopted and implemented in time to attain the ozone NAAQS in the Chicago area by the December 31, 1987, statutory deadline or even shortly thereafter, and that Illinois' plan for the Chicago area was not adequate to assure attainment of the ozone NAAQS by the same date.

Consistent with its proposed policy for dealing with areas that failed to demonstrate attainment by the end of 1987 (52 FR 45044), USEPA notified the Governor of Illinois on May 26, 1988, pursuant to section 110(a)(2)(H), that the Illinois SIP was "substantially inadequate." USEPA followed up the notice to the Governor with a detailed letter to the Director of the Illinois Environmental Protection Agency's Air Division. That letter identified unfulfilled commitments and specific deficiencies with the State's proposed plan and requested that the state remedy those deficiencies. To date, the state has only remedied one of those deficiencies. USEPA is today proposing to promulgate Federal rules which correct the remaining deficiencies, consistent with USEPA RACT guidance for RACT I, RACT II, RACT III, and Major non-CTG rules.

C. Wisconsin v. Reilly

On April 1, 1987, the State of Wisconsin (plaintiff) filed a complaint in the United States District Court for the Eastern District of Wisconsin. By the six claims in that complaint, the plaintiff sought a judgment that USEPA:

a. Be required to finally approve or disapprove the proposed 1982 revisions to the ozone SIPs for northeastern Illinois and northwestern Indiana;

b. Be required to promulgate revisions to the Illinois and Indiana ozone SIPs in conformance with section 172(b) and (c) of the Federal Clean Air Act; and

c. Be required to impose and enforce a moratorium on the construction or modification of major stationary sources of ozone in the northeastern Illinois and northwestern Indiana ozone nonattainment areas.

On August 14, 1987, the State of Illinois moved to intervene in Wisconsin's suit against USEPA. This motion was granted and intervention permitted on April 5, 1988.

On September 30, 1988, the USEPA Administrator signed notices of final rulemaking disapproving the 1982 ozone SIP revisions for the northeastern Illinois and northwestern Indiana nonattainment areas. The Agency published final disapprovals of the ozone SIP for Illinois on October 17, 1988 (53 FR 40415) and for Indiana on November 18, 1988 (53 FR 46608). On November 19, 1988, Illinois filed a petition for review in the United States Court of Appeals for the Seventh Circuit, seeking review of USEPA's final rulemaking.

On January 18, 1989, the District Court entered an order granting the plaintiff a partial summary judgment requiring that the defendant USEPA promulgate ozone implementation plans for northeastern Illinois and northwestern Indiana within within 14 months of the date of the Court's order. On February 10, 1989, in response to the State of Illinois' motion for clarification of the Court's January 18, 1989 order, the District Court dismissed as moot the plaintiff's claims relating to USEPA's obligation to finally approve or disapprove the proposed 1982 revisions to the ozone SIPs for northeastern Illinois and northwestern Indiana and the plaintiff's claims that USEPA was required to impose and enforce a construction moratorium. On May 8, 1989, the District Court entered final judgment on the counts for which it had ordered USEPA to promulgate ozone implementation plans for northeastern Illinois and northwestern Indiana.

On March 20, 1989, Illinois filed a notice of appeal with the Circuit Court on the District Court's order of January 18, 1989, as clarified on February 10, 1989. On May 25, 1989, Illinois filed a notice of appeal with the Circuit Court on the final judgment of the District Court, entered on May 8, 1989. This appeal was subsequently consolidated with Illinois' earlier petition for review, filed in the same court on November 19, 1988.

On September 25, 1989, Illinois, Wisconsin, and USEPA filed a joint motion to sever and remand with the

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[2] USEPA extended a pre-existing ban on the construction of major new stationary sources and major modifications of stationary sources of volatile organic compounds (precursors of ambient ozone) in Cook, Kane, Lake, and DuPage counties upon disapproval of the Illinois Part D ozone plan for those counties on October 17, 1988 (53 FR 40415).

[3] On November 2, 1989 (54 FR 46271), USEPA proposed to limit highway funding in Cook, Lake, Kane, and DuPage counties based on the State's failure to make reasonable efforts in submitting a revised plan.

[4] On May 16, 1983 (48 FR 21947), in response to a request from the State of Illinois, USEPA redesignated Will and McHenry Counties as attaining the ozone NAAQS. In 1983, Illinois requested USEPA to redesignate Kane and DuPage Counties as attaining the ozone NAAQS. USEPA denied the request to redesignate Kane and DuPage Counties on June 12, 1984 (49 FR 24128), and again on August 4, 1989 (54 FR 32078) upon remand from the United States Court of Appeals for the Seventh Circuit in *Illinois State Chamber of Commerce* v. *USEPA*, 775 F.2d 1141 (7th Cir. 1985).

Circuit Court seeking to sever Illinois' petition for review from its appeal, and seeking to remand the order and judgment on appeal back to the District Court. On September 29, 1989, the Circuit Court found it unnecessary to grant the severance, but did grant the requested remand in the case on appeal. On October 19, 1989, he parties filed a settlement agreement and a joint motion to vacate with the District Court. The settlement agreement calls for the use of a more sophisticated air quality model (i.e., a photochemical reactive grid model), allows more time for USEPA to promulgate a FIP using this model, and requires interim emission reductions while the modeling study is being performed. The interim emission reductions consist of Federal promulgation of revised VOC RACT rules for Illinois and, if necessary, Indiana to remedy deficiencies in the States' regulations.

On November 6, 1989, the District Court vacated its prior order and ordered all further proceedings stayed pending performance of the settlement agreement.

D. Summary of Today's Action

Today's proposal addresses the Part D requirement for RACT for the Chicago portion of the Illinois SIP.[5] Today, USEPA is proposing: (a) To adopt Federal RACT rules for inclusion in the Illinois plan,[6] (b) to approve certain pending State RACT rules for inclusion in the Illinois plan, and (c) to disapprove certain State RACT rules. In total, today's notice proposes to establish a comprehensive set of RACT rules applicable to the sources in Cook, DuPage, Kane, Lake, McHenry, and Will Counties in Illinois.

USEPA is proposing that these Federal RACT rules replace part or all of the federally approved (or federally proposed for approval) individual State rules in the SIP. The resultant plan for Illinois would then consist of some federally approved (State) rules and some federally promulgated (Federal) rules. This mixed Federal-State rule approach provides the best model for the State to secure eventually a total federally approed plan by ndicating the corrections Illinois must make to its rules, and is consistent with the District Court's order. As an alternative USEPA is also soliciting public comment on a comprehensive Federal plan (more fully discussed below). Under this alernative approach USEPA would promulgate as Federal rules both new RACT rules unaddressed by the present SIP and ules that are substantially similar to those State rules that have already been federally approved. This combination of Federal rules would then totally supercede the State rules currently in the SIP.

USEPA wishes to note that although only the proposed Federal rules are published in today's notice, the rulemaking docket for today's action contains a comprehensive compilation of all rules (federally approved State rules and new Federal rules) which would be in effect under this proposal. This document will enable the public to better understand how the State and Federal rules fit together, and to comment on the alternative approach for a comprehensive Federal plan.

It should also be noted that while RACT rules are an integral part of a Part D plan, there are other equally important requirements that still need to be addressed in order to provide for attainment. USEPA expects the State to take the lead in adopting for attainment. USEPA expects the State to take the lead in adopting rules necessary to satisfy the remaining requirements of Part D, regardless of USEPA's own efforts to develop an attainment FIP for the Chicago area.

As a first step towards promulgating a complete FIP pursuant to the Court order. USEPA believes that it is appropriate to take rulemaking action now on RACT rules for the greater Chicago area for the following reasons. First, the Clean Air requires that states submit SIPs that implement all reasonably available control measures as expeditiously as practicable and make reasonable further progress toward attainment through the implementation of RACT at a minimum on existing sources for designated nonattainment areas. 42 U.S.C. 7502(b)(2), (3). These rules will provide interim emission reductions while USEPA and the states develop a full attainment demonstration and other necessary control requirements. USEPA has maintained this interpretation of the RACT requirement in these circumstances since 1979 (see 44 FR 20372, April 4, 1979, and 46 FR 7182, January 22, 1981).

Second, traditional stationary source RACT rules are easier to both develop and implement than innovative areawide controls and transportation control measures. They, thus, represent a logical way to achieve reasonable further progress during the period before USEPA can develop a full-scale attainment FIP.

Third USEPA is confident that given the large emission reduction shortfall in the Chicago area, as described in the Federal Register notice of July 11, 1989 (54 FR 29063), all of these requirements plus numerous other areawide and transportation controls (and perhaps tightening of stationary source controls beyond RACT) will be necessary to support any attainment demonstration for the Chicago area.

Finally, Illinois has already completed rulemaking and submitted several RACT rules. It is appropriate for USEPA to act on these rules as SIP revisions and at the same time promulgate Federal measures to enhance the RACT provisions as necessary to meet the statutory and regulatory requirements.

II. Action on State Rules

Illinois has submitted several revisions to its ozone SIP to USEPA in recent years. The revisions have been either prompted by Federal guidance and notices (to correct deficiencies in existing federally approved rules or to provide rules for certain source categories for which no federally approved rule exists), or prompted by industry petitions to the State for alternative emission limitations. A summary of these submittals and USEPA's proposed rulemaking actions is provided below. A more detailed explanation of the State rules and more detailed justification for USEPA's action on them are contained in the Technical Support Documents located in the docket for this rulemaking.[7]

[5] USEPA will address the RACT rules for Indiana, pursuant to the District Court's order, in a future FEDERAL REGISTER notice.

[6] The proposed Federal rules would correct all of the deficiencies previously identified by USEPA in the letter to the Director of the Illinois Environmental Protection Agency's Air Division. It should be noted that pursuant to the settlement agreement, the Illinois Environmental Protection Agency submitted to the Illinois Pollution Control Board on September 29, 1989, revisions to the State rules to correct some of these deficiencies. USEPA has notified the State that if the Board adopts these revisions according to the schedule set forth in the settlement agreement, then USEPA's intent would be to approve these State rules. Assuming USEPA decides to pursue a mixed Federal-State plan, as discussed later in this notice, USEPA maintains this position (despite some differences in the wording between the proposed State and Federal rules) because the substance and effect of the State and Federal rules are the same. (For some of these revisions, final Federal approval would have the effect only of indicating [in a non-binding form] the portions of the State rules that, standing alone, would be theoretically acceptable. The Federal rules, however, would govern in these cases and would represent the federally enforceable plan.)

[7] USEPA's proposed rulemaking actions discussed in this section are described below independent of the two approaches discussed in the following section concerning the form of the ultimate plan (i.e., either a mix of Federal and State rules, or a comprehensive set of Federal rules). If, after reviewing the public comments, USEPA decides to promulgate a comprehensive set of

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A. RACT Deficiencies

In early 1988, USEPA performed a national review of SIPs to determine their conformance with the Agency's RACT guidance as contained in the control techniques guidelines (CTGs), CTG-related guidance, and the May 25, 1988, document titled, "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations" (also known as the "Blue Book").[8] (As noted previously, part D of the Clean Air Act requires the implementation of all reasonably available control measures as expeditiously as practicable and all measures, including RACT, as necessary to ensure reasonable further progress and attainment by the required date. 42 U.S.C. 7502(b) (2), (3). Consequently, ozone plans for nonattainment areas must include RACT requirements for sources covered by the CTGs and major non-CTG sources.) In its review of these regulations, USEPA concentrated primarily on the following areas:

- RACT regulation exemptions
- Definition of 100 tons per year (TPY) source
- Clarity of requirements
- Definitions of key terms
- Equipment component leaks
- RACT-level control on non-CTG sources
- Emission limits and emission limit units
- Transfer efficiency
- Compliance periods
- Recordkeeping
- Test methods
- Exemptions
- Variances

On May 26, 1988, USEPA notified the Governor of Illinois, James R. Thompson, that the Illinois Ozone SIP was substantially inadequate to attain and maintain the ozone standard in the Chicago-Gary-Lake County (IL), IL-IN-WI Consolidated Metropolitan Statistical Area (CMSA).[9] As a follow-up to that letter, USEPA notified the Illinois Environmental Protection Agency (Illinois EPA) on June 17, 1988, of specific deficiencies in the State's SIP and requested the State to correct them. The deficiencies cited by USEPA were the following:

1. The source exemption level in the surface coating rule (i.e., 25 tons of VOC emissions per year) is too high (part 215, subpart F, § 215.206).[10] According to USEPA's RACT guidance, the exemption level should be 3 pounds per hour or 15 pounds per day actual emissions before add-on control, or 10 tons per year theoretical potential emissions (design capacity or maximum production) before add-on control.

2. The rules do not specify the units to be used in calculating equivalent surface coating emission limitations (subpart F). The limitations should be expressed as pounds of VOC per gallon of coating (less water and exempt solvents). If "equivalent" add-on controls, transfer efficiency,[11] or cross-line averaging [12] are allowed, then the limitations should also be expressed as pounds of VOC per gallon of solids. Alternatively, the regulation can contain a clearly defined, replicable calculation conversion procedure to determine compliance.

3. The rules do not specify how exempt solvents are to be treated (subpart F). For calculation purposes, any exempt solvent shall be treated as water [as in pounds of VOC per gallon of coating (less water and exempt solvents)].

Note: although the State has submitted a rule revision which corrects this deficiency, the rule cannot be approved for other reasons—see the discussion for Power Driven Fastener Coating under Section B. State Submittals to Address RACT Deficiencies.)

4. Several definitions (subpart A, section 215.104 and part 211, subpart B, section 211.122) are deficient and must be revised:

(a) Fabric coating should cover "saturation" operations as well as strictly coating operations.

(b) Paper coating should cover "saturation" operations.

(c) The definition of transfer efficiency should be based upon coating solids and not total coating.

(d) There is no definition of coating, which should be defined to include "functional" as well as protective or decorative films.

(e) The vinyl coating definition should make clear that organosol and plastisol coatings (which traditionally have contained little or no solvent) cannot be used to bubble emissions from vinyl printing and topcoating.

(f) Refinishing should be defined as the repainting of used equipment.

5. The rules are inadequate with respect to the use of transfer efficiency (subpart F). Either baseline transfer efficiency (TE) and test method must be specified, or TE credit can be allowed only if submitted as a source-specific SIP revision.

6. The rules allow emission limits to be revised without Federal approval by means of an internal emission offset provision (subpart F, section 215.207).[13] Unless and until Illinois has an approved generic "bubble rule", all internal offsets must be submitted as SIP revisions and must comply with USEPA's emissions trading policy (51 FR 43814).

7. The rules do not clearly state the applicable compliance period (subpart F and subpart P). The compliance time frame associated with each emission limit must be stated (e.g., instantaneous or daily). In general, the compliance can be averaged over no longer than a daily basis.

8. The recordkeeping requirements in the coating rule (subpart F) are inadequate and must be made consistent with the timeframes and cutoffs in the State's rules.

9. The test methods in the rules do not reflect the most current methods. The most current test methods are required.

10. The rules do not contain a capture efficiency test method. A capture efficiency test method must be prescribed when developed by USEPA.

11. Inaccessible valves are improperly exempted from all periodic monitoring requirements (subpart R, section 215.447). Inaccessible valves should be subject to at least annual monitoring.

12. The SIP must clearly state that any variance, exemption, or alternative

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Federal rules superceding all of the State rules, then final Federal approval of any State rules would have the effect only of indicating (in a nonbinding form) the portions of the State rules that, standing alone, would be theoretically acceptable. The Federal rules would govern and would represent the federally enforceable plan.

[8] The Blue Book represents additional presumptive clarification of those areas (described in appendix D of USEPA's November 24, 1987, proposed post-1987 ozone and carbon monoxide policy statement) in which existing VOC RACT regulations have not been adopted or implemented on a nationally consistent basis meeting the requirement of RACT. This clarification does not expand or modify existing Federal regulatory requirements, but merely clarifies the existing requirements consistent with USEPA's original intent.

[9] USEPA's identification of the entire CMSA is consistent with the concept of an expanded planning area, as discussed in the proposed post-1987 ozone and carbon monoxide policy statement. The SIP call was issued for this expanded area based on the conclusion that sources (e.g., vehicles) in the entire CMSA (or MSA) contribute to the formation of ozone and carbon monoxide and the area's nonattainment. Consequently, the finding of SIP inadequacy applies to all of the counties in the CMSA (or MSA).

[10] This citation refers to the rule identification in the State statute. Unless noted otherwise, all Illinois VOC rules are contained in part 215 of subchapter C: Emission Standards and Limitations for Stationary Sources, chapter I: Pollution Control Board, subtitle B: Air Pollution, title 35: Environmental Protection of the Illinois statute.

[11] Transfer efficiency is a measure of how efficiently coating solids are applied to the objects being coated in spray coating operations.

[12] Cross-line averaging refers to the averaging of emissions from two or more coating lines to achieve compliance with the emission limitations of a rule.

[13] Internal offsets refers to the practice of reducing emissions below the lower of the current actual or applicable allowable emissions for an emissions unit by an amount sufficient to compensate for an equal (or lesser) increase in emissions above the applicable allowable emissions for another emissions unit.

compliance strategy approved by the State must be submitted to USEPA as a revision to the SIP.

13. The rules improperly allow an exemption for any bulk gasoline plant whose annual gasoline throughput is less than 350,000 gallons, as averaged over the preceding 3 calendar years (subpart Y, section 215.581). According to the CTG and model regulation guidance, the acceptable exemption level is 4,000 gallons per day.

Note, subpart P, § 215.402 also suffers from reliance on a 3-year average.

14. The rules exempt oil-fired afterburners from the requirement to operate from November 1 to April 1 (subpart A). USEPA policy only allows seasonal control for natural gas-fired afterburners and use of emulsified asphalt.

15. The solvent metal cleaning rule improperly exempts sources which emit less than 6.7 kg (15 lbs) in any one day and 1.4 kg (3 lbs) in any one hour (subpart E, section 215.181). No such emissions exemption level is acceptable.

16. The paper coating limitation does not apply to equipment used for both printing and paper coating (subpart F, section 204). An exemption from the paper coating limitation would not be acceptable unless the sources were covered by the State's graphic arts regulations, which they are not in Illinois.

B. State Submittals to Address RACT Deficiencies

All but one of the 16 previously cited deficiencies remain uncorrected by the State. In addition, there remain deficiencies in other State rules not finally approved by USEPA. Revised rules submitted by the State which address these deficiencies, along with USEPA's proposed rulemaking action, are discussed below.

(1) *Item 6: Internal Offset Rule (Subpart F, Section 215.207).* On March 28, 1988, Illinois submitted a revised internal offset rule which attempts to correct the deficiencies cited by USEPA in its July 11, 1985, proposed disapproval of the rule. In the revised rule, allowable emissions are now determined on a solids basis and the formula for determining actual and allowable emissions has been corrected. The revised rule still suffers from two problems: (1) The methods or procedures used to determine emissions are contained only in operating permits which have an expiration date (i.e., it cannot be assured that the methods or procedures will continue to be used after the operating permit expires), and (2) the rule does not explicitly state that the emission plans for internal offsets must be submitted to USEPA as SIP revisions. For these reasons, USEPA is proposing to disapprove the revised rule

(2) *Item 13: Clarification of 3-Year Averaging (Subpart A, Section 215.107).* On August 21, 1987, Illinois submitted a revision to the applicability section of its rules which clarified the 3-year averaging criterion used in the rules for graphic arts (subparts H and P) and bulk gasoline plants (subpart Y). Because 3-year averaging is not consistent with USEPA's RACT guidance, this revision, as well as the relevant portions of the rules for graphic arts and bulk gasoline plants, are not acceptable. Consequently, USEPA is proposing to disapprove the revised rule. (As noted later, USEPA is proposing revisions to correct this deficiency in the graphic arts and bulk gasoline plant rules.)

C. Other Submittals

Illinois has also submitted rules covering a number of other source categories for which RACT regulations are required. These submittals do not address the deficiencies in USEPA's SIP call, which are primarily based on rules previously approved by USEPA. USEPA has concluded that some of these rules are approvable and some are not approvable, and is proposing action based on these conclusions. The approvals and disapprovals rules are discussed separately below, along with USEPA's rationale for its proposed rulemaking.

(1) Not Approvable

High Gloss Catalyzed Coatings (Subpart F, Section 215.204(c)). On March 28, 1988, Illinois submitted a revised surface coating rule which relaxes the existing federally approved SIP emission limitations from 2.9 to 3.5 pounds per gallon for "specialty high gloss catalyzed coatings". The rule currently applies to Classic Finishing Company in Chicago. The State has not demonstrated that the revised limit is consistent with RACT. Consequently, USEPA is proposing to disapprove the revised rule.

Marine Propulsion Equipment (Subpart F, Section 215.206(b)). On August 21, 1987, Illinois submitted a revised surface coating rule which deleted the exemption for the exterior of airplanes and marine propulsion equipment in the definition of "miscellaneous metal parts and products". The revised rule also provides an exemption for the Outboard Marine Corporation's (OMC) Waukegan facility so long as its VOC emissions from miscellaneous metal coating operations do not exceed 35 tons per year. On July 22, 1988 (53 FR 27712), USEPA proposed to approve the revised rule. As explained in the technical support document, based on the public comments submitted in response to the proposal and USEPA's RACT guidance for applicability cutoffs (i.e., the 35 tons per year cut-off is not consistent with RACT guidance and no demonstration has been made that there is not a significant difference between the "State-derived" cut-off and USEPA's RACT guidance), USEPA now believes that it cannot accept the revised rule. Consequently, USEPA is reproposing to disapprove the revised rule. (OMC did provide a demonstration which purports that it is infeasible for it to comply with the emission limitations for miscellaneous metal parts and products. Based on this demonstration, USEPA previously proposed to approve the State rule. USEPA will, therefore, consider a revised coating limitation for OMC, if submitted by Illinois, based upon the information previously provided by OMC.)

Diesel-Electric Locomotive Coating (Subpart F, Section 215.204(m)). On July 29, 1988, Illinois submitted a revised surface coating rule which relaxes the emission limitations for "existing diesel-electric locomotive coating lines in Cook County" from the emission limitations in the otherwise applicable miscellaneous metal parts and products rule. The rule currently applies to General Motors Corporation, Electro-Motive Division in Cook County. The State has not demonstrated that the revised limit is consistent with RACT. Consequently, USEPA is proposing to disapprove the revised rule.

Power Driven Fastener Coating (Subpart F, Section 215.204(j)(4)). On March 28, 1988, Illinois submitted a revised surface coating rule which treats exempt solvents the same as water (i.e., emission limits have been changed from pounds VOC per gallon of coating less water, to pounds VOC per gallon less water and exempt solvents) and relaxes the emission limitations for "power driven fastener coatings" from the emission limitations in the otherwise applicable miscellaneous metal parts and products rule. The rule currently applies to Duo-Fast Corporation in Franklin Park. Although the treatment of exempt solvents is acceptable, the State has not demonstrated that the revised limits are consistent with RACT. Consequently, USEPA is proposing to disapprove the revised rule.

Generic Rule (Subparts AA, II, PP, QQ, RR). On July 21, 1988, Illinois submitted a "generic" rule which establishes control requirements for

major sources not currently subject to CTG regulations. The State rule is not acceptable because the method of determining what constitutes a major non-CTG source is not consistent with USEPA RACT guidance. For example, the State rule applies to sources which emit 100 tons or more per year of VOC if no air pollution control equipment were used. According to the RACT guidance, the emissions levels must be based on the theoretical potential to emit (design capacity or maximum production), not actual emissions, before add-on controls. Consequently, USEPA is proposing to disapprove the revised rule.

Synthesized and non-CTG Pharmaceutical Manufacturing (Subpart A, Section 215.102 and Subpart T). On May 26, 1988, Illinois submitted a rule which establishes control requirements for synthesized and non-CTG pharmaceutical manufacturing. The rule currently applies to Abbott Laboratories in North Chicago and Abbott Park. The rule is not acceptable because the method for determining the vapor pressure of mixtures is sufficiently ambiguous so as to be unenforceable and it allows an interpretation that would include the contribution of water vapor (which is contrary to USEPA's RACT guidance).

In addition, there are other unenforceable provisions within Subpart T. Consequently, USEPA is proposing to disapprove the revised rule.

Printing and Publishing (Subpart H, Section 215.245). On March 3, 1988, Illinois submitted a revised rule for printing and publishing (graphic arts) for the nonattainment counties. The revised rule lowers the exemption level for rotogravure and flexographic printing presses to 100 tons per year when averaged over the preceding 3 calendar years and requires packaging rotogravure printing presses (wishing to comply by installing add-on control equipment) to have a combined capture and control system reduction of at least 65 percent. As noted previously, 3-year averaging is not consistent with USEPA's RACT guidance. In addition, applicability must be based on potential, not actual emissions (in the absence of add-on control equipment). Consequently, USEPA is proposing to disapprove the revised rule.

(2) Approvable

Definition of Volatile Organic Material (Part 211, Subpart B, Section 211.122). On January 8, 1988, Illinois submitted a revised definition for "volatile organic material". The revised definition eliminates the reference to any vapor pressure cutoff and identifies seven additional exempt (non-photochemically reactive) compounds. Because the revised definition is generally consistent with the model definition in the USEPA's RACT guidance, USEPA is proposing to approve the revised definition. Although USEPA is proposing to approve the revised State definition, USEPA is also proposing a comprehensive set of definitions in the General Provisions section of the Federal rule, which include a definition of volatile organic material. The proposed Federal definition is substantially similar to the revised State definition. If both definitions receive final approval, then the Federal rule will represent the applicable federally enforceable rule. This is appropriate because the definitions are inextricably linked to other provisions that USEPA is promulgating.

SOCMI Air Oxidation (Subpart V). On December 22, 1987, Illinois submitted a rule which establishes control requirements, and testing and monitoring provisions, for SOCMI air oxidation processes. The new rule is consistent with the December 1984 CTG document entitled "Control of Volatile Organic Compound Emissions from Air Oxidation Processes in Synthetic Organic Chemical Manufacturing Industry". Consequently, USEPA is proposing to approve the revised rule.

SOCMI Leaks (Subpart Q). On May 12, 1988, Illinois submitted a revised rule for leaks from Synthetic Organic Chemical and Polymer Manufacturing Equipment. Except for certain monitoring provisions, the revised rule is consistent with USEPA's RACT guidance and is, therefore, approvable. Because certain monitoring exemptions in section 215.432 are not appropriate and an alternative monitoring program in section 215.436 is authorized without USEPA approval, USEPA cannot approve these portions of the rule. Consequently, USEPA is proposing to approve the revised SOCMI leak rule, except for sections 215.432 and 215.436 which USEPA is proposing to disapprove.[14]

Polystyrene Plants (Subpart A, Section 215.104 and Subpart BB). On October 2, 1987, Illinois submitted a rule which establishes control requirements, and testing and monitoring provisions, for polystyrene plants. The new rule is consistent with the November 1983 CTG document entitled "Control of Volatile Organic Compound Emissions from Manufacture of High-Density Polyethylene, Polypropylene, and Polystyrene Resins" and the January 9, 1986, memorandum entitled "Clarification of CTG RACT Recommendation for High-Density Polyethylene, Polypropylene, and Polystyrene". Consequently, USEPA is proposing to approve the revised rule.

Heatset Web Offset (Subpart P, Section 215.408). On September 28, 1987, Illinois submitted revisions to the emission limitations and compliance schedule for heatset web offset lithographic printing. The applicability criteria, emission limits, and compliance schedule are consistent with the August 1981 draft CTG document entitled "Control of Volatile Organic Compound Emissions from Full-Web Process-Color Heatset Web Offset Lithographic Printing" and other USEPA guidance on RACT for major non-CTG sources in nonattainment areas. Although USEPA is proposing to approve the State rule for heatset web offset printing, USEPA is also proposing a comprehensive Federal rule for graphic arts. The proposed Federal rule will include a heatset web offset regulation substantially similar to the proposed State rule. If both rules receive final approval, then the Federal rule will represent the applicable federally enforceable rule. This is appropriate because the heatset web offset provisions are inextricably linked to other provisions that USEPA is promulgating.

Alternative Emission Limitations (Subpart F, Section 215.205). On March 28, 1988, Illinois submitted a revised rule concerning alternative emission limitations for coating operations. The revision establishes an overall control efficiency requirement of 81 percent, except for can coating operations (where the control requirement remains at 75 percent). This revision is supported by the April 1981 study entitled "Determination of Capture and Destruction Efficiencies of Selected Volatile Organic Compound Control Devises in the State of Illinois" and generally satisfies the conditional approval issue cited by USEPA in its prior conditional approval of Illinois' RACT I regulations (45 FR 11494). Although USEPA is proposing to approve the revised State rule, USEPA is also proposing a comprehensive Federal rule for coating operations. The proposed Federal rules will include a provision for alternative emission limitations similar to the proposed State rule. If both rules receive final approval, then the Federal rule will represent the applicable federally enforceable rule. This is appropriate because the alternative emission limitation

[14] On September 25, 1989, Illinois submitted a revision to its SOCMI leak rule. This revision will be addressed by USEPA in a future **Federal Register** notice.

provisions are inextricably linked to other provisions that USEPA is promulgating.

In addition to these regulations, USEPA has previously proposed to approve certain Illinois RACT regulations. USEPA continues to classify these rules as approvable and will take action in the form of final rulemaking in the future. These rules are for:

External Floating Roofs (Subpart H, Sections 215.240, 241, 249). On August 21, 1987, Illinois submitted a revised rule which modified the exemption for stationary crude oil storage tanks equipped with an external floating roof from the requirement to use secondary seals. The revised rule limits the exemption to tanks used to store crude oil with a pour point of 50 °F. or higher as determined by ASTM Standard D97–66. This revision is consistent with the December 1978 CTG document entitled "Control of Volatile Organic Emissions from Petroleum Liquid Storage in External Floating Roof Tanks". On July 22, 1988 (53 FR 27712), USEPA proposed to approve the State rule.

Gasoline Tank Trucks and Vapor Collection Systems (Subpart Y, Section 215.584). On August 21, 1987, Illinois submitted revised rules for bulk gasoline plants, bulk gasoline terminals, and gasoline dispensing stations, and added a rule for gasoline delivery vessels. These rules establish requirements for leak prevention from gasoline tank trucks and vapor collection systems. These regulations satisfy USEPA guidance for leak testing and repair of gasoline tank trucks and vapor collection systems. The State has also adopted USEPA-approved test methods for use with these rules. The revised rule for bulk gasoline plants, bulk gasoline terminals, and gasoline dispensing facilities establishes operating and repair requirements for vapor collection systems consistent with the December 1978 CTG document entitled "Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks and Vapor Collection Systems". On July 22, 1988 (53 FR 27712), USEPA proposed to approve these State rules.

Petroleum Dry Cleaning (Subpart Z, Sections 215.607–613). On June 25, 1987, Illinois submitted a rule which establishes control requirements, testing and monitoring provisions, and compliance dates for large petroleum dry cleaners. The new rule is consistent with the September 1982 CTG document entitled "Control of Volatile Organic Compound Emissions from Large Petroleum Dry Cleaners" and relevant USEPA guidance on test methods and expeditiousness. On April 8, 1988 (53 FR 11686), USEPA proposed to approve the petroleum dry cleaning rule.

III. Proposed Federal Rules

A. Statutory Basis and Geographic Applicability

As discussed above, in 1988 USEPA disapproved Illinois' 1982 part D SIP for ozone. Upon disapproval of the plan, USEPA was required to promulgate a substitute Federal plan, because section 110(c)(1)(B) of the Act states that the Administrator shall promulgate such a Federal plan if "* * * the plan, or any portion thereof, submitted for such State is determined by the Administrator not to be in accordance with the requirements of this section." 42 U.S.C. 7410(c)(1)(B). Under the settlement agreement signed by the parties in *Wisconsin* v. *Reilly*, one of USEPA's interim requirements (prior to promulgating the full plan) is to adopt VOC RACT rules for Illinois in the event that the State fails to adopt and submit to USEPA approvable rules itself. Thus, these RACT rules will be promulgated by USEPA pursuant to its authority under section 110(c)(1)(B) to promulgate a plan that will provide for attainment and maintenance of the ozone NAAQS in northeastern Illinois.

Furthermore, on May 26, 1988, pursuant to section 110(a)(2)(H) of the Act, the USEPA Regional Administrator Valdas V. Adamkus notified Illinois Governor James R. Thompson that the Illinois SIP (including portions of the SIP that USEPA has approved) was substantially inadequate to attain and maintain the ozone standard in the Chicago-Gary-Lake County (IL), IL–IN–WI consolidated metropolitan statistical area (CMSA). USEPA called upon Illinois to revise its SIP to correct this deficiency. Among other things, USEPA instructed the State to correct a number of deficient VOC RACT rules, and to adopt a number of other rules deemed necessary by USEPA. These rules were to be promulgated and submitted to USEPA generally by August 1989. Illinois' failure to complete these actions, and thus to adequately respond to USEPA's instruction to revise the implementation plan, provides further authority for today's proposal. See section 110(c)(1)(C) of the Act, 42 U.S.C. 7410(c)(1)(C) (promulgation of Federal implementation plan where State fails to revise an implementation plan as instructed by USEPA).

Today's proposal applies to six Illinois counties in the greater Chicago area: Cook, DuPage, Kane, Lake, McHenry, and Will. The first four of these counties are currently designated nonattainment for ozone under section 107 of the Act; Will and McHenry Counties were designated nonattainment for ozone following enactment of part D in 1977, but were subsequently redesignated as attainment (see 40 CFR 81.134). The VOC RACT rules proposed by USEPA are necessarily applicable to Cook, DuPage, Kane, and Lake Counties because all part D requirements, including the RACT requirement found in section 172(b)(3), must be met for plans for nonattainment areas. In addition, USEPA believes that the history of ozone designations and planning in the Chicago area and the nature of the ozone problem there necessitate that the federally-adopted RACT rules apply in McHenry and Will Counties as well. (Note, USEPA's proposal to subject all six counties to the same level of control [RACT] through this rulemaking will not necessarily require the State to control emissions beyond RACT in these counties equally as part of its future, revised "attainment" SIP. The State may control these emissions to the extent necessary beyond RACT, provided the revised plan produces progress and attainment in accordance with the requirements of the Clean Air Act.)

USEPA believes that requiring RACT for certain VOC sources in McHenry and Will Counties is important for several reasons. First, Illinois has recognized the contribution of these counties to the ozone nonattainment problem in the Chicago area by including emission sources located in them in the area for which the State constructed its Chicago attainment demonstration in both its 1979 and 1982 part D ozone SIPs. (McHenry and Will Counties also were a part of the area for which the State requested and USEPA approved an extension of the ozone attainment date to December 31, 1987—see 45 FR 11471, February 21, 1980.) In fact, most of the State's current VOC rules apply to these two counties based on the State's decision to group the two counties with the designated nonattainment counties for purposes of Chicago-area ozone attainment planning.

Second, as USEPA has stated on previous occasions subsequent to its redesignation of McHenry and Will Counties as attainment for ozone, that redesignation was based on several incorrect assumptions. At that time, USEPA believed that VOC emissions from stationary sources in these two counties would be reduced significantly even subsequent to the redesignation as a result of Illinois' planned adoption of statewide RACT rules. But USEPA's

reliance on Illinois' commitment to adopt statewide RACT rules proved misplaced, as the State later withdrew this commitment. In addition, at the time it redesignated the two counties, USEPA believed that it could later reinstate the nonattainment designations through a unilateral redesignation. But in *Bethlehem Steel* versus *EPA*, 638 F.2d 944 (1983), the Seventh Circuit Court of Appeals held that USEPA could not unilaterally redesignate an area. Thus, the Agency now believes that it mistakenly redesignated the two counties as attainment for ozone. See 53 FR 52727, 52733, December 29, 1988.

Finally, and perhaps most important, USEPA believes that stationary sources of VOC located in McHenry and Will Counties make a significant contribution to the ozone nonattainment problem in the greater Chicago area, and that the ozone NAAQS cannot reasonbly be attained unless RACT rules are applied in these two counties. The two counties are located in proximity of and upwind of the areas measuring the highest exceedances of the ozone standard in the Chicago area. As the Agency explained in its recent decision to deny Illinois' request to redesignate DuPage and Kane Counties as attainment for ozone, "[i]f adjacent areas [to urbanized areas] have significant ozone precursor sources because of population, growth potential, or significant existing stationary sources, then these 'fringe' areas will also be designated as nonattainment because of their current and/or future contribution to the ozone problem in and near the urbanized areas experiencing the violations." (54 FR 32078, 32079, August 4, 1989) As is discussed more fully in the Technical Support Document, McHenry and Will Counties meet these criteria. It is, therefore, reasonable to apply to those counties the RACT rules being proposed today, even though the counties are still formally designated as attainment for ozone.[15]

The absence of nonattainment designations for McHenry and Will Counties does not remove USEPA's authority to set RACT rules for them under the FIP authority of section 110(c)(1)(B) and (C). For the reasons described above, USEPA believes that such rules are necessary to insure attainment and maintenance in the Chicago area, as required by sections 110 and 172(c). The absence of a nonattainment designation for those counties is irrelevant to whether RACT—level controls are needed for those purposes. See discussion at 52 FR 45044, 45066–45067, November 24, 1987 ("reasonable further progress" requirement stemming from part D, section 172(b)(3), could in substance be applied to all areas under section 110(a)(2)(A) and (B) on the theory that such progress is necessary to ensure timely attainment).

B. Overview of Rules

In general, the specific rules that USEPA is proposing are necessary to assure that enforceable rules (required under sections 110(a)(2)(D) and 172(c)) are in place that meet the requirements for RACT (under section 172(b)(2), (3)), and that meet other Clean Air Act requirements.

With respect to enforceability, for example, the Illinois SIP has few explicit recordkeeping requirements, thereby rendering enforcement problematic. The proposed Federal rules would add recordkeeping requirements consistent with underlying compliance requirements. In addition, the Illinois SIP, in many areas, does not clearly specify test methods, fails to include any test method for certain categories of sources, or authorizes the director of the State agency to set the test method. The proposed Federal rules would require use of the most appropriate test method that USEPA has developed.

With respect to RACT requirements, for example, the Illinois SIP exempts from control requirements surface coating operations of a size larger than allowed by USEPA guidance, as specified in the Blue Book. This guidance, which includes a cut-off of 15 pounds per day before add-on control is based both on previus USEPA gudiance and the fact that similar cut-offs are in effect in a number of states, such as Wisconsin. Prior USEPA guidance which supports this cut-off is the April 1978 document entitled "Regulatory Guidance for Control of Volatile Organic Compound Emissions from 15 Categories of Stationary Sources", EPA–905/2–78–001, and a June 25, 1987, memorandum from G.T. Helms, Chief, Control Programs Operations Branch, USEPA entitled "Emission Cut-Off for Control Techniques Guidelines, Volatile Organic Compound Sources".

USEPA is proposing Federal rules under section 110(c) to modify the following stationary source category rules to bring them into conformance with the RACT requirements as interpreted by USEPA guidance:

- Solvent Metal Cleaning;
- Coating Operations, including automobile or light duty truck, can, paper, coil, fabric, vinyl, metal furniture, large appliance, magnet wire, miscellaneous metal parts and products, heavy off-highway vehicle products, wood furniture, and diesel-electric locomotive (General Motors Corporation, Electro-Motive Division);
- Printing and Publishing Operations, including flexographic and rotogravure printing, and heatset web offset lithographic printing;—
- SOCMI Leaks;
- Petroleum Refinery Leaks;
- Pharmaceutical Manufacturing;
- Bulk Gasoline Plants; and
- Major Non–CTG (Generic) Rules, including paint and ink manufacturing, miscellaneous fabricated product manufacturing, miscellaneous formulation manufacturing, miscellaneous organic chemical manufacturing, and other emission sources.

In addition to the Federal rules proposed for these stationary source categories, USEPA is proposing revised General Provisions. This section includes new or revised definitions (e.g., fabric coating, paper coating, transfer efficiency, coating, vinyl coating, and refinishing), revised test methods and procedures, a seasonal exemption only for gas-fired afterburners, a requirement that any alternative emission limitation or variance must be submitted to USEPA for approval, and more specific procedures for determining the vapor pressure of organics.

A summary of these rules is provided below. For the reasons described above, USEPA is proposing to apply the rules to the six Illinois counties in the Chicago area: Cook, DuPage, Kane, Lake, McHenry, and Will.

The proposed Federal rules would correct all of the previously identified deficiencies. It should be noted that pursuant to the settlement agreement, the Illinois Environmental Protection Agency submitted to the Illinois Pollution Control Board on September 29, 1989, revisions to the State that rules to correct some of these deficiencies. USEPA has notified the State that if the Board adopts these revisions according to the schedule set forth in the settlement agreement, then USEPA's intent would be to approve these State rules. Assuming USEPA decides to pursue a mixed Federal-State plan, as discussed below, USEPA maintains this position (despite some differences in the wording between the proposed State and Federal rules) because the

[15] USEPA's decision to apply the RACT rules now in McHenry and Will Counties, but not in Grundy and Kendall Counties (which are also in the Chicago CMSA), does not mean that the application of RACT in the latter two counties might not be appropriate in the future. Rather, the Agency believes that in the first phase of correcting existing ozone SIPs, only those counties in the historical Chicago demonstration area, and that were subject to the 1988 SIP call by USEPA to correct deficiencies in VOC RACT rules, should be subject to the RACT corrections.

substance and effect of the State and Federal rules are the same. The wording differences between the two sets of rules are not significant and are probably necessary given the diferences in structure of the overall Federal and State rules. (For some of these revisions [i.e., those which represent fragments of rules, as indicated in footnote 16], final Federal approval would have the effect only of indicating [in a non-binding form] the portions of the State rules that, standing alone, would be theoretically acceptable. The Federal rules, however, would govern in these cases and would represent the federally enforceable plan.)

The approach proposed by USEPA today consists of new Federal rules which would replace part or all of the individual State rules that have been federally approved or are being federally proposed for approval (in today's notice). These new Federal rules would just correct the RACT deficiencies identified previously. The resultant plan for Illinois would then consist of some federally approved (State) rules and some federally promulgated (Federal) rules. USEPA believes that this approach provides the best model for the State to secure eventually a total federally approved SIP by highlighting the changes Illinois must make to its rules. It does present a possible problem, however, given the interrelationship of the rules, as discussed below. USEPA specifically requests public comment on this approach. To clarify which rules are federally promulgated rules (i.e., FIP rules) and which rules are federally approved State rules (i.e., SIP rules) under this mixed Federal-State plan approach, USEPA has included a document with the complete set of rules in the docket for this rulemaking action. This document contains all of the RACT rules for the Chicago area and indicates which rules are Federal rules and which are State rules.

As an alternative to the mixed Federal-State plan, USEPA also wishes to solicit public comment on a comprehensive Federal plan. Under this alternative approach, USEPA would promulgate the entire set of RACT rules for Chicago such that it would be a stand-alone Federal plan. That is, USEPA would be promulgating revisions which correct the RACT rule deficiencies outlined above *and* promulgating Federal rules substantially similar to the State rules that it has already federally approved or proposed to approve. This comprehensive Federal plan would totally supercede all of the State VOC rules currently in the SIP. This alternative approach is suggested because of the effect of several changes being proposed by USEPA today, including changes to the definitions, the test methods and procedures, and the exemptions, variances, and alternative means of control portions of the General Provisions section. The General Provisions section applies to each of the individual source category rules. It could, therefore, be argued that changes to the General Provisions section result (indirectly) in changes to the individual source category rules. If USEPA relied on its previous approval of the State rules for the individual source categories (while changing portions of the General Provisions section), then USEPA may be making the original State rules more stringent as a matter of Federal law than Illinois had initially intended. This may conflict with a decision by the U.S. Court of Appeals for the Seventh Circuit.

In *Bethlehem Steel* v. *USEPA*, 638 F. 2d 992 (1983), the Circuit Court ruled that USEPA could not, through its authority to partially approve or disapprove a plan revision, make a plan more stringent than the state had ever intended it to be. The Court did, however, indicate that USEPA could modify the plan through formal rulemaking under section 110(c) rather than through partial SIP approval. USEPA believes that its adherence to the procedural requirements of sections 110(c) and 307(d) of the Clean Air Act in proposing the Federal RACT rule revisions may avoid the procedural issue identified in *Bethlehem* and hence may be consistent with the Court's ruling. Nevertheless, USEPA acknowledges that because the General Provisions section is an integral part of the overall plan, it could be argued that compliance with the *Bethlehem* decision would necessitate formal rulemaking under section 110(c) on the entire plan, not just the deficient portions identified by USEPA. For this reason, USEPA is also requesting public comment on the alternative approach of federally promulgating a complete, comprehensive Federal plan. Public comment is also requested on each of the individual rules that would be contained in the comprehensive plan. The document noted above, which contains the complete set of rules, provides commentors with information on the make-up of a comprehensive Federal plan. Should USEPA promulgate a comprehensive plan, all of the rules in the document would be Federal rules.[16]

The State could obviate the need for a comprehensive Federal plan by indicating its intention that USEPA promulgate only the rules necessary to cure the identified RACT deficiencies, even though such action may render previously approved State rules more stringent as a matter of Federal law than the State had initially intended. The Court in *Bethlehem* was primarily concerned with federalism issues and the adverse effect of USEPA partial approval in altering state rules contrary to state intent. If the State indicates that it intends this result, then federalism issues should not be implicated. In fact, federalism would actually be served by allowing many State promulgated rules to remain in effect under the SIP.

C. Solvent Metal Cleaning

The proposed Federal rule eliminates the exception for solvent metal cleaning operations that emit less than 6.8 kg/day and 1.4 kg/hr. As noted previously, such as exemption is inconsistent with USEPA's RACT guidance. Because elimination of this exemption will subject some new sources to the solvent metal cleaning rule, new compliance schedules will be added which require these newly subject facilities to be in compliance by April 1, 1991. A section on test methods will also be added which specifies the most current USEPA-approved test methods.

D. Coating Operations

The proposed Federal rule would establish a complete rule for the following coating operations: paper coating, fabric coating, can coating, coil coating, miscellaneous metal parts and products coating, automobile and light-duty truck assembly-line coating, vinyl coating, magnet wire coating, metal furniture coating, would furniture coating, large appliance coating, heavy off-highway vehicle products coating, and existing diesel-electric locomotive coating. The proposed rule applies to coating operations (except wood furniture coating) with actual emissions more than 15 pounds per day before add-on control. (Wood furniture coating operations with potential emissions greater than 100 TPY, in the absence of

[16] Because of these concerns about the interrelationship of portions of the plan, the State of Illinois may wish to avoid this issue in subsequent SIP submittals. Thus, USEPA recommends that for any given source category for which the State wishes to submit a substitute State rule, the State should submit both the relevant requirements of the General Provisions section and a substantially complete rule for the category. USEPA may not be able to approve a rule fragment, even if it is consistent with USEPA policy or the underlying Federal rule, if the rule revision submitted by the State is structurally inconsistent with those portions of the FIP with which it would be integrated. These problems will be reduced if the State submits entire rules for a source category.

add-on control equipment, are subject to the rule.) The rule provides no special exemption (which the State rule does) for equipment used for both printing and paper coating. (The equipment must be subject to either the paper coating or graphics rule.) According to the proposed Federal rule, emissions limitations are expressed in units of VOC per gallon of coating (minus water and exempt solvents) and reflect either instantaneous or daily-weighted averages. In addition, the rule would require that alternative emission limitations (for sources wishing to comply using add-on controls) be expressed as pounds of VOC per gallon of solids. Sources wishing to comply using internal offsets or cross-line averageing would be required to satisfy the requirements of USEPA's emissions trading policy, including the submittal of a site-specific plan revision to USEPA, which is necessary to ensure that the resulting set of limits is equivalent in effect to the otherwise applicable limits. Improved recordkeeping and reporting requirements are included in the proposed Federal rule.

E. Printing and Publishing (Graphic Arts)

The proposed Federal rule would require printing and publishing operations to use instantaneous or daily averaging in calculating emissions, along with the most current test methods. Exemption levels are based on single calendar year emissions, not a 3-year average. Because the revisions will impose new or additional control requirements for some sources, additional time for compliance will be allowed for newly subject sources.

F. SOCMI Leaks

The proposed Federal rule would require synthetic organic chemical and polymer manufacturers to monitor additional equipment components with low accessibility for VOC leaks on an annual basis. The rule would also now require that any alternative leak detection program undergo prior USEPA approval as a plan revision, so USEPA can ensure that the alternative program is indeed equivalent in effect to the otherwise applicable program.

G. Petroleum Refinery Leaks

The proposed Federal rule would require petroleum refineries to monitor "inaccessible" valves (i.e., valves with low accessibility) annually and to monitor certain components more frequently than is required under the State rule.

H. Pharmaceutical Manufacturing

The proposed Federal rule for pharmaceutical manufacturing involves new applicability provisions, as well as revised testing and monitoring, control equipment, and recordkeeping requirements. The rule would apply to sources emitting either: (a) More than both 6.8 kg/day (15 lbs/day) and 2,268 kg/yr (2.5 TPY), or (b) more than 45.4 kg/day (100 lbs/day). Surface condenser controls must now be monitored for outlet temperature, and control equipment other than surface condensers must achieve reductions of at least 90 percent.

I. Bulk Gasoline Plants

The proposed Federal rule would change the throughput exemption for bulk gasoline plants from 350,000 gallons per year and 1,000,000 gallons per year averaged over the preceding 3 calendar years to 4,000 gallons per day on a 30-day rolling average.

J. Major Non-CTG (Generic) Rules

USEPA's interpretation of the stationary source RACT requirements calls for the control of all major (i.e., greater than 100 TPY) facilities. All major sources covered by a CTG are discussed above. To cover all major non-CTG sources, USEPA has developed five generic non-CTG rules based on the State's rules. These five rules would regulate VOC emissions from paint and ink manufacturing processes, miscellaneous fabricated product manufacturing processes, miscellaneous formulation manufacturing processes, miscellaneous organic chemical manufacturing processes, and other emission sources.

Note: USEPA's proposed pharmaceutical manufacturing rules include non-CTG pharmaceutical manufacturing operations and USEPA's proposed coating rules include a non-CTG source category (i.e., wood furniture coating).)

The proposed Federal rule for paint and ink manufacturing operations would apply to plants that have the potential to emit 100 TPY or more of VOC emissions from non-CTG sources, or that produce more than 7,570,820 liters (2,000,000 gallons) per year of paints and inks which contain less than 10 percent by weight of water, and ink formulations not containing as the primary solvents water, Magie oil, or glycol. In addition, storage tanks containing volatile organic liquids with a vapor pressure greater than 10 kilopascals (kPa) would have to be equipped with pressure/vacuum conservation vents, and tanks larger than 946 liters (250 gallons) would have to be submerged filled or bottom filled.

The rule for miscellaneous formulation manufacturing processes generally applies to formulated product manufacturers that are not regulated under any of the other specific source categories. Facilities with the total potential to emit 100 TPY or more of emissions from non-CTG sources would be regulated (small individual sources within a plant of 2.5 TPY or less may remain unregulated in certain situations). A provision for determining compliance based on current USEPA methods has also been added.

The rule for miscellaneous fabricated product manufacturing is similar to the miscellaneous formulation regulation in that it covers sources not regulated under the rules for specific source categories. It would apply to plants with the uncontrolled potential to emit 100 TPY or more of emissions from non-CTG sources. A provision for determining compliance based on current USEPA methods has been added.

The rule for miscellaneous organic chemical manufacturing processes is similar to the two miscellaneous categories discussed above. A provision for determining compliance based on current USEPA methods has been added.

The rule for other emission sources is similar to the rules for the three miscellaneous categories. The rule is intended as a catch-all for any other major non-CTG source which may not be subject to the four generic rules discussed above. Consistent with the State's rule, the proposed Federal rule exempts coke ovens (including by-product recovery plants), fuel combustion sources, bakeries, barge loading facilities, jet engine test cells, nonsynthetic pharmaceutical manufacturing, production of polystyrene foam insulation board (including storage and extrusion of scrap where blowing agent is added to the polystyrene resin at the plant, production of polystyrene foam insulation board (not including storage and extrusion of scrap where blowing agent is added to the polystyrene resin at the plant), and iron and steel production.

A provision for determining compliance based on current USEPA methods is included in the rule.

Finally, USEPA is also proposing specific recordkeeping and reporting requirements which would apply to the three miscellaneous category rules, and the other emission source rule.

K. General Provisions

The General Provisions section in the proposed Federal rule contains requirements and clarifications which affect the other sections of the VOC rule. The main elements of this section in the proposed Federal rule are: Definitions, Test Methods, Determination of Vapor Pressure, Compliance Dates, and Alternative

Compliance Determinations. A comprehensive list of definitions is contained in the Federal rule, including definitions which correct the relevant deficiencies in the State rule and which clarify the proposed Federal rule. Test methods and procedures are specified for coatings, inks, and fountain solutions; transfer efficiency test protocols; capture system efficiency test protocols; control device efficiency testing and monitoring; overall efficiency; VOC gas phase source test methods; VOC leak detection methods; bulk gasoline delivery system test protocols; and solvent metal cleaning VOC emissions. Specific procedures for determining vapor pressure have also been added to the proposed Federal rule. Compliance with the proposed rules is required upon promulgation, unless otherwise indicated in the individual source category rules. Any exemptions, variances, or alternatives to the control requirements or test methods are federally effective only if submitted to and approved USEPA as a plan revision.

In addition, the General Provision section contains a seasonal exemption for afterburners. In the proposed Federal rule, an exemption is provided only for natural gas-fired afterburners during the period of November 1 through April 1.

No matter what rules USEPA promulgates or approves, the existing federally-approved SIP regulations for any source will continue to apply, and be fully enforceable, until the date on which the source is required to comply with the new regulations. Further, the existing SIP will continue in force if there is any delay or lapse in the applicability of the new regulations. However, if (but only if) the existing and new regulations conflict, so that a source cannot comply with the existing SIP while moving toward compliance with the new regulations, the source may apply for a site-specific exemption from the existing SIP from the State. All such exemptions granted by the State must be submitted to and approved by USEPA before such exemption from the SIP is in effect.

IV. Summary of Rules

Today's notice proposes action on Illinois rules which have been submitted by the State, and proposes Federal rules to amend all deficiencies not corrected by Illinois. Table 1 provides a summary of the Federal rules being proposed, the State rules being approved, the State rules previously proposed for approval but not promulgated, and the State rules which have been approved and are not changing. The following designations are used in Table 1:

- FED—Proposed Federal Rule.
- PRO—State Rule being proposed for approval.
- PRE—State Rule previously proposed for approval.
- SIP—Existing federally approved State rule which is not changing.

TABLE 1.—SUMMARY OF VOC RULES FOR ILLINOIS

State No.	Rule	Federal No.
Subpart A: General Provisions		52.741(a)
215.103*	Abbreviations and Conversion Factors (FED)	
215.107*	Applicability (FED)	
215.104*	Definitions (FED)	
215.102*	Testing Methods and Procedures Compliance Dates (FED)	
215.106*	Afterburners (FED)	
	Exemptions, Variances and Alternative Means of Control (FED)	
	Vapor Pressure of Volatile Organic Liquids (FED)	
	Vapor Pressure of Organic Material or Solvent (FED)	
	Vapor Pressure of Volatile Organic Material (FED)	
	Subpart B: Organic Emissions from Storage and Loading Operations:	
215.121	Storage Containers (SIP)	
215.122	Loading Operations (SIP)	
215.123	Petroleum Liquid Storage Tanks (SIP)	
215.124	External Floating Roofs (SIP)	
215.125	Compliance Dates and Geographical Areas (PRE)	
215.126	Compliance Plan (PRE)	
	Subpart C: Organic Emissions from Miscellaneous Equipment:	
215.141	Separation Operations (SIP)	
215.142	Pumps and Compressors (SIP)	
215.143	Vapor Blowdown (SIP)	
215.144	Safety Relief Valves (SIP)	
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	Subpart K: Use of Organic Material:	
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TABLE 1.—SUMMARY OF VOC RULES FOR ILLINOIS—Continued

State No.	Rule	Federal No.
215.304	Operations with Compliance Program (SIP)	
	Subpart P: Printing and Publishing:	
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215.405*	Compliance Schedule (FED)	
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	Subpart Q: Leaks from Synthetic Organic Chemical and Polymer Manufacturing Equipment:	
215.420	Applicability (PRO)	
215.421	General Requirements (PRO)	
215.422	Inspection Program Plan for Leaks (PRO)	
215.423	Inspection Program for Leaks (PRO)	
215.424	Repairing Leaks (PRO)	
215.425	Recordkeeping for Leaks (PRO)	
215.426	Reporting for Leaks (PRO)	
215.427	Alternative Program for Leaks (PRO)	
215.428	Compliance Dates (PRO)	
215.429	Compliance Plan (PRO)	
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215.432*	Inspection Program for Leaks (FED)	
215.433	Repairing Leaks (PRO)	
215.434	Recordkeeping for Leaks (PRO)	
215.435	Reporting for Leaks (PRO)	52.741(i)(2)
215.436*	Alternative Program for Leaks (FED)	
215.437	Open-Ended Valves (PRO)	
215.438	Compliance Date (PRO)	
	Subpart R: Petroleum Refining and Related Industries: Asphalt Materials:	
215.441	Petroleum Refinery Waste Gas Disposal (SIP)	
215.442	Vacuum Producing Systems (SIP)	
215.443	Wastewater (Oil/Water) Separator (SIP)	
215.444	Process Unit Turnarounds (SIP)	
215.445	Leaks: General Requirements (SIP)	
215.446	Monitoring Program Plan for Leaks (SIP)	52.741(j)(1)
215.447*	Monitoring Program for Leaks (FED)	
215.448	Recordkeeping for Leaks (SIP)	
215.449	Reporting for Leaks (SIP)	52.741(j)(2)
215.450*	Alternative Program for Leaks (FED)	
215.451	Sealing Device Requirements (SIP)	52.741(j)(3)
215.452*	Compliance Schedule for Leaks (FED)	
215.453	Compliance Dates and Geographical Areas (PRE)	
	Subpart S: Rubber and Miscellaneous Plastic Products:	
215.461	Manufacture of Pneumatic Rubber Tires (SIP)	
215.462	Green Tire Spraying Operations (SIP)	
215.463	Alternative Emission Reduction Systems (SIP)	
215.464	Testing and Monitoring (SIP)	
215.465	Compliance Dates and Geographical Area (PRE)	
215.466	Compliance Plan (PRE)	
	Subpart T: Pharmaceutical Manufacturing:	52.741(1)
215.480*	Applicability (FED)	
215.481*	Control of Reactors, Distillation Units, Crystallizers, Centrifuges and Vacuum Dryers (FED)	
215.482*	Control of Air Dryers, Production Equipment Exhaust Systems and Filters (FED)	
215.483*	Materials Storage and Transfer (FED)	
215.484*	In-Process Tanks (FED)	
215.485*	Leaks (FED)	
215.486*	Other Emission Sources (FED)	
215.487*	Testing (FED)	
215.488*	Monitoring and Recordkeeping for Air Pollution Control Equipment (FED)	
215.489*	Compliance Schedule (FED)	
	Subpart V: Air Oxidation Processes:	
215.520	Applicability (PRO)	
215.521	Definitions (PRO)	
215.525	Emission Limitations for Air Oxidation Processes (PRO)	
215.526	Testing and Monitoring (PRO)	
215.527	Compliance Date (PRO)	
	Subpart W: Agriculture:	
215.541	Pesticide Exception (SIP)	
	Subpart X: Construction:	
215.561	Architectural Coatings (SIP)	
215.562	Paving Operations (SIP)	
215.563	Cutback Asphalt (SIP)	
	Subpart Y: Gasoline Distribution:	52.741(q)(1)
215.581*	Bulk Gasoline Plants (FED)	
215.582	Bulk Gasoline Terminals (SIP)	
215.583	Gasoline Dispensing Facilities (SIP)	
215.584	Gasoline Delivery Vessels (PRE)	

TABLE 1.—SUMMARY OF VOC RULES FOR ILLINOIS—Continued

State No.	Rule	Federal No.
	Subpart Z: Dry Cleaners:	
215.601	Perchloroethylene Dry Cleaners (SIP)	
215.602	Exemptions (SIP)	
215.603	Testing and Monitoring (SIP)	
215.604	Compliance Dates and Geographic Areas (PRE)	
215.605	Compliance Plan (PRE)	
215.606	Exception to Compliance Plan (PRE)	
215.607	Standards for Petroleum Solvent Dry Cleaners (PRE)	
215.608	Operating Practices for Petroleum Solvent Dry Cleaners (PRE)	
215.609	Program for Inspection and Repair and Leaks (PRE)	
215.610	Testing and Monitoring (PRE)	
215.611	Exception for Petroleum Solvent Dry Cleaners (PRE)	
215.612	Compliance Dates and Geographical Areas (PRE)	
215.613	Compliance Plan (PRE)	
	Subpart AA: Paint and Ink Manufacturing:	
215.620*	Applicability (FED)	52.741(s)
215.621*	Exemption for Waterbase Material and Heatset-Offset Ink (FED)	
215.623*	Permit Conditions (FED)	
215.624*	Open-top Mills, Tanks, Vats, or Vessels (FED)	
215.625*	Grinding Mills (FED)	
215.626*	Storage Tanks (FED)	
215.628*	Leaks (FED)	
215.630*	Clean Up (FED)	
215.636*	Compliance Schedule (FED)	
	Subpart BB: Polystyrene Plants:	
215.875	Applicability of Subpart BB (PRO)	
215.877	Emissions Limitations at Polystyrene Plants (PRO)	
215.879	Compliance Date (PRO)	
215.881	Compliance Plan (PRO)	
215.883	Special Requirements for Compliance Plan (PRO)	
215.886	Testing and Monitoring (PRO)	
	Subpart PP: Miscellaneous Fabricated Product Manufacturing Processes:	
215.920*	Applicability (FED)	52.741(u)
215.923*	Permit Conditions (FED)	
215.926*	Control Requirements (FED)	
215.927*	Compliance Schedule (FED)	
215.928*	Testing (FED)	
	Subpart QQ: Miscellaneous Formulation Manufacturing Processes:	
215.940*	Applicability (FED)	52.741(v)
215.943*	Permit Conditions (FED)	
215.946*	Control Requirements (FED)	
215.947*	Compliance Schedule (FED)	
215.948*	Testing (FED)	
	Subpart RR: Miscellaneous Organic Chemical Manufacturing Processes:	
215.960*	Applicability (FED)	52.741(w)
215.963*	Permit Conditions (FED)	
215.966*	Control Requirements (FED)	
215.967*	Compliance Schedule (FED)	
215.968*	Testing (FED)	
	Other Emission Sources	52.741(x)
	Applicability (FED)	
	Permit Conditions (FED)	
	Control Requirements (FED)	
	Compliance Schedule (FED)	
	Testing (FED)	
	Recordkeeping and Reporting for Generic Rules	52.741(y)
	Exempt Emission Sources (FED)	
	Subject Emission Sources (FED)	

* Presented for informational purposes only. Federal number is applicable for this rule.

VI. Impacts

A. Environmental Impacts

Implementation of the proposed Federal rules is expected to provide an additional reduction in VOC emissions of about 14,000 tons per year (TPY) beyond the existing State rules. This reduction was calculated assuming general compliance with all existing State rules, including State rules which have not been federally approved (i.e., since these State rules have been in effect and enforceable at the State level for several years, and most of these reductions should have already occurred.) Thus, USEPA believes that the reductions are on the order of 14,000 TPY.

B. Cost Impacts

Implementation of the proposed Federal rules is expected to provide an additional cost of about $25 million annually beyond the existing State rules. This cost was calculated assuming general compliance with all existing State rules, including State rules which have not been federally approved (i.e., since these State rules have been in effect and enforceable at the State level for several years, and most of these costs should have already occurred.) Thus, USEPA believes that the costs are on the order of $25 million annually.

VI. Regulatory Analysis

A. Administratve Designation and Regulatory Analysis

The Administrator has determined that this proposal does not constitute a major proposed regulation, as defined in section 1(b) of Executive Order 12291. Specifically, costs under the proposed rule will total less than $100 million annually. Accordingly, a Regulatory Impact Analysis (RIA) containing a detailed assessment of the FIP rules for Illinois is not required. Nevertheless, a preliminary evaluation of the potential emission reductions and the costs associated with the proposed Federal rules has been prepared. A copy of this preliminary evaluation has been included in the docket for this rulemaking. The proposed regulation also was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB, and USEPA responses to those comments, have been placed in the public docket for this rulemaking.

B. Impact on Small Entities

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 600 et seq., USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. According to Section 605(b) of the RFA, this requirement may be waived if the Administrator certifies that the regulations will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and governmental entities with jurisdictions over populations of less than 50,000. USEPA has prepared a draft study on the impact on small entities and has included this study in the docket for this rulemaking action.

C. Reporting and Recordkeeping Requirements

The information collection provisions relating to the proposal have been submitted to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. A copy of the Information Collection Request document prepared by USEPA may be obtained from the Information Policy Branch; USEPA, 401 M Street, SW., [PH–223], Washington, DC 20460, or by calling (202) 382–2706. All comments on this issue should be submitted to USEPA at the above Region V address in Chicago, Illinois, but a copy should also be sent to the Office of Information and Regulatory Affairs; Office of Management and Budget; 726 Jackson Place, NW., Washington, DC 20503, marked "Attention: Desk Officer for USEPA." USEPA's final rulemaking notice will respond to any OMB or public comments on the information collection requirements.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Environmental Protection Agency, Hydrocarbons, Incorporation by Reference, Intergovernmental relations, Nitrogen dioxide, Ozone.

Authority: 42 U.S.C. 7401–7642.

Dated: December 5, 1989.

Basil G. Constantelos,

Acting Regional Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart O—Illinois

Title 40 of the Code of Federal Regulations, chapter I, part 52, subpart O is being proposed to be amended as follows:

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. 40 CFR part 52 is amended by adding a new § 52.741 subpart O to read as follows:

§ 52.741 Control strategy: Ozone Control Measures for Cook, DuPage, Kane, Lake, McHenry and Will Counties.

(a) General Provisions—(1) *Abbreviations and conversion factors.* (i) The following abbreviations are used in § 52.741:

ASTM	American Society of Testing and Materials
bbl	barrels (42 gallons)
Btu	British thermal units
°C	degrees Celsius or centigrade
cm	centimeters
cu in.	cubic inches
°F	degrees Fahrenheit
FIP	Federal implementation plan
ft	feet
ft ²	square feet
g	grams
gpm	gallons per minute
g/mole	grams per mole
gal	gallons
hr	hours
in.	inches
K	degrees Kelvin
kcal	kilograms
kg	kilograms
kg/hr	kilograms per hour
kPa	kilopascals; one thousand newtons per square meter
l	liters
l/sec	liters per second
lbs	pounds
lbs/hr	pounds per hour
lbs/gal	pounds per gallon
LEL	lower explosive limit
m	meters
m ²	square meters
m ³	cubic meters
mg	milligrams
Mg	Megagrams, metric tons or tonnes
ml	milliliters
min	minutes
MJ	megajoules
mm Hg	millimeters of mercury
ppm	parts per million
ppmv	parts per million by volume
psi	pounds per square inch
psia	pounds per square inch absolute
psig	pounds per square inch gauge
RACT	Reasonably Available Control Technology
scf	standard cubic feet
scm	standard cubic meters
sec	seconds
SIP	State implementation plan
sq cm	square centimeters
sq in	square inches
USEPA	United States Environmental Protection Agency
VOC	volatile organic compounds
VOL	volatile organic liquids
VOM	volatile organic materials

(ii) The following conversion factors are used in § 52.741.

English	Metric
1 gal	3.785 l
1,000 gal	3,785 l or 3.785 m ³
1 psia	6.897 kPa (51.71 mm Hg)
2.205 lbs	1 kg
1 bbl	159.0 l
1 cu in	16.39 ml
1 lb/gal	119,800 mg/l
1 ton	0.907 Mg

(2) *Applicability.* The provisions of § 52.741 shall apply to all sources located in Cook, DuPage, Kane, Lake, McHenry or Will County.

(3) *Definitions.*

"*Accumulator*" means the reservoir of a condensing unit receiving the condensate from a surface condenser.

"*Actual emissions*" means the actual rate of emissions of a pollutant from an emissions unit during a particular time period.

"*Actual heat input*" means the quantity of heat produced by the combustion of fuel using the gross heating value of the fuel.

"*Adhesive*" means any substance or mixture of substances intended to serve as a joining compound.

"*Administrator*" means the Administrator of the USEPA or that person's designee.

"*Afterburner*" means a device in which materials in gaseous effluents are combusted.

"Agency" means the United States Environmental Protection Agency.

"Air contaminant" means any solid, liquid, or gaseous matter, any odor, or any form of energy, that is capable of being released into the atmosphere from an emission source.

"Air dried coatings" means any coating which is not heated above 90 °C (194°F) for the purpose of curing or drying.

"Air pollution" means the presence in the atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant, or animal life, to health, or to property, or to unreasonably interfere with the enjoyment of life or property.

"Air pollution control equipment" means any equipment or facility of a type intended to eliminate, prevent, reduce or control the emission of specified air contaminants to the atmosphere.

"Allowable emissions" means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless restricted by federally enforceable limitations on operating rate, hours of operation, or both) and the most stringent of: (A) The applicable standards in 40 CFR parts 60 and 61; (B) the applicable implementation plan; or (C) a federally enforceable permit.

"Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.

"Ambient air quality standards" means those standards designed to protect the public health and welfare codified in 40 CFR part 50 and promulgated from time to time by the USEPA pursuant to authority contained in section 108 of the Clean Air Act, 42 U.S.C. 7401 et seq., as amended from time to time.

"Applicator" means a device used in a coating line to apply coating.

"As applied" means the exact formulation of a coating as it is applied on or impregnated into a substrate.

"Asphalt" means the dark-brown to black cementitious material (solid, semisolid, or liquid in consistency) of which the main constituents are bitumens which occur naturally or as a residue of petroleum refining.

"Automobile" means a motor vehicle capable of carrying no more than 12 passengers.

"Automobile and light-duty truck refinishing" means the repainting of used automobiles and light-duty trucks.

"Automobile or light-duty truck manufacturing plant" means a facility where parts are manufactured or finished for eventual inclusion into a finished automobile or light-duty truck ready for sale to vehicle dealers, but not including customizers, body shops, and other repainters.

"Baked coatings" means any coating which is cured or dried in an oven where the oven air temperature exceeds 90 °C (194 °F).

"Binders" means organic materials and resins which do not include VOM's.

"Bituminous coatings" means black or brownish coating materials which are soluble in carbon disulfide, which consist mainly of hydrocarbons, and which are obtained from natural deposits or as residues from the distillation of crude oils or of low grades of coal.

"British thermal unit" means the quantity of heat required to raise one pound of water from 60 °F to 61 °F.

"Building, structure, facility, or installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control), except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., which have the same two-digit code) as described in the "Standard Industrial Classification Manual, 1972", as amended by the 1977 Supplement.

"Bulk gasoline plant" means any gasoline storage and distribution facility that receives gasoline from bulk gasoline terminals by delivery vessels and distributes gasoline to gasoline dispensing facilities.

"Can" means any cylindrical metal receptacle, with or without a top, cover, spout or handles, into which solid or liquid materials are packaged.

"Can coating" means any coating applied on a single walled container that is manufactured from metal sheets thinner than 29 gauge (0.0141 in.).

"Can coating facility" means a facility that includes one or more can coating line(s).

"Can coating line" means a coating line in which any protective, decorative, or functional coating is applied onto the surface of cans or can components.

"Can-seam spray" means a coating sprayed on the exterior and/or interior of a welded, cemented, or soldered seam to protect the exposed metal.

"Capture system" means all equipment (including, but not limited to, hoods, ducts, fans, ovens, dryers, etc.) used to contain, collect and transport an air pollutant to a control device.

"Clean Air Act" means the Clean Air Act of 1963, as amended, including the Clean Air Act Amendments of 1977, (42 U.S.C. 7401 et seq.).

"Clear coating" means coatings that lack color and opacity or are transparent using the undercoat as a reflectant base or undertone color.

"Clear topcoat" means the final coating which contains binders, but not opaque pigments, and is specifically formulated to form a transparent or translucent solid protective film.

"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.

"Coating" means a material applied onto or impregnated into a substrate for protective, decorative, or functional purposes. Such materials include, but are not limited to, paints, varnishes, sealers, adhesives, thinners, diluents, and inks.

"Coating applicator" means equipment used to apply a surface coating.

"Coating line" means all operations on a line (with or without curing and/or drying) involved in the application of coatings, including coating applicators and heating or drying ovens.

"Coating plant" means any building, structure, facility, or installation that contains a coating line.

"Coil" means any flat metal sheet or strip that is rolled or wound in concentric rings.

"Coil coating" means any coating applied on any flat metal sheet or strip that comes in rolls or coils.

"Coil coating facility" means a facility that includes one or more coil coating line(s).

"Coil coating line" means a coating line in which any protective, decorative or functional coating is applied onto the surface of flat metal sheets, strips, rolls, or coils for industrial or commercial use.

"Cold cleaning" means the process of cleaning and removing soils from surfaces by spraying, brushing, flushing, or immersion while maintaining the organic solvent below its boiling point. Wipe cleaning is not included in this definition.

"Complete combustion" means a process in which all carbon contained in a fuel or gas stream is converted to carbon dioxide.

"Component" means, with respect to synthetic organic chemical and polymer manufacturing equipment, and petroleum refining and related industries, any piece of equipment which has the potential to leak VOM including, but not limited to, pump seals, compressor seals, seal oil degassing

vents, pipeline valves, pressure relief devices, process drains, and open ended pipes. This definition excludes valves which are not externally regulated, flanges, and equipment in heavy liquid service. For purposes of paragraph (i) of this section, this definition also excludes bleed ports of gear pumps in polymer service.

"Concrete curing compounds" means any coating applied to freshly poured concrete to retard the evaporation of water.

"Condensate" means hydrocarbon liquid separated from its associated gases, which condenses due to changes in the temperature or pressure and remains liquid at standard conditions.

"Continuous process" means, with respect to polystyrene resin, a method of manufacture in which the styrene raw material is delivered on a continuous basis to the reactor in which the styrene is polymerized to polystyrene.

"Control device" means equipment (such as an incinerator or adsorber) used to remove air pollutants from a contaminated air stream before discharge to the ambient air.

"Conveyorized degreasing" means the continuous process of cleaning and removing soils from surfaces utilizing either cold or vaporized solvents.

"Crude oil" means a naturally occurring mixture which consists of hydrocarbons and sulfur, nitrogen, or oxygen derivatives of hydrocarbons and which is a liquid at standard conditions.

"Crude oil gathering" means the transportation of crude oil or condensate after custody transfer between a production facility and a reception point.

"Custody transfer" means the transfer of produced petroleum and/or condensate after processing and/or treating in the producing operations, from storage tanks or automatic transfer facilities to pipelines or any other forms of transportation.

"Daily-weighted average VOM content" means the average VOM content of two or more coatings as applied on a coating line during any day, taking into account the fraction of total coating volume that each coating represents, as calculated with the following equation:

$$VOM_w = \sum_{i=1}^{n} [V_i C_i]/V_T$$

where,

VOM_w = The average VOM content of two or more coatings as applied each day on a coating line in units of kg VOM/1 (lbs VOM/gal) of coating (minus water and any compounds which are specifically exempted from the definition of VOM).

n = The number of different coatings as applied each day on a coating line.

V_i = The volume of each coating (minus water and any compounds which are specifically exempted from the definition of VOM) as applied each day on a coating line in units of 1 (gal).

C_i = The VOM content of each coating as applied each day on a coating line in units of kg VOM/1 (lbs VOM/gal) of coating (minus water and any compounds which are specifically exempted from the definition of VOM), and

V_T = The total volume of all coatings (minus water and any compounds which are specifically exempted from the definition of VOM) as applied each day on a coating line in units of 1 (gal).

"Day" means the consecutive 24 hours beginning at 12:00 a.m. (midnight) local time.

"Degreaser" means any equipment or system used in solvent cleaning.

"Delivery vessel" means any tank truck or trailer equipped with a storage tank that is used for the transport of gasoline to a stationary storage tank at a gasoline dispensing facility, bulk gasoline plant, or bulk gasoline terminal.

"Dip coating" means a method of applying coatings in which the part is submerged in a tank filled with the coating.

"Electrostatic application" means a charging of atomized paint droplets for deposition by electrostatic attraction.

"Electrostatic coating" means a method of applying coatings which uses an electric potential to enhance deposition of the coatings on the part.

"Emission rate" means the total quantity of any air contaminant discharged into the atmosphere over a certain period of time.

"Emission source" means any building, structure, facility, equipment, installation or any combination thereof, at, from, or by reasons which VOM is emitted or discharged into the atmosphere.

"Emissions unit" means any part of a stationary source which emits or would have the potential to emit any pollutant subject to regulation under the Clean Air Act.

"Enamel" means a coating that cures by chemical cross-linking of its base resin. Enamels can be distinguished from lacquers because enamels are not readily resoluble in their original solvent.

"Enclose" means to cover any VOM surface that is exposed to the atmosphere.

"End sealing compound coat" means a compound applied to can ends which functions as a gasket when the end is assembled onto the can.

"Excess air" means air supplied in addition to the theoretical quantity necessary for complete combustion of all fuel and/or combustible waste material.

"Excessive release" means a discharge of more than 295 g (0.65 lbs) of mercaptans and/or hydrogen sulfide into the atmosphere in any 5-minute period.

"Exterior base coating" means a coating applied to the exterior of a can body, end, or flat sheet to provide protection to the metal or to provide background for any lithographic or printing operation.

"Exterior end coating" means a coating applied to the exterior end of a can to provide protection to the metal.

"External-floating roof" means a cover over an open top storage tank consisting of a double deck or pontoon single deck which rests upon and is supported by the volatile organic liquid being contained and is equipped with a closure seal or seals to close the space between the roof edge and tank shell.

"Extreme environmental conditions" means exposure to any or all of the following: ambient weather conditions; temperatures consistently above 95 °C (203 °F); detergents; abrasive and scouring agents; solvents, or corrosive atmospheres.

"Extreme performance coating" means any coating which during intended use is exposed to extreme environmental conditions.

"Fabric coating" means any coating applied on textile fabric. Fabric coating includes the application of coatings by impregnation.

"Fabric coating facility" means a facility that includes one or more fabric coating lines.

"Fabric coating line" means a coating line in which any protective, decorative, or functional coating or reinforcing material is applied on or impregnated into a textile fabric.

"Federally enforceable" means all limitations and conditions which are enforceable by the Administrator including those requirements developed pursuant to 40 CFR parts 60 and 61; requirements within any applicable implementation plan; and any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Subpart I and 40 CFR 51.166.

"Final repair coat" means the repainting of any coating which is damaged during vehicle assembly.

"Firebox" means the chamber or compartment of a boiler or furnace in which materials are burned, but not the combustion chamber or afterburner of an incinerator.

"Fixed-roof tank" means a steel cylindrical shell with a permanently affixed roof.

"Flexographic printing" means the application of words, designs, and pictures to a substrate by means of a roll printing technique in which the pattern to be applied is raised above the printing roll and the image carrier is made of elastomeric materials.

"Flexographic printing line" means a printing line in which each roll printer uses a roll with raised areas for applying an image such as words, designs, or pictures to a substrate. The image carrier on the roll is made of rubber or other elastomeric material.

"Floating roof" means a roof on a stationary tank, reservoir, or other container which moves vertically upon change in volume of the stored material.

"Flow coating" means a method of applying coatings in which the part is carried through a chamber containing numerous nozzles which direct unatomized streams of coatings from many different angles onto the surface of the part.

"Fountain solution" means the solution which is applied to the image plate to maintain hydrophilic properties of the nonimage areas.

"Fuel combustion emission source" means any furnace, boiler, or similar equipment used for the primary purpose of producing heat or power by indirect heat transfer.

"Fuel gas system" means a system for collection of refinery fuel gas including, but not limited to, piping for collecting tail gas from various process units, mixing drums and controls, and distribution piping.

"Furniture coating application line" means the combination of coating application equipment, flash-off area, spray booths, ovens, conveyors, and other equipment operated in a predetermined sequence for purpose of applying coating materials to wood furniture.

"Gas service" means that the component contains process fluid that is in the gaseous state at operating conditions.

"Gasoline" means any fuel sold for use in motor vehicles and motor vehicle engines and commonly or commercially known or sold as gasoline.

"Gasoline dispensing facility" means any site where gasoline is transferred from a stationary storage tank to a motor vehicle gasoline tank used to provide fuel to the engine of that motor vehicle.

"Graphic arts coating facility" means a facility that includes one or more graphic arts coating lines.

"Graphic arts coating line" means any packaging rotogravure printing, publication rotogravure printing, or flexographic printing line, or any paper, fabric, or film coating line operated in conjunction with a printing line.

"Gross heating value" means amount of heat produced when a unit quantity of fuel is burned to carbon dioxide and water vapor, and the water vapor is condensed as described in ASTM D–2015–66, D–900–55, D–1826–64 and D–240–64.

"Gross vehicle weight" means the manufacturer's gross weight rating for the individual vehicle.

"Gross vehicle weight rating" means the value specified by the manufacturer as the maximum design loaded weight of a single vehicle.

"Heatset" means a class of web-offset lithography which requires a heated dryer to solidify the printing inks.

"Heatset-web-offset lithographic printing line" means a lithographic printing line in which a blanket cylinder is used to transfer ink from a plate cylinder to a substrate continuously fed from a roll or an extension process and an oven is used to solidify the printing inks.

"Heavy liquid" means liquid with a true vapor pressure of less than 0.3 kPa (0.04 psi) at 294.3 K (70°F) established in a standard reference text or as determined by ASTM method D–2879; or which has 0.1 Reid Vapor Pressure as determined by ASTM method D–323; or which when distilled requires a temperature of 421.95 K (300°F) or greater to recover 10 percent of the liquid as determined by ASTM method D–86.

"Heavy off-highway vehicle" means heavy construction, mining, farming or material handling equipment; heavy industrial engines; diesel-electric locomotives and associated power generation equipment; and the components of such equipment or engines.

"Heavy off-highway vehicle products" means, for the purpose of paragraph (e) of this section, heavy construction, mining, farming, or material handling equipment; heavy industrial engines; diesel-electric locomotives and associated power generation equipment; and the components of such equipment or engines.

"Heavy off-highway vehicle products coating facility" means a facility that includes one or more heavy off-highway vehicle products coating line(s).

"Heavy off-highway vehicle products coating line" means a coating line in which any protective, decorative, or functional coating is applied onto the surface of heavy off-highway vehicle products.

"High temperature aluminum coating" means a coating that is certified to withstand a temperature of 537.8°C (1000°F) for 24 hours.

"Hot well" means the reservoir of a condensing unit receiving the condensate from a barometric condenser.

"Hour" means a block period of 60 minutes (e.g., 1:00 a.m. to 2:00 a.m.).

"In-process tank" means a container used for mixing, blending, heating, reacting, holding, crystallizing, evaporating or cleaning operations in the manufacture of pharmaceuticals.

"In vacuum service" means, for the purpose of paragraph (i) of this section, equipment which is operating at an internal pressure that is at least 5 kPa (0.73 psia) below ambient pressure.

"Incinerator" means a combustion apparatus in which refuse is burned.

"Indirect heat transfer" means transfer of heat in such a way that the source of heat does not come into direct contact with process materials.

"Ink" means a coating used in printing, impressing, or transferring an image onto a substrate.

"Interior base coating" means a coating applied to the interior of a can body, end, or flat sheet to provide a protective lining between the product and the can.

"Interior body spray coating" means a coating sprayed on the interior of a can body to provide film between the product and the can.

"Internal-floating roof" means a cover or roof in a fixed-roof tank which rests upon and is supported by the volatile organic liquid being contained and is equipped with a closure seal or seals to close the space between the roof edge and tank shell.

"Lacquers" means any clear wood finishes formulated with nitrocellulose or synthetic resins to dry by evaporation without chemical reaction, including clear lacquer sanding sealers.

"Large appliance" means any residential and commercial washers, dryers, ranges, refrigerators, freezers, water heaters, dish washers, trash compactors, air conditioners, and other similar products.

"Large appliance coating" means any coating applied to the component metal parts (including, but not limited to, doors, cases, lids, panels, and interior support parts) of residential and commercial washers, dryers, ranges,

refrigerators, freezers, water heaters, dish washers, trash compactors, air conditioners, and other similar products.

"Large appliance coating facility" means a facility that includes one or more large appliance coating line(s).

"Large appliance coating line" means a coating line in which any protective, decorative, or functional coating is applied onto the surface of large appliances.

"Light-duty truck" means any motor vehicle rated at 3,850 kg gross vehicle weight or less, designed mainly to transport property.

"Light liquid" means VOM in the liquid state which is not defined as heavy liquid.

"Liquid-mounted primary seal" means a seal constructed of an elastomeric coated fabric envelope and mounted onto the floating roof in such a manner that it touches the surface of the stored liquid.

"Liquid service" means that the equipment or component contains process fluid that is in a liquid state at operating conditions.

"Magnet wire coating" means any coating of electrically insulating varnish or enamel applied to conducting wire to be used in electrical machinery.

"Magnet wire coating facility" means a facility that includes one or more magnet coating line(s).

"Magnet wire coating line" means a coating line in which any protective, decorative, or functional coating is applied onto the surface of magnet wire.

"Malfunction" means any sudden and unavoidable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused entirely or in part by poor maintenance, careless operation, or any other preventable upset condition or preventable equipment breakdown shall not be considered malfunctions.

"Manufacturing process" means a method whereby a process emission source or series of process emission sources is used to convert raw materials, feed stocks, subassemblies, or other components into a product, either for sale or for use as a component in a subsequent manufacturing process.

"Metal furniture" means a furniture piece including, but not limited to, tables, chairs, waste baskets, beds, desks, lockers, benches, shelving, file cabinets, lamps, and room dividers.

"Metal furniture coating" means any coating applied to any furniture piece made of metal or any metal part which is or will be assembled with other metal, wood, fabric, plastic or glass parts to form a furniture piece including, but not limited to, tables, chairs, waste baskets, beds, desks, lockers, benches, shelving, file cabinets, lamps, and room dividers. This definition shall not apply to any coating line coating miscellaneous metal parts or products.

"Metal furniture coating facility" means a facility that includes one or more metal furniture coating line(s).

"Metal furniture coating line" means a coating line in which any protective, decorative, or functional coating is applied onto the surface of metal furniture.

"Metallic shoe-type seal" means a primary or secondary seal constructed of metal sheets (shoes) which are joined together to form a ring, springs, or levers which attach the shoes to the floating roof and hold the shoes against the tank wall, and a coated fabric which is suspended from the shoes to the floating roof.

"Miscellaneous fabricated product manufacturing process" means:

(A) A manufacturing process involving one or more of the following applications, including any drying and curing of formulations, and capable of emitting VOM:

(*1*) Adhesives to fabricate or assemble components or products.

(*2*) Asphalt solutions to paper or fiberboard.

(*3*) Asphalt to paper or felt.

(*4*) Coatings or dye to leather.

(*5*) Coatings to plastic.

(*6*) Coatings to rubber or glass.

(*7*) Disinfectant material to manufactured items.

(*8*) Plastic foam scrap or "fluff" from the manufacture of foam containers and packaging material to form resin pallets.

(*9*) Resin solutions to fiber substances.

(*10*) Viscose solutions for food casings.

(B) The storage and handling of formulations associated with the process described above, and the use and handling of organic liquids and other substances for clean-up operations associated with the process described in this definition.

"Miscellaneous formulation manufacturing process" means:

(A) A manufacturing process which compounds one or more of the following and is capable of emitting VOM:

(*1*) Adhesives.

(*2*) Asphalt solutions.

(*3*) Caulks, sealants, or waterproofing agents.

(*4*) Coatings, other than paint and ink.

(*5*) Concrete curing compounds.

(*6*) Dyes.

(*7*) Friction materials and compounds.

(*8*) Resin solutions.

(*9*) Rubber solutions.

(*10*) Viscose solutions.

(B) The storage and handling of formulations associated with the process described above, and the use and handling of oganic liquids and other substances for clean-up operations associated with the process described in this definition.

"Miscellaneous metal parts or products" means any metal part or metal product, even if attached to or combined with a nonmetal part or product, except cans, coils, metal furniture, large appliances, magnet wires, automobiles, ships, and airplane bodies.

"Miscellaneous metal parts and products coating" means any coating applied to any metal part or metal product, even if attached to or combined with a nonmetal part or product, except cans, coils, metal furniture, large appliances, and magnet wires. Prime coat, prime surfacer coat, topcoat, and final repair coat for automobiles and light-duty trucks are not miscellaneous metal parts and products coatings. However, underbody anti-chip (e.g., underbody plastisol) automobile, and light-duty truck coatings are miscellaneous metal parts and products coatings. Also, automobile and light-duty truck refinishing coatings, coatings applied to the exterior of marine vessels, coatings applied to the exterior of airplanes, and the customized topcoating of automobiles and trucks if production is less than 35 vehicles per day are not miscellaneous metal parts and products coatings.

"Miscellaneous metal parts or products coating facility" means: A facility that includes one or more miscellaneous metal parts or products coating lines.

"Miscellaneous metal parts or products coating line" means a coating line in which any protective, decorative, or functional coating is applied onto the surface of miscellaneous metal parts or products.

"Miscellaneous organic chemical manufacturing process" means:

(A) A manufacturing process which produces by chemical reaction, one or more of the following organic compounds or mixtures of organic compounds and which is capable of emitting VOM:

(*1*) Chemicals listed in paragraph (aa) of this section.

(*2*) Chlorinated and sulfonated compounds.

(*3*) Cosmetic, detergent, soap, or surfactant intermediaries or specialties and products.

(*4*) Disinfectants.

(*5*) Food additives.

(6) Oil and petroleum product additives.

(7) Plasticizers.

(8) Resins or polymers.

(9) Rubber additives.

(10) Sweeteners.

(11) Varnishes.

(B) The storage and handling of formulations associated with the process described above and the use and handling of organic liquids and other substances for clean-up operations associated with the process described in this definition.

"Monitor" means to measure and record.

"Offset" means, with respect to printing and publishing operations, use of a blanket cylinder to transfer ink from the plate cylinder to the surface to be printed.

"Opaque stains" means all stains that are not semi-transparent stains.

"Open-ended valve" means any valve, except pressure relief devices, having one side of the valve in contact with process fluid and one side open to the atmosphere, either directly or through open piping.

"Open top vapor degreasing" means the batch process of cleaning and removing soils from surfaces by condensing hot solvent vapor on the colder metal parts.

"Organic material" means any chemical compound of carbon including diluents and thinners which are liquids at standard conditions and which are used as dissolvers, viscosity reducers, or cleaning agents, but excluding methane, carbon monoxide, carbon dioxide, carbonic acid, metallic carbonic acid, metallic carbide, metallic carbonates, and ammonium carbonate.

"Organic vapor" means the gaseous phase of an organic material or a mixture of organic materials present in the atmosphere.

"Oven" means a chamber within which heat is used for one or more of the following purposes: dry, bake, cure, or polymerize a coating or ink.

"Overvarnish" means a coating applied directly over a design coating or applied directly over ink to reduce the coefficient of friction, to provide gloss, and to protect and finish against abrasion and corrosion.

"Owner or operator" means any person who owns, operates, leases, controls, or supervises an emission source or air pollution control equipment.

"Packaging rotogravure printing" means rotogravure printing upon paper, paper board, metal foil, plastic film, and other substrates, which are, in subsequent operations, formed into packaging products or labels for articles to be sold.

"Packaging rotogravure printing line" means a rotogravure printing line in which surface coatings are applied to paper, paperboard, foil, film, or other substrates which are to be used to produce containers, packaging products, or labels for articles.

"Paint manufacturing plant" means a plant that mixes, blends, or compounds enamels, lacquers, sealers, shellacs, stains, varnishes, or pigmented surface coatings.

"Paper coating" means any coating applied on paper, plastic film, or metallic foil to make certain products, including (but not limited to) adhesive tapes and labels, book covers, post cards, office copier paper, drafting paper, or pressure sensitive tapes. Paper coating includes the application of coatings by inpregnation and/or saturation.

"Paper coating facility" means a facility that includes one or more paper coating lines.

"Paper coating line" means a coating line in which any protective, decorative, or functional coating is applied on, saturated into, or inpregnated into paper, plastic film, or metallic foil to make certain products, including (but not limited to) adhesive tapes and labels, book covers, post cards, office copier paper, drafting paper, and pressure sensitive tapes.

"Parts per million (volume)" means a volume/volume ratio which expresses the volumetric concentration of gaseous air contaminant in a million unit volume of gas.

"Person" means any individual, corporation, partnership, association, State, municipality, political subdivision of a State; any agency, department, or instrumentality of the United States; and any officer, agent, or employee thereof.

"Petroleum" means the crude oil removed from the earth and the oils derived from tar sands, shale, and coal.

"Petroleum liquid" means crude oil, condensate or any finished or intermediate product manufactured at a petroleum refinery, but not including Numbers 2 through 6 fuel oils as specified in ASTM D–396–69; gas turbine fuel oils Numbers 2–GT through 4–GT as specified in ASTM D–2880–71; or diesel fuel oils Numbers 2–D and 4–D, as specified in ASTM D–975–68.

"Petroleum refinery" means any facility engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oils, lubricants, or other products through distillation of petroleum, or through the redistillation of petroleum, cracking, or reforming unfinished petroleum derivatives.

"Pharmaceutical" means any compound or mixture, other than food, used in the prevention, diagnosis, alleviation, treatment, or cure of disease in man and animal.

"Photochemically reactive material" means any organic material with an aggregate of more than 20 percent of its total volume composed of the chemical compounds classified below or the composition of which exceeds any of the following individual percentage composition limitations. Whenever any photochemically reactive material or any constituent of any organic material may be classified from its chemical structure into more than one of the following groups of organic materials, it shall be considered as a member of the most reactive group, that is, the group having the least allowable percent of the total organic materials.

(A) A combination of hydrocarbons, alcohols, aldehydes, esters, ethers, or ketones having an olefinic or cyclo-olefinic types of unsaturation: 5 percent. This definition does not apply to perchloroethylene or trichloroethylene.

(B) A combination of aromatic compounds with eight or more carbon atoms to the molecule except ethylbenzene: 8 percent.

(C) A combination of ethylbenzene, ketones having branched hydrocarbon structure or toluene: 20 percent.

"Pigmented coatings" means opaque coatings containing binders and colored pigments which are formulated to conceal the wood surface either as an undercoat or topcoat.

"Plant" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control), except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., which have the same two-digit code) as described in the "Standard Industrial Classification Manual, 1972", as amended by the 1977 Supplement.

"Plasticizers" means a substance added to a polymer composition to soften and add flexibility to the product.

"Potential emissions" and "potential to emit" mean the quantity of volatile organic material emissions that theoretically could be emitted by a stationary source before add-on controls based on the design capacity or maximum production capacity of the source and 8760 hours per year. The design capacity or maximum production capacity includes use of coating(s) or

ink(s) with the highest volatile organic material content.

"Pressure tank" means a tank in which VOL's are stored at a pressure greater than atmospheric pressure.

"Prime coat" means the first of two or more coating applications applied to a metal surface.

"Prime surfacer coat" means a coating used to touch up areas on the surface of automobile and light-duty truck bodies not adequately covered by the prime coat before application of the top coat. The prime surfacer coat is applied between the prime coat and topcoat. An anti-chip coating applied to main body parts (e.g., rocker panels, bottom of doors and fenders, and leading edge of roof) is a prime surfacer coat.

"Primers" means any coatings formulated and applied to substrates to provide a firm bond between the substrate and subsequent coats.

"Printing line" means an operation consisting of a series of one or more roll printers and any associated roll coaters, drying areas, and ovens where in one or more surface coatings are applied, dried, and/or cured.

"Process" means any stationary emission source other than a fuel combustion emission source or an incinerator.

"Production equipment exhaust system" means a system for collecting and directing into the atmosphere emissions of volatile organic material from reactors, centrifuges, and other process emission sources.

"Publication rotogravure printing line" means a rotogravure printing line in which surface coatings are applied to paper which is subsequently formed into books, magazines, catalogues, brochures, directories, newspaper supplements, or other types of printed material.

"Reactor" means a vat, vessel, or other device in which chemical reactions take place.

Reasonably Available Control Technology (RACT)" means the lowest emission limitation that an emission source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.

"Refiner" means any person who owns, leases, operates, controls, or supervises a refinery.

"Refinery" means any plant at which motor vehicle fuel is produced.

"Refinery unit, process unit or unit" means a set of components which are a part of a basic process operation such as distillation, hydrotreating, cracking, or reforming of hydrocarbons.

"Repair coatings" means coatings used to correct imperfections or damage to furniture surface.

"Repaired" means, for the purpose of paragraph (i) of this section, that equipment component has been adjusted, or otherwise altered, to eliminate a leak.

"Roll coater" means an apparatus in which a uniform layer of coating material is applied by means of a roll or rolls across the entire width of a moving substrate which is fed from an unwinding roll.

"Roll printer" means an apparatus in which a surface coating is applied by means of a roll or rolls with only partial coverage across the width of a moving substrate which is fed from an unwinding roll. The partial coverage results in the formation of words, designs, or pictures on the substrate.

"Roll printing" means the application of words, designs, and pictures to a substrate usually by means of a series of hard rubber or metal rolls each with only partial coverage.

"Rotogravure printing" means the application of words, designs, and pictures to a substrate by means of a roll printing technique in which the pattern to be applied is recessed relative to the nonimage area.

"Rotogravure printing line" means a printing line in which each roll printer uses a roll with recessed areas for applying an image to a substrate.

"Safety relief valve" means a valve which is normally closed and which is designed to open in order to relieve excessive pressures within a vessel or pipe.

"Sanding sealers" means any coatings formulated for and applied to bare wood for sanding and to seal the wood for subsequent application of varnish. To be considered a sanding sealer a coating must be clearly labelled as such.

"Sealer" means, for the purpose of paragraph (e)(1)(i)(L) of this section, a coating containing binders which seals the wood prior to application to subsequent coatings.

"Semi-transparent stains" means stains containing dyes or semi-transparent pigments which are formulated to enhance wood grain and change the color of the surface but not to conceal the surface, including, but not limited to, sap stain, toner, non-grain raising stain, pad stain, or spatter stain.

"Set of safety relief valves" means one or more safety relief valves designed to open in order to relieve excessive pressures in the same vessel or pipe.

"Sheet basecoat" means a coating applied to metal when the metal is in sheet form to serve as either the exterior or interior of a can for either two-piece or three-piece cans.

"Side-seam spray coat" means a coating applied to the seam of a three-piece can.

"Single coat" means one coating application applied to a metal surface.

"Solvent" means a liquid substance that is used to dissolve or dilute another substance.

"Solvent cleaning" means the process of cleaning soils from surfaces by cold cleaning, open top vapor degreasing, or conveyorized degreasing.

"Source" means any building, structure, facility, equipment, installation, or any combination thereof, at, from, or by reasons which VOM is emitted or discharged into the atmosphere.

"Specified air contaminant" means any air contaminant as to which this Subtitle contains emission standards or other specific limitations.

"Splash loading" means a method of loading a tank, railroad tank car, tank truck, or trailer by use of other than a submerged loading pipe.

"Standard conditions" means a temperature of 70 °F and a pressure of 14.7 psia.

"Standard cubic foot (scf)" means the volume of one cubic foot of gas at standard conditions.

"Standard Industrial Classification Manual" means the Standard Industrial Classification Manual (1972), Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

"Start-up" means the setting in operation of an emission source for any purpose.

"Stationary emission source"and "Stationary source" mean an emission source which is not self-propelled.

"Storage tank or storage vessel" means any stationary tank, reservoir or container used for the storage of VOL's.

"Submerged-fill pipe" means any discharge pipe or nozzle which meets either of the following conditions:

(A) Where the tank is filled from the top, the end of the discharge pipe or nozzle must be totally submerged when the liquid level is 15 cm (6 in.) from the bottom of the tank.

(B) Where the tank is filled from the side, the discharge pipe or nozzle must be totally submerged when the liquid level is 46 cm (18 in.) from the bottom of the tank.

"Substrate" means the surface onto which a coating is applied or into which a coating is impregnated.

"Surface condenser" means a device which removes a substance from a gas stream by reducing the temperature of

the stream, without direct contact between the coolant and the stream.

"Thirty-day rolling average" means any value arithmetically averaged over any consecutive thirty days.

"Three-piece can" means a can which is made from a rectangular sheet and two circular ends.

"Topcoat" means a film of coating material applied in a multiple coat operation other than prime coat, final repair coat, or prime surfacer coat.

"Topcoat operation" means all topcoat spray booths, flash-off areas, and bake ovens at a facility which are used to apply, dry, or cure the final coatings (except final off-line repair) on components of automobile and light-duty truck bodies.

"Transfer efficiency" means the ratio of the amount of coating solids deposited onto a part or product to the total amount of coating solids used.

"True vapor pressure" means the equilibrium partial pressure exerted by a volatile organic liquid as determined in accordance with methods described in American Petroleum Institute Bulletin 2517, "Evaporation Loss From Floating Roof Tanks," second edition, February 1980.

"Two-piece can" means a can which is drawn from a shallow cup and requires only one end to be attached.

"Undercoaters" means any coatings formulated for and applied to substrates to provide a smooth surface for subsequent coats.

"Unregulated safety relief valve" means a safety relief valve which cannot be actuated by a means other than high pressure in the pipe or vessel which it protects.

"Vacuum producing system" means any reciprocating, rotary, or centrifugal blower or compressor or any jet ejector or device that creates suction from a pressure below atmospheric and discharges against a greater pressure.

"Valves not externally regulated" means valves that have no external controls, such as in-line check valves.

"Vapor balance system" means any combination of pipes or hoses which creates a closed system between the vapor spaces of an unloading tank and a receiving tank such that vapors displaced from the receiving tank are transferred to the tank being unloaded.

"Vapor collection system" means all piping, seals, hoses, connections, pressure-vacuum vents, and other possible sources between the gasoline delivery vessel and the vapor processing unit and/or the storage tanks and vapor holder.

"Vapor control system" means any system that limits or prevents release to the atmosphere of organic material in the vapors displaced from a tank during the transfer of gasoline.

"Vapor-mounted primary seal" means a foam-filled primary seal mounted continuously around the circumference of the tank so there is an annular vapor space underneath the seal. The annular vapor space is bound by the bottom of the primary seal, the tank wall, the liquid surface, and the floating roof.

"Vapor recovery system" means a vapor gathering system capable of collecting all hydrocarbon vapors and gases discharged from the storage tank and a vapor disposal system capable of processing such hydrocarbon vapors and gases so as to prevent their emission to the atmosphere.

"Varnishes" means any clear wood finishes formulated with various resins to dry by chemical reaction on exposure to air.

"Vehicle" means a device by which any person or property may be propelled, moved, or drawn upon a highway, excepting a device moved exclusively by human power or used exclusively upon stationary rails or tracks.

"Vinyl coating" means any topcoat or printing ink applied to vinyl coated fabric or vinyl sheets. Vinyl coating does not include organisols and plastisols.

"Vinyl coating facility" means a facility that includes one or more vinyl coating line(s).

"Vinyl coating line" means a coating line in which any protective, decorative or functional coating is applied onto vinyl coated fabric or vinyl sheets.

"Volatile organic liquid" means any substance which is liquid at storage conditions and which contains volatile organic compounds.

"Volatile organic material (VOM) or volatile organic compound (VOC)" means any organic compound which participates in atmospheric photochemical reactions. This includes any organic compound other than the following compounds: methane, ethane, methyl chloroform (1,1,1-trichloroethane), CFC–113 (trichlorotrifluoroethane), methylene chloride (dichloromethane), CFC–11 (trichlorofluoromethane), CFC–12 (dichlorodifluoromethane), CFC–22 (chlorodifluoromethane), FC–23 (trifluoromethane), CFC–114 (dichlorotetrafluoroethane), CFC–115 (chloropentafluoroethane), HCFC–123 (dichlorotrifluoroethane), HFC–134a (tetrafluoroethane), HCFC–141b (dichlorofluoroethane) and HCFC–142b (chlorodifluoroethane). These compounds have been determined to have negligible photochemical reactivity. For purposes of determining compliance with emission limits, VOC will be measured by the approved test methods. Where such a method also inadvertently measures compounds with negligible photochemical reactivity, an owner or operator may exclude these negligibly reactive compounds when determining compliance with an emissions standard.

"Volatile petroleum liquid" means any petroleum liquid with a true vapor pressure that is greater than 1.5 psia (78 mm Hg) at standard conditions.

"Wash coat" means a coating containing binders which seals wood surfaces, prevents undesired staining, and controls penetration.

"Web" means a substrate which is printed in continuous roll-fed presses.

"Wood furniture" means room furnishings including cabinets (kitchen, bath, and vanity), tables, chairs, beds, sofas, shutters, art objects, wood paneling, wood flooring, and any other coated furnishings made of wood, wood composition, or fabricated wood materials.

"Wood furniture coating facility" means a facility that includes one or more wood furniture coating line(s).

"Wood furniture coating line" means a coating line in which any protective, decorative, or functional coating is applied onto wood furniture.

"Woodworking" means the shaping, sawing, grinding, smoothing, polishing, and making into products of any form or shape of wood.

(4) *Testing methods and procedures.*

(i) Coatings, inks and fountain solutions. The following test methods and procedures shall be used to determine compliance of as applied coatings, inks, and fountain solutions with the limitations set forth in Section 52.741.

(A) *Sampling:* Samples collected for analyses shall be one-liter taken into a one-liter container at a location and time such that the sample will be representative of the coating as applied (i.e., the sample shall include any dilution solvent or other VOM added during the manufacturing process). The container must be tightly sealed immediately after the sample is taken. Any solvent or other VOM added after the sample is taken must be measured and accounted for in the calculations in paragraph (a)(4)(i)(C). For multiple package coatings, separate samples of each component shall be obtained. A mixed sample shall not be obtained as it will cure in the container. Sampling procedures shall follow the guidelines presented in:

(*1*) ASTM D3925 standard practice for sampling liquid paints and related pigment coating.

(2) ASTM E300 standard practice for sampling industrial chemicals.

(B) *Analyses:* The applicable analytical methods specified below shall be used to determine the composition of coatings, inks, or fountain solutions as applied.

(1) Method 24 of 40 CFR part 60, appendix A, shall be used to determine the VOM content in coatings. If it is demonstrated to the satisfaction of the Agency that plant coating formulation data are equivalent to Method 24 results, formulation data may be used. In the event of any inconsistency between a Method 24 test and a facility's formulation data, the Method 24 test will govern.

(2) Method 24A of 40 CFR part 60, appendix A, shall be used to determine the VOM content and density of rotogravure printing inks and related coatings. If it is demonstrated to the satisfaction of the Agency that the plant coating formulation data are equivalent to Method 24A results, formulation data may be used. In the event of any inconsistency between a Method 24A test and a facility's formulation data, the Method 24A test will govern.

(3) The following ASTM methods are the analytical procedures for determining VOM:

(i) ASTM D1475–60: Standard test method for density of paint, varnish, lacquer and related products.

(ii) ASTM D2369–87: Standard test method for volatile content of a coating.

(iii) ASTM D3792–86: Standard test method for water content of water-reducible paints by direct injection into a gas chromatograph.

(iv) ASTM D4017–81: Standard test method for water content in paints and paint materials by the Karl Fischer method.

(v) ASTM D4457–85: Standard test method for determination of dichloromethane and 1,1,1, trichloroethane in paints and coatings by direct injection into a gas chromatograph. (The procedure delineated above can be used to develop protocols for any compounds specifically exempted from the definition of VOM.)

(vi) ASTM D2697–86: Standard test method for volume non-volatile matter in clear or pigmented coatings.

(vii) ASTM 03980: Standard practice for interlaboratory testing of paint and related materials.

(viii) ASTM E180–85: Practice for determining the precision data of ASTM methods for analysis of and testing of industrial chemicals.

(ix) ASTM D2372–85: Standard method of separation of vehicle from solvent-reducible paints.

(4) The Administrator may determine that the analytical methods specified in paragraphs (a)(4)(i)(B) *(1), (2)* and *(3)* are not appropriate to determine compliance and may either specify or allow an alternate test method to be conducted at his discretion.

(C) *Calculations:* Calculations for determining the VOM content, water content and the content of any compounds which are specifically exempted from the definition of VOM of coatings, inks and fountain solutions as applied shall follow the guidance provided in the following documents.

(1) "A Guide for Surface Coating Calculation." EPA–340/1–86–016.

(2) "Procedures for Certifying Quantity of Volatile Organic Compounds Emitted by Paint, Ink and Other Coatings." (revised June 1986). EPA–450/3–84–019.

(3) "A Guide for Graphic Arts Calculations." August 1988. EPA–340/1–88–003.

(ii) Transfer efficiency test protocol. The protocol for determining the transfer efficiency of coating applicators at topcoat coating operations at an automobile assembly facility shall follow the procedure in: "Protocol for Determining the Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations." December 1988. EPA–450/3–88–018.

(iii) Capture system efficiency test protocols.

(A) The protocols for determining the VOM capture system efficiency must conform to the guidance delineated in the following document:

Draft Guideline Document for Measuring Capture Efficiency. USEPA–EMB draft document, June 14, 1989. The final version of this document shall replace the subject draft document when the draft document is finalized.

(B) The owner or operator must obtain written USEPA approval for its protocol for determining capture efficiency for the purpose of demonstrating compliance with the provisions of § 52.741 at least 30 days prior to conducting such test. The protocol shall at a minimum describe the emission source, concentration of compounds which are specifically exempted from the definition of VOM and VOM species, gas flow rates, coating compositions, quality assurance procedures, and production rates, test methods, and calculations.

(iv) Control device efficiency testing and monitoring.

(A) The control device efficiency shall be determined by simultaneously measuring the inlet and outlet gas phase VOM concentrations and gas volumetric flow rates in accordance with the gas phase test methods specified in paragraph (a)(4)(vi).

(B) Any owner or operator that uses an afterburner or carbon adsorber to comply with any paragraph of § 52.741 shall use Agency approved continuous monitoring equipment which is installed, calibrated, maintained, and operated according to vendor specifications at all times the afterburner or carbon adsorber is in use. The continuous monitoring equipment must monitor the following parameters:

(1) Combustion chamber temperature of each afterburner.

(2) Temperature rise across each catalytic afterburner bed.

(3) The VOM concentration of each carbon adsorption bed exhaust.

(v) Overall efficiency.

(A) The overall efficiency of the emission control system shall be determined as the product of each individual capture system efficiency and each control device efficiency or by the liquid/liquid test protocol for each solvent recovery system. In those cases in which the overall efficiency is being determined for an entire line, the capture efficiency used to calculate the product of the capture and control efficiency is the total capture efficiency over the entire line.

(B) For coating lines which are both chosen by the owner or operator to comply with paragraphs (e)(2)(ii), (e)(2)(iii), (e)(2)(iv), (e)(2)(v), or (e)(2)(vi) by the alternative in (e)(2)(i)(B) and meet the criteria allowing them to comply with paragraph (e)(2) instead of paragraph (e)(1), the overall efficiency of the capture system and control device, as determined by the test methods and procedures specified in paragraphs (a)(4)(iii), (iv) and (v)(A), shall be no less than the equivalent overall efficiency which shall be calculated by the following equation:

$$E=([VOM_a-VOM_t]/VOM_a)\times 100$$

where:

E = Equivalent overall efficiency of the capture system and control device as a percentage,

VOM_a = Actual VOM content of a coating, or the daily-weighted average VOM content of two or more coatings (if more than one coating is used), as applied to the subject coating line as determined by the applicable test methods and procedures specified in paragraph (a)(4)(i) in units of kg VOM/l (lb VOM/gal) of coating solids as applied.

VOM = The VOM emission limit specified in paragraph (e)(2)(i) or (ii) in units of kg VOM/l (lb VOM/gal) of coating solds as applied.

(vi) Volatile organic material gas phase source test methods. The methods in 40 CFR part 60, appendix A,

delineated below shall be used to determine control device efficiencies.

(A) 40 CFR part 60, appendix A, Methods 18, 25 or 25A, as appropriate to the conditions at the site, shall be used to determine VOM concentration. Method selection shall be based on consideration of the diversity of organic species present and their total concentration and on consideration of the potential presence of interfering gases. Except as indicated in paragraphs (a)(4)(vi)(A) *(1)* and *(2)* below, the test shall consist of three separate runs, each lasting a minimum of 60 min, unless the Administrator determines that process variables dictates shorter sampling times.

(1) When the method is to be used to determine the efficiency of a fixed-bed carbon adsorption system with a common exhaust stack for all the individual adsorber vessels, the test shall consist of three separate runs, each coinciding with one or more complete sequences through the adsorption cycles of all the individual adsorber vessels.

(2) When the method is to be used to determine the efficiency of a fixed-bed carbon adsorption system with individual exhaust stacks for each adsorber vessel, each adsorber vessel shall be tested individually. The test for each adsorber vessel shall consist of three separate runs. Each run shall coincide with one or more complete adsorption cycles.

(B) 40 CFR part 60, appendix A, Method 1 or 1A shall be used for sample and velocity traverses.

(C) 40 CFR part 60, appendix A, Method 2, 2A, 2C or 2D shall be used for velocity and volumetric flow rates.

(D) 40 CFR part 60, appendix A, Method 3 shall be used for gas analysis.

(E) 40 CFR part 60, appendix A, Method 4 shall be used for stack gas moisture.

(F) 40 CFR part 60, appendix A, Methods 2, 2A, 2C, 2D, 3 and 4 shall be performed, as applicable, at least twice during each test run.

(vii) Leak detection methods for volatile organic material. Owners or operators required by the various subparts of this regulation to carry out a leak detection monitoring program shall comply with the following requirements:

(A) Leak detection monitoring. *(1)* Monitoring shall comply with 40 CFR part 60, appendix A, Method 21.

(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 methods specified in Method 21.

(4) Calibration gases shall be:

(i) Zero air (less than 10 ppm of hydrocarbon in air); and

(ii) A mixture of methane or n-hexane and air at a concentration of approximately but less than 10,000 ppm methane or n-hexane.

(5) The instrument probe shall be traversed around all potential leak interfaces as close to the interface as possible as described in Method 21.

(B) When equipment is tested for compliance with no detectable emissions as required, the test shall comply with the following requirements:

(1) The requirements of paragraphs (a)(4)(vii)A*(1)* through (vii)(A)*(5)* above shall apply.

(2) The background level shall be determined as set forth in Method 21.

(C) Leak detection tests shall be performed consistent with:

(1) "APTI Course SI 417 controlling Volatile Organic Compound Emissions from Leaking Process Equipment." EPA–450/2–82–015.

(2) "Portable Instrument User's Manual for Monitoring VOC Sources." EPA–340/1–86–015.

(3) "Protocols for Generating Unit—Specific Emission Estimates for Equipment Leaks of VOC and VHAP." EPA–450/3–88–010.

(4) "Petroleum Refinery Enforcement Manual." EPA–340/1–80–008.

(viii) Bulk gasoline delivery system test protocol. (A) The method for determining the emissions of gasoline from a vapor recovery system are delineated in 40 CFR Part 60, Subpart XX, § 60.503.

(B) Test shall be performed consistent with:

(1) "Inspection Manual for Control of Volatile Organic Emissions from Gasoline Marketing Operations: appendix D." EPA–340/1–80–012.

(2) "Control of Hydrocarbons from Tank Truck Gasoline Loading Terminals: appendix A." EPA–450/2–77–026.

(ix) Solvent metal cleaning volatile organic material emissions. The method for determining VOM emissions shall be performed consistent with "Regulatory Guidance for Control of Volatile Organic Compound Emissions From 15 Categories of Stationary Sources." EPA 905/2–78–001, Section XX.9404, pages 48 and 49.

(5) *Compliance dates.* Compliance with the requirements of all rules is required upon promulgation unless otherwise indicated by compliance dates contained in specific rules. This paragraph shall not operate to provide additional time for compliance under section 113(d) of the Act, 42 U.S.C. 7413(d), for sources subject to compliance upon promulgation.

(6) *Afterburners.* The operation of any natural gas fired afterburner and capture system used to comply with § 52.741 is not required during the period of November 1 of any year to April 1 of the following year provided that the operation of such devices is not required for purposes of occupational safety or health, or for the control of toxic substances, odor nuisances, or other regulated pollutants.

(7) *Exemptions, variances and alternative means of control.* Any exemptions, variances or alternatives to the control requirements, emission limitations, or test methods in the Illinois SIP or FIP can only be allowed if approved by the Administrator as a SIP or FIP revision.

(8) *Vapor pressure of volatile organic liquids.* (i) If the VOL consists of only a single compound, the vapor pressure shall be determined by ASTM Method D–2879–83 (Approved 1983) or the vapor pressure may be obtained from a published source such as: Boublik, T., V. Fried and E. Hala, "The Vapor Pressure of Pure Substances," Elsevier Scientific Publishing Co., New York (1973), Perry's Chemical Engineer's Handbook, McGraw-Hill Book Company (1984), CRC Handbook of Chemistry and Physics, Chemical Rubber Publishing Company (1986–87), Lange's Handbook of Chemistry, John A. Dean, editor, McGraw-Hill Book Company (1985).

(ii) If the VOL is a mixture, the vapor pressure shall be determined by ASTM Method D–2879–83 (approved 1983) or by the following equation:

$$P_{vol} = \sum_{i=1}^{n} P_i X_i$$

where:

P_{vol} = Total vapor pressure of the mixture,
n = Number of components in the mixture,
i = Subscript denoting an individual component,
P_i = Vapor pressure of a component determined in accordance with paragraph (a) of this section
X_i = Mole fraction of the component in the total mixture.

(9) *Vapor pressure of organic material or solvent.* (i) If the organic material or solvent consists of only a single compound, the vapor pressure shall be determined by ASTM Method D–2879–83 (Approved 1983) or the vapor pressure may be obtained from a published source such as: Boublik, T., V. Fried and E. Hala, "The Vapor Pressure of Pure Substances," Elsevier Scientific Publishing Co., New York (1973), Perry's Chemical Engineer's Handbook.

McGraw-Hill Book Company (1984), CRC Handbook of Chemistry and Physics, Chemical Rubber Publishing Company (1986–87), Lange's Handbook of Chemistry, John A. Dean, editor, McGraw-Hill Book Company (1985).

(ii) If the organic material or solvent is in a mixture made up of both organic material compounds and compounds which are not organic material, the vapor pressure shall be determined by the following equation:

$$P_{om} = \frac{\sum_{i=1}^{n} P_i X_i}{\sum_{i=1}^{n} X_i}$$

where:

P_{om} = Total vapor pressure of the portion of the mixture which is composed of organic material,
n = Number of organic material components in the mixture
i = Subscript denoting an individual component,
P_i = Vapor pressure of an organic material component determined in accordance with paragraph (a) of this section,
X_i = Mole fraction of the organic material component of the total mixture.

(iii) If the organic material or solvent is in a mixture made up of only organic material compounds, the vapor pressure shall be determined by ASTM Method D–2879–83 (approved 1983) or by the above equation.

(10) *Vapor pressure of volatile organic material.* (i) If the VOM consists of only a single compound, the vapor pressure shall be determined by ASTM Method D–2879–83 (Approved 1983) or the vapor pressure may be obtained from a published source such as: Boublik, T., V. Fried and E. Hala, "The Vapor Pressure of Pure Substances," Elsevier Scientific Publishing Co., New York (1973), Perry's Chemical Engineer's Handbook, McGraw-Hill Book Company (1984), CRC Handbook of Chemistry and Physics, Chemical Rubber Publishing Company (1986–87), Lange's Handbook of Chemistry, John A. Dean, editor, McGraw-Hill Book Company (1985).

(ii) If the VOM is in a mixture made up of both VOM compounds and compounds which are not VOM, the vapor pressure shall be determined by the following equation:

$$P_{vom} = \frac{\sum_{i=1}^{n} P_i X_i}{\sum_{i=1}^{n} X_i}$$

where:

P_{vom} = Total vapor pressure of the portion of the mixture which is composed of VOM,
n = Number of VOM components in the mixture,
i = Subscript denoting an individual component,
P_i = Vapor pressure of a VOM component determined in accordance with paragraph (a) of this section,
X_i = Mole fraction of the VOM component of the total mixture.

(iii) If the VOM is in a mixture made up of only VOM compounds, the vapor pressure shall be determined by ASTM Method D–2879–83 (approved 1983) or by the above equation.

(b) [Reserved]

(c) [Reserved]

(d) *Solvent Cleaning*—(1) *Solvent cleaning in general.* The requirements of subpart E (sections 215.182–215.184) of 35 Ill. Adm. Code 215 shall apply to all cold cleaning, open top vapor degreasing, and conveyerized degreasing operations.

(Note: for Federal purposes, paragraph (d)(1) supercedes subpart E (section 215.181) of 35 Ill. Adm. Code 215.)

(2) *Compliance schedule.* Every owner or operator of an emission source which was previously exempt from the requirements of subpart E (sections 215.182–215.184) of 35 Ill. Adm. Code 215 because of the provisions specified in subpart E (section 215.181) of 35 Ill. Adm. Code 215, shall comply with the requirements of subpart E (section 215.182–215.184) of 35 Ill. Adm. Code 215 on and after April 1, 1991.

(3) *Test methods.* The following test methods shall be used to demonstrate compliance with subpart E (sections 215.182–215.184) of 35 Ill. Adm. Code 215:

(i) Vapor pressures shall be determined by using the procedure specified in paragraph (a)(9).

(ii) Exhaust ventilation rates shall be determined by using the procedures specified in paragraph (a)(4)(vi)(C).

(iii) The performance of control devices shall be determined by using the procedures specified in paragraph (a)(4)(vi).

(e) *Coating operations—(1) Emission limitations for manufacturing plants.* (i) Except as provided in paragraph (e)(3), no owner or operator of a coating line shall apply at any time any coating in which the VOM content exceeds the following emission limitations for the specified coating. The following emission limitations are expressed in units of VOM per volume of coating (minus water any any compounds which are specifically exempted from the definition of VOM) as applied at each coating applicator, except where noted. Compounds which are specifically exempted from the definition of VOM should be treated as water for the purpose of calculating the "less water" part of the coating composition. Compliance with this paragraph must be demonstrated through the applicable coating analysis test methods and procedures specified in paragraph (a)(4)(i) and the recordkeeping and reporting requirements specified in paragraph (e)(6)(ii). As an alternative to compliance with this paragraph, the owner or operator of a coating line may meet the requirements of paragraph (e)((1)(ii) or paragraph (e)(2). The equation presented in paragraph (e)(1)(iii) shall be used to calculate emission limitations for determining compliance by add-on controls, credits for transfer efficiency, emissions trades and cross-line averaging.

	kg/1	lb/gal
(A) Automobile or Light-Duty Truck Coating:		
(*1*) Prime coat	0.14	(1.2)
(*2*) Prime surfacer coat	0.34	(2.8)

(Note: The prime surfacer coat limitation is based upon a transfer efficiency of 30 percent. Transfer efficiency credits can only be allowed if aproved by the Administrator as a SIP or FIP revisions.)

	kg/1	lb/gal
(*3*) Topcoat	1.81	(15.1)

(Note: The topcoat limitation is in units of kg (lbs) of VOM per 1 (gal) of coating solids deposited. Compliance with the limitation shall be based on the daily-weighted average VOM content from the entire topcoat operation (all topcoat spray booths, flash-off areas and back ovens). Compliance shall be demonstrated in accordance with the topcoat protocol for automobiles and light-duty trucks referenced in paragraph (a)(4)(ii). Paragraph (e)(1)(ii) does not apply to the topcoat limitation.)

	kg/1	lb/gal
(4) Final repair coat	0.58	(4.8)
(B) Can Coating:		
(1) Sheet basecoat and overvarnish	0.34	(2.8)
(2) Exterior basecoat and overvanish	0.34	(2.8)
(3) Interior body spray coat	0.51	(4.2)
(4) Exterior end coat	0.51	(4.2)
(5) Side seam spray coat	0.66	(5.5)
(6) End sealing compound coat	0.44	(3.7)
(C) Paper coating	0.35	(2.9)

(Note: The paper coating limitation shall not apply to any owner or operator of any paper coating line on which printing is performed if the paper coating line complies with the emissions limitations in paragraph (h)(1): Printing and Publishing.)

	kg/1	lb/gal
(D) Coil Coating	0.31	(2.6)
(E) Fabric Coating	0.35	(2.9)
(F) Vinyl coating	0.45	(3.8)
(G) Metal Furniture Coating	0.36	(3.0)
(H) Large Appliance Coating	0.34	(2.8)

(Note: The limitation shall not apply to the use of quick-drying lacquers for repair of scratches and nicks that occur during assembly, provided that the volume of coating does not exceed 0.95 1 (1 quart) in any one rolling eight-hour period.)

	kg/1	lb/gal
(I) Magnet Wire Coating	0.20	(1.7)
(J) Miscellaneous Metal Parts and Products Coating:		
(1) Clear coating	0.52	(4.3)
(2) Air-dried coating	0.42	(3.5)
(3) Extreme performance coating	0.42	(3.5)
(4) All other coatings	0.36	(3.0)
(K) Heavy Off-Highway Vehicle Products Coating:		
(1) Extreme Performance prime coat	0.42	(3.5)
(2) Extreme performance topcoat (air dried)	0.42	(3.5)
(3) Final repair coat (air dried)	0.42	(3.5)
(4) All other coatings are subject to the emission limitations for miscellaneous metal parts and products coatings in paragraph (e)(1)(i)(J) above.		
(L) Wood Furniture Coating:		
(1) Clear topcoat	0.67	(5.6)
(2) Opaque stain	0.56	(4.7)
(3) Pigmented coat	0.60	(5.0)
(4) Repair coat	0.67	(5.6)
(5) Sealer	0.67	(5.6)
(6) Semi-transparent stain	0.79	(6.6)
(7) Wash coat	0.73	(6.1)

(Note: An owner or operator of a wood furniture coating operaton subject to this paragraph shall apply all coatings, with the exception of no more than 37.8 1 (10 gal) of coating per day used for touch-up and repair operations, using one or more of the following application systems: airless spray application system, air-assisted airless spray application system, electrostatic spray application system, electrostatic bell or disc application system, heated airless spray application system, roller coat. brush or wipe application system, or dip-and-drain application system.)

(M) General Motors Corporation, Electro-Motive Division in Cook County:

	kg/1	lb/gal
(1) Extreme performance prime coat	0.42	(3.5)
(2) Extreme performance topcoat (air dried)	0.42	(3.5)
(3) Final repair coat (air dried)	0.42	(3.5)
(4) High-temperature aluminum coating	0.72	(6.0)
(5) All other coatings	0.36	(3.0)

(ii) Daily-weighted average limitations.

No owner or operator of a coating line subject to the limitations of paragraph (e)(1)(i) and complying by means of paragraph (e)(1)(ii) shall operate the subject coating line unless the owner or operator has demonstrated compliance with paragraph (e)(1)(ii)(A), (ii)(B), (ii)(C), (ii)(D), (ii)(E) or (ii)(F) (depending upon the source category) through the applicable coating analysis test methods and procedures specified in paragraph (a)(4)(i) and the recordkeeping and reporting requirements specified in paragraph (e)(6)(iii).

(A) No owner or operator of a coating line subject to only one of the limitations from among paragraph (e)(1)(i)(A)*(1)*, (i)(A)*(2)*, (i)(A)*(4)*, (i)(C), (i)(D), (i)(E), (i)(F), (i)(G), (i)(H), or (i)(I) shall apply coating on any such coating line, during any day, whose daily-weighted average VOM content exceeds the emission limitation to which the coatings are subject.

(B) No owner or operator of a miscellaneous metal parts and products coating line subject to the limitations of paragraph (e)(1)(i)(J) shall apply coatings to miscellaneous metal parts or products on the subject coating line unless the requirements in paragraph (e)(1)(ii)(B)*(1)* or *(2)* are met.

(1) For each coating line which applies multiple coatings, all of which are subject to the same numerical emission limitation within paragraph (e)(1)(i)(J) above, during the same day (e.g., all coatings used on the line are subject to 0.42 g/1 [3.5 lbs/gal]), the daily-weighted average VOM content shall not exceed the coating VOM content limit corresponding to the category of coating used, or

(2) For each coating line which applies coatings from more than one of the four coating categories in paragraph (e)(1)(i)(J) above, during the same day, the owner or operator shall submit to and receive approval from the Administrator for a site-specific FIP revision. To receive approval, the requirements of USEPA's Emissions Trading Policy Statement (and related policy) must be satisfied.

(c) No owner or operator of a can coating facility subject to the limitations of paragraph (e)(1)(i)(B) shall operate the subject coating facility using a coating with a VOM content in excess of the limitations specified in paragraph (e)(1)(i)(B) unless all of the following requirements are met:

(1) An alternative daily emission limitation shall be determined according to paragraph (e)(2)(ii)(C)*(2)* below. Actual daily emissions shall never exceed the alternative daily emission limitation and shall be calculated by use of the following equation.

$$E_d = \sum_{i=1}^{n} V_i C_i$$

where:

E_d = Actual VOM emissions for the day in units of kg/day (lbs/day),

i = Subscript denoting a specific coating applied,

n = Total number of coatings applied in the can coating operation,

V_i = Volume of each coating applied for the day in units of 1/day (gal/day) of coating (minus water and any compounds which are specifically exempted from the definition of VOM), and

C_i = The VOM content of each coating as applied in units of kg VOM/1 (lbs VOM/gal) of coating (minus water and any compounds which are specifically exempted from the definition of VOM).

(2) The alternative daily emission limitation (A_d) shall be determined on a daily basis as follows:

$$A_d = \sum_{i=1}^{n} V_i L_i \frac{(D_i - C_i)}{(D_i - C_i)}$$

where:

A_d = The VOM emissions allowed for the day in units of kg/day (lbs/day),

i = Subscript denoting a specific coating applied,

n = Total number of surface coatings applied in the can coating operation,

c_i = The VOM content of each surface coating as applied in units of kg VOM/l (lbs VOM/gal) of coating (minus water and any compounds which are specifically exempted from the definition of VOM),

D_i = The density of VOM in each coating applied. For the purposes of calculating A_d, the density is 0.882 kg VOM/l VOM (7.36 lbs VOM/gal VOM),

V_i = Volume of each surface coating applied for the day in units of 1 (gal) of coating (minus water and any compounds which are specifically exempted from the definition of VOM),

L_i = The VOM emission limitation for each surface coating applied as specified in paragraph (e)(1)(i)(B) in units of kg VOM/l (lbs VOM/gal) of coating (minus water or any compounds which are specifically exempted from the definition of VOM).

(D) No owner or operator of a heavy off-highway vehicle products coating line subject to the limitations of paragraph (e)(1)(i)(K) shall apply coatings to heavy off-highway vehicle products on the subject coating line unless the requirements of paragraph (e)(1)(ii)(D) *(1)* or *(2)* are met.

(1) For each coating line which applies multiple coatings, all of which are subject to the same numerical emission limitation within paragraph (e)(1)(i)(K) above, during the same day (e.g., all coatings used on the line are subject to 0.42 g/l [3.5 lbs/gal]), the daily-weighted average VOM content shall not exceed the coating VOM content limit corresponding to the category of coating used, or

(2) For each coating line which applies coatings subject to more than one numerical emission limitation in paragraph (e)(1)(i)(K) above, during the same day, the owner or operator shall submit to and receive approval from the Administrator for a site-specific FIP revision. To receive approval, the requirements of USEPA's Emissions Trade Policy Statement (and related policy) must be satisfied.

(E) No owner or operator of a wood furniture coating line subject to the limitations of paragraph (e)(1)(i)(L) shall apply coatings to wood furniture on the subject coating line unless the requirements of paragraph (e)(1)(ii)(E) *(1)* or *(2)*, in addition to the requirements specified in the note to paragraph (e)(1)(i)(L), are met.

(1) For each coating line which applies multiple coatings, all of which are subject to the same numerical emission limitation within paragraph (e)(1)(i)(L) above, during the same day (e.g., all coatings used on the line are subject to 0.67 g/1 [5.6 lbs/gal]), the daily-weighted average VOM content shall not exceed the coating VOM content limit corresponding to the category of coating used, or

(2) For each coating line which applies coatings subject to more than one numerical emission limitation in paragraph (e)(1)(i)(L) above, during the same day, the owner or operator shall submit to and receive approval from the Administrator for a site-specific FIP revision. To receive approval, the requirements of USEPA's Emissions Trading Policy Statement (and related policy) must be satisfied.

(F) No owner or operator of the General Motors Corporation, Electro-Motive Division diesel-electric locomotive coating line in Cook County, subject to the limitations of paragraph (e)(1)(i)(M) shall apply coatings to diesel-electric locomotives on the subject coating line unless the requirements of paragraph (e)(1)(ii)(F) *(1)* or *(2)* are met.

(1) For each coating line which applies multiple coatings, all of which are subject to the same numerical emission limitation within paragraph (e)(1)(i)(M) above, during the same day (e.g., all coatings used on the line are subject to 042 g/1 [3.5 lbs/gal]), the daily-weighted average VOM content shall not exceed the coating VOM content limit corresponding to the category of coating used, or

(2) For each coating line which applies coatings subject to more than one numerical emission limitation in paragraph (e)(1)(i)(M) above, during the same day, the owner or operator shall submit to and receive approval from the Administrator for a site-specific FIP revision. To receive approval, the requirements of USEPA's Emissions Trading Policy Statement (and related policy) must be satisfied.

(iii) Limitations in terms of kg (lbs) of VOM emissions per 1 (gal) of solids as applied at each coating applicator shall be determined by the following equation:

$$S = \frac{C}{1-(C/D)}$$

where:

S = The limitation on VOM emissions in terms of kg VOM/1 (lbs VOM/gal) of solids,

C = The limitation on VOM emissions in terms of kg/1 (lbs/gal) of coating (minus water and any compounds which are specifically excluded from the definition of VOM) specified in paragraph (e)(1)(i),

D = The density of VOM in the coating. For the purposes of calculating S, the density is 0.882 kg VOM/1 VOM (7.36 lbs VOM/gal VOM).

(2) *alternative emission limitations.* Any owner or operator of a coating line subject to paragraph (e)(1) may comply with this paragraph, rather than with paragraph (e)(1), if a capture system and control device are operated at all times and the owner or operator demonstrates compliance with paragraphs (e)(2) (ii), (iii), (iv), (v), or (vii) (depending upon the source category) through the applicable coating analysis and capture system and control device efficiency test methods and procedures specified in paragraph (a)(4) and the recordkeeping and reporting requirements specified in paragraph (e)(6)(iv); and the control device is equipped with the applicable monitoring equipment specified in paragraph (a)(4)(iv) and the monitoring equipment is installed, calibrated, operated and maintained according to vendor specifications at all times the control device is in use. The use of a capture system and control device, which does not demonstrate compliance with paragraphs (e)(2) (ii), (iii), (iv), (v), (vi), or (vii), may only be used as an alternative to compliance with paragraph (e)(1) if approved as a FIP revision.

(i) Alternative add-on control methodologies. (A) The coating line is equipped with a capture system and control device that provides 81 percent reduction in the overall emissions of VOM from the coating line and the control device has a 90 percent efficiency, or

(B) The system used to control VOM from the coating line is demonstrated to have an overall efficiency sufficient to limit VOM emissions to no more than what is allowed under paragraph (e)(1). Use of any control system other than carbon absorption, condensation, or absorption scrubber system can only be allowed if approved by the Administrator as a SIP or FIP revision. Transfer efficiency credits can only be allowed if approved by the Administrator as a SIP or FIP revision. Baseline transfer efficiencies and transfer efficiency test methods must be approved by the Administrator. Such overall efficiency is to be determined as follows:

(1) Obtain the emission limitation from the appropriate paragraph in (e)(1),

(2) Calculate "S" according to the equation in paragraph (e)(1)(iii),

(3) Calculate the overall efficiency required according to paragraph (a)(4)(v). For the purposes of calculating this value, according to the equation in (a)(4)(v)(B), VOM_i is equal to the value of "S" as determined above in (i)(B)*(2)*.

(ii) No owner or operator of a coating line subject to only *one* of the emission limitations from among paragraph (e)(1)(i)(A)*(1)*, (e)(1)(i)(A)*(2)*, (e)(1)(i)(A)*(4)*, (e)(1)(i)(C), (e)(1)(i)(D), (e)(1)(i)(E), (e)(1)(i)(F), (e)(1)(i)(G), (e)(1)(i)(H), or (e)(1)(i)(I) and equipped with a capture system and control device shall operate the subject coating line unless the requirements in paragraph (e)(2)(i) (A) or (B) are met. No owner or operator of a coating line subject to paragraph (e)(1)(i)(A)*(3)*, and

equipped with a capture system and control device shall operate the coating line unless the owner or operator demonstrates compliance with the topcoat limitation in accordance with the topcoat protocol for automobile and light-duty trucks referenced in paragraph (a)(4)(ii).

(iii) No owner or operator of a miscellaneous metal parts and products coating line which applies one or more coatings, all of which are subject to the same numerical emission limitation within paragraph (e)(1)(i)(J), during the same day (e.g., all coatings used on the line are subject to 0.42 kg/l [3.5 lbs/gal]) and are equipped with a capture system and control device shall operate the subject coating line unless the requirements in paragraph (e)(2)(i) (A) or (B) are met.

(iv) No owner or operator of a heavy off-highway vehicle products coating line which applies one or more coatings, all of which are subject to the same numerical emission limitation within paragraph (e)(1)(i)(K), during the same day (e.g., all coatings used on the line are subject to 0.42 kg/l [3.5 lbs/gal]) and are equipped with a capture system and control device shall operate the subject coating line unless the requirements in paragraph (e)(2)(i) (A) or (B) are met.

(v) No owner or operator of the General Motors Corporation, Electro-Motive Division diesel-electric locomotive coating line in Cook County which applies one or more coatings, all of which are subject to the same numerical emission limitation within paragraph (e)(1)(i)(M), during the same day (e.g., all coatings used on the line are subject to 0.42 kg/l [3.5 lbs/gal]) and are equipped with a capture system and control device shall operate the subject coating line unless the requirements in paragraph (e)(2)(i) (A) or (B) are met.

(vi) No owner or operator of a wood furniture coating line which applies one or more coatings, all of which are subject to the same numerical emission limitation within paragraph (e)(1)(i)(L), during the same day (e.g., all coatings used on the line are subject to 0.67 kg/l [5.6 lbs/gal] and are equipped with a capture system and control device shall operate the subject coating line unless the requirements in paragraph (e)(2)(i) (A) or (B) are met. If compliance is achieved by meeting the requirements in paragraph (e)(2)(i)(B), then the provisions in the note to paragraph (e)(1)(i)(L) must also be met.

(vii) No owner or operator of a can coating facility and equipped with a capture system and control device shall operate the subject coating facility unless the requirements in paragraph (e)(2)(vii) (A) or (B) below are met.

(A) An alternative daily emission limitation shall be determined according to paragraph (e)(1)(ii)(C)(*2*). Actual daily emissions shall never exceed the alternative daily emission limitation and shall be calculated by use of the following equation:

$$E_d = \sum_{i=1}^{n} V_i \, C_i \, (1-F_i)$$

where:

E_d = Actual VOM emissions for the day in units of kg/day (lbs/day),

i = Subscript denoting the specific coating applied,

n = Total number of surface coatings as applied in the can coating operation,

V_i = Volume of each coating as applied for the day in units of l/day (gal/day) of coating (minus water and any compounds which are specifically exempted from the definition of VOM),

C_i = The VOM content of each coating as applied in units of kg VOM/l (lbs VOM/gal) of coating (minus water and any compounds which are specifically exempted from the definition of VOM), and

F_i = Fraction, by weight, of VOM emissions from the surface coating reduced or prevented from being emitted to the ambient air. This is the overall efficiency of the capture system and control device.

(B) The coating line is equipped with a capture system and control device that provide 75 percent reduction in the overall emissions of VOM from the coating line and the control device has a 90 percent efficiency.

(3) *Exemptions from emission limitations.* (i) Exemptions for all source categories except wood furniture coating. The limitations of paragraph (e) shall not apply to coating lines within a facility, that otherwise would be subject to the same subparagraph of paragraph (e)(1)(i) (because they belong to the same source category, e.g. can coating), provided that combined actual emissions of VOM from all lines at the facility subject to that subparagraph do not and will not exceed 6.8 kg/day (15 lbs/day) before the application of capture systems and control devices. (For example, can coating lines within a plant would not be subject to the limitations of subparagraph (e)(1)(i)(B) if the combined actual emissions of VOM from the can coating lines do not and will not exceed 6.8 kg/day (15 lbs/day) before the application of capture systems and control devices.) Volatile organic material emissions from heavy off-highway vehicle products coating lines must be combined with VOM emissions from miscellaneous metal parts and products coating lines to determine applicability. Any owner or operator of a coating facility shall comply with the applicable coating analysis test methods and procedures specified in paragraph (a)(4)(i) and the recordkeeping and reporting requirements specified in paragraph (e)(6)(i) if total VOM emissions from the subject coating lines are always less than or equal to 6.8 kg/day (15 lbs/day) before the application of capture systems and control devices and, therefore, are not subject to the limitations of paragraph (e)(1). Once a category of coating lines at a facility is subject to the limitations in paragraph (e)(1), the coating lines are always subject to the limitations in paragraph (e)(1).

(ii) Applicability for wood furniture coating. (A) The limitations of paragraph (e) shall apply to a plant's wood furniture coating lines if the plant contains process emission sources, not regulated by paragraphs (d), (e), (h) (excluding paragraph (h)(5)), or (g)(1), or Subparts B, Q, R, S, V, X, Y (Sections 215.582–215.584), or Z of 35 Ill. Adm. Code 215, which as a group both:

(*1*) Have the potential to emit 91 Mg (100 tons) or more per calendar year of VOM if no air pollution control equipment were used and

(*2*) Are not limited to less than 91 Mg (100 tons) of VOM per calendar year if no air pollution control equipment were used, through production or capacity limitations contained in a federally enforceable construction permit or SIP of FIP revisions.

(B) If a plant ceases to fulfill the criteria of paragraph (e)(3)(ii)(A), the limitations of paragraph (e)(1)(i)(L) shall continue to apply to any wood furniture coating line which was ever subject to the limitations of paragraph (e)(1)(i)(L).

(C) For the purposes of paragraph (e)(3)(ii), an emission source shall be considered regulated by a subpart, section, or paragraph if it is subject to the limitations of that subpart, section, or paragraph. An emission source is not considered regulated by a subpart, section, or paragraph if its emissions are below the applicability cutoff level or if the source is covered by an exemption.

(D) Any owner or operator of a wood furniture coating line to which the limitations of paragraph (e) are not applicable due to the criteria in paragraph (e)(3)(ii) shall, upon request by the Administrator, submit records to the Administrator within 30 calendar days from the date of the request that document that the coating line is exempt from the limitations of paragraph (e).

(4) Exemption from general rule on use of organic material. No owner or operator of a coating line subject to the limitations of paragraph (e)(1) is required to meet the limitations of subpart K (section 215.301 or 215.302) of 35 Ill. Adm. Code 215, after the date by which the coating line is required to meet paragraph (e)(1).

(5) *Compliance schedule.* Every owner or operator of a coating line (of a type included within paragraph (e)(1)(i)) shall comply with the requirements of paragraph (e)(1), (e)(2) or (e)(3) and paragraph (e)(6) in accordance with the applicable compliance schedule to the extent specified in paragraph (e)(5) (i), (ii), (iii) or (iv) below.

(i) No owner or operator of a coating line which is exempt from the limitations of paragraph (e)(1) because of the criteria in paragraph (e)(3)(i) shall operate said coating line on or after April 1, 1991, unless the owner or operator has complied with, and continues to comply with, paragraph (e)(6)(i). Wood furniture coating lines are not subject to (e)(6)(i).

(ii) No owner or operator of a coating line complying by means of paragraph (e)(1)(i) shall operate said coating line on or after April 1, 1991, unless the owner or operator has complied with, and continues to comply with, paragraphs (e)(1)(i) and (e)(6)(ii).

(iii) No owner or operator of a coating line complying by means of paragraph (e)(1)(ii) shall operate said coating line on or or after April 1, 1991, unless the owner or operator has complied with, and continues to comply with, paragraphs (e)(1)(ii) and (e)(6)(iii).

(iv) No owner or operator of a coating line complying by means of paragraph (e)(2) shall operate said coating line on or after April 1, 1991, unless the owner or operator has complied with, and continues to comply with, paragraphs (e)(2) and (e)(6)(iv).

(6) *Recordkeeping and reporting.* The VOM content of each coating and the efficiency of each capture system and control device shall be determined by the applicable test methods and procedures specified in paragraph (a)(4) to establish the records required under paragraph (e)(6).

(i) Any owner or operator of a coating line which is exempted from the limitations of paragraph (e)(1) because of paragraph (e)(3)(i) shall comply with the following:

(A) By April 1, 1991, the owner or operator of a facility referenced in paragraph (e)(6)(i) shall certify to the Administrator that the facility is exempt under the provisions of paragraph (e)(3)(i). Such certification shall include:

(1) A declaration that the facility is exempt from the limitations of paragraph (e)(1) because of paragraph (e)(3)(i); and

(2) Calculations which demonstrate that the combined VOM emissions from all coating lines at the facility are and will remain 6.8 kg (15 lbs) or less each day before the application of capture systems and control devices. The following equation shall be used to calcualte total VOM emissions:

$$T_e = \sum_{j=1}^{m} \sum_{i=1}^{n} (A_i B_i)_j$$

where:

T_e = Total VOM emissions from coating lines at a facility each day before the application of capture systems and control devices in units of kg/day (lbs/day),

m = Number of coating lines at the facility,

j = Subscript denoting an individual coating line,

n = Number of different coatings as applied each day on each coating line at the facility,

i = Subscript denoting an individual coating,

A_i = Weight of VOM per volume of each coating (minus water and any compounds which are specifically exempted from the definition of VOM) as applied each day on each coating line at the facility in units of kg VOM/l (lbs VOM/gal), and

B_i = Volume of each coating (minus water and any compounds which are specifically exempted from the definition of VOM) as applied each day on each coating line at the facility in units of l/day (gal/day). The instrument or method by which the owner or operator accurately measured or calculated the volume of each coating as applied on each coating line each day shall be described in the certification to the Administrator.

(B) On and after April 1, 1991, the owner or operator of a facility referenced in paragraph (e)(6)(i) shall collect and record all of the following information each day for each coating line and maintain the information at the facility for a period of three years:

(1) The name and identification number of each coating as applied on each coating line.

(2) The weight of VOM per volume and the volume of each coating (minus water and any compounds which are specifically exempted from the definition of VOM) as applied each day on each coating line.

(C) On and after April 1, 1991, the owner or operator of a facility exempted from the limitations of paragraph (e)(1) because of paragraph (e)(3)(i) shall notify the Administrator of any record showing that total VOM emissions from the coating facility exceed 6.8 kg (15 lbs) in any day before the application of capture systems and control devices shall be reported by sending a copy of such record to the Administrator within 30 days after the exceedance occurs.

(ii) Any owner or operator of a coating line subject to the limitations of paragraph (e)(1) and complying by means of paragraph (e)(1)(i) shall comply with the following:

(A) By April 1, 1991, or upon start-up of a new coating line, or upon changing the method of compliance from an existing subject coating line from paragraph (e)(1)(ii) or paragraph (e)(2) to paragraph (e)(1)(i); the owner or operator of a subject coating line shall certify to the Administrator that the coating line will be in compliance with paragraph (e)(1)(i) on and after April 1, 1991, or on and after the initial start-up date. Such certification shall include:

(1) The name and identification number of each coating as applied on each coating line.

(2) The weight of VOM per volume of each coating (minus water and any compounds which are specifically exempted from the definition of VOM) as applied each day on each coating line.

(B) On and after April 1, 1991, or on and after the initial start-up date, the owner or operator of a coating line subject to the limitations of paragraph (e)(1) and complying by means of paragraph (e)(1)(i) shall collect and record all of the following information each day for each coating line and maintain the information at the facility for a period of three years:

(1) The name and identification number of each coating as applied on each coating line.

(2) The weight of VOM per volume of each coating (minus water and any compounds which are specifically exempted from the definition of VOM) as applied each day on each coating line.

(C) On and after April 1, 1991, the owner or operator of a subject coating line shall notify the Administrator in the following instances:

(1) Any record showing violation of paragraph (e)(1)(i) shall be reported by sending a copy of such record to the Administrator within 30 days following the occurrence of the violation.

(2) At least 30 calendar days before changing the method of compliance with paragraph (e)(1) from paragraph (e)(1)(i) to paragraph (e)(1)(ii) or paragraph (e)(2), the owner or operator shall comply with all requirements of paragraph (e)(6)(iii)(A) or (iv)(A),

respectively. Upon changing the method of compliance with paragraph (e)(1) from paragraph (e)(1)(i) to paragraph (e)(1)(ii) or paragraph (e)(2), the owner or operator shall comply with all requirements of paragraph (e)(6)(iii) or (iv), respectively.

(iii) Any owner or operator of a coating line subject to the limitations of paragraph (e)(1) and complying by means of paragraph (e)(1)(ii) shall comply with the following:

(A) By April 1, 1991, or upon start-up of a new coating line, or upon changing the method of compliance for an existing subject coating line from paragraph (e)(1)(i); or paragraph (e)(2) to paragraph (e)(1)(ii); the owner or operator of the subject coating line shall certify to the Administrator that the coating line will be in compliance with paragraph (e)(1)(ii) on and after April 1, 1991, or on and after the initial start-up date. Such certification shall include:

(1) The name and identification number of each coating line which will comply by means of paragraph (e)(1)(ii).

(2) The name and identificaton number of each coating as applied on each coating line.

(3) The weight of VOM per volume and the volume of each coating (minus water and any compounds which are specifically exempted from the definition of VOM) as applied each day on each coating line.

(4) The instrument or method by which the owner or operator will accurately measure or calculate the volume of each coating as applied each day on each coating line.

(5) The method by which the owner or operator will create and maintain records each day as required in paragraph (e)(6)(iii)(B).

(6) An example of the format in which the records required in paragraph (e)(6)(iii)(B) will be kept.

(B) On and after April 1, 1991, or on and after the initial start-up date, the owner or operator of a coating line subject to the limitations of paragraph (e)(1) and complying by means of paragraph (e)(1)(ii), shall collect and record all of the following information each day for each coating line and maintain the information at the facility for a period of three years:

(1) The name and identification number of each coating as applied on each coating line.

(2) The weight of VOM per volume and the volume of each coating (minus water and any compounds which are specifically exempted from the definition of VOM) as applied each day on each coating line.

(3) The daily-weighted average VOM content of all coatings as applied on each coating line as defined in paragraph (a)(3).

(C) On and after April 1, 1991, the owner or operator of a subject coating line shall notify the Administrator in the following instances:

(1) Any record showing violation of paragraph (e)(1)(ii) shall be reported by sending a copy of such record to the Administrator within 30 days following the occurrence of the violation.

(2) At least 30 calendar days before changing the method of compliance with paragraph (e) from paragraph (e)(1)(ii) to paragraph (e)(1)(i) or paragraph (e)(2), the owner or operator shall comply with all requirements of paragraph (e)(6)(ii)(A) or (iv)(A), respectively. Upon changing the method of compliance with paragraph (e) from paragraph (e)(1)(ii) to paragraph (e)(1)(i) or paragraph (e)(2), the owner or operator shall comply with all requirements of paragraph (e)(6)(ii) or (iv), respectively.

(iv) Any owner or operator of a coating line subject to the limitations of paragraph (e) (2) and complying by means of paragraph (e)(2)(ii), (iii), (iv), (v), (iv) or (vii) shall comply with the following:

(A) By April 1, 1991, or upon start-up of a new coating line, or upon changing the method of compliance for an existing coating line from paragraph (e) (1) (i) or (ii) to paragraph (e) (2); the owner or operator of the subject coating line shall perform all tests and submit to the Administrator the results of all tests and calculations necessary to demonstrate that the subject coating line will be in compliance with paragraph (e) (2) on and after April 1, 1991, or on and after the initial start-up date.

(B) On and after April 1, 1991, or on and after the initial start-up date, the owner or operator of a coating line subject to the limitations of paragraph (e)(2) and complying by means of paragraph (e) (2) (ii), (iii), (iv), (v), (vi) or (vii) shall collect and record all of the following information each day for each coating line and maintain the information at the facility for a period of three years:

(1) The weight of VOM per volume of coating solids as applied each day on each coating line.

(2) Control device monitoring data.

(3) A log of operating time for the capture system, control device, monitoring equipment and the associated coating line.

(4) A maintenance log for the capture system, control device and monitoring equipment detailing all routine and non-routine maintenance performed including dates and duration of any outages.

(C) On and after April 1, 1991, the owner or operator of a subject coating line shall notify the Administrator in the following instances:

(1) Any record showing violation of paragraph (e)(2) shall be reported by sending a copy of such record to the Administrator within 30 days following the occurrence of the violation.

(2) At least 30 calendar days before changing the method of compliance with paragraph (e) from paragraph (e)(2) to paragraph (e)(1)(i) or paragraph (e)(1)(ii), the owner or operator shall comply with all requirements of paragraph (e)(6)(ii)(A) or (iii)(A), respectively. Upon changing the method of compliance with paragraph (e) from paragraph (e)(2) to paragraph (e)(1)(i) or paragraph (e)(1)(ii), the owner or operator shall comply with all requirements of paragraph (e)(6)(ii) or (iii), respectively.

(f) [Reserved]

(g) [Reserved]

(h) Printing and Publishing—(1) *Flexographic and rotogravure printing.*

(i) No owner or operator of a subject flexographic, packaging rotogravure or publication rotogravure printing line shall apply at any time any coating or ink unless the VOM content does not exceed the limitation specified in either paragraph (h)(1)(i)(A) or (B) below. Compliance with this paragraph must be demonstrated through the applicable coating or ink analysis test methods and procedures specified in paragraph (a)(4)(i) and the recordkeeping and reporting requirements specified in paragraph (h)(4)(ii). As an alternative to compliance with paragraph (h)(1)(i), a subject printing line may meet the requirements of paragraph (h)(1)(ii) or (iii) below.

(A) Forty percent VOM by volume of the coating and ink (minus water and any compounds which are specifically exempted from the definition of VOM), or

(B) Twenty-five percent VOM by volume of the volatile content in the coating and ink.

(ii) No owner or operator of a subject flexographic, packaging rotogravure or publication rotogravure printing line shall apply coatings or inks on the subject printing line unless the weighted average, by volume, VOM content of all coatings and inks as applied each day on the subject printing line does not exceed the limitation specified in either paragraph (h)(1)(i)(A) (as determined by paragraph (h)(1)(ii)(A)) or (h)(1)(i)(B) (as determined by paragraph (h)(1)(ii)(B). Compliance with this paragraph must be demonstrated through the applicable coating or ink analysis test methods and

procedures specified in paragraph (a)(4)(i) and the recordkeeping and reporting requirements specified in paragraph (h)(4)(iii).

(A) The following equation shall be used to determine if the weighted average VOM content of all coatings and inks as applied each day on the subject printing line exceeds the limitation specified in paragraph (h)(1)(i)(A).

$$VOM_{(i)(A)} = \frac{\sum_{i=1}^{n} C_i L_i (V_{si} + V_{VOMi})}{\sum_{i=1}^{n} L_i (V_{si} + V_{VOMi})}$$

where:

$VOM_{(i)(A)}$ = The weighted average VOM content in units of percent VOM by volume of all coatings and/or inks (minus water and any compounds which are specifically exempted from the definition of VOM) used each day,

i = Subscript denoting a specific coating or ink as applied,

n = The number of different coatings and/or inks as applied each day on a printing line,

C_i = The VOM content in units of percent VOM by volume of each coating or ink as applied (minus water and any compounds which are specifically exempted from the definition of VOM),

L_i = The liquid volume of each coating or ink as applied in units of 1 (gal),

V_{si} = The volume fraction of solids in each coating or ink as applied, and

V_{VOMi} = The volume fraction of VOM in each coating or ink as applied (minus water and any compounds which are specifically exempted from the definition of VOM).

(B) The following equation shall be used to determine if the weighted average VOM content of all coatings and inks as applied each day on the subject printing line exceeds the limitation specified in paragraph (h)(1)(i)(B).

$$VOM_{(i)(B)} = \frac{\sum_{i=1}^{n} C_i L_i V_{VMi}}{\sum_{i=1}^{n} L_i V_{VMi}}$$

where:

$VOM_{(i)(B)}$ = The weighted average VOM content in units of percent VOM by volume of the volatile content of all coatings and/or inks used each day,

i = Subscript denoting a specific coating or ink as applied,

n = The number of different coatings and/or inks as applied each day on each printing line,

C_i = The VOM content in units of percent VOM by volume of the volatile matter in each coating or ink as applied,

L_i = The liquid volume of each coating or ink as applied in units of 1 (gal), and

V_{VMi} = The volume fraction of volatile matter in each coating or ink as applied.

(iii) No owner or operator of a subject flexographic, packaging rotogravure or publication rotogravure printing line equipped with a capture system and control device shall operate the subject printing line unless the owner or operator meets the requirements in paragraph (h)(l)(iii) (A), (B) or (C) and paragraphs (h)(l)(iii) (D), (E) and (F) below.

(A) A carbon adsorption system is used which reduces the captured VOM emissions by at least 90 percent by weight, or

(B) an incineration system is used which reduces the captured VOM emissions by at least 90 percent by weight, or

(C) An alternative VOM emission reduction system is demonstrated to have at least a 90 percent control device efficiency and the alternative emission rreduction system is approved by the Administrator. Use of any alternative VOM emission reduction system can only be allowed if approved by the Administrator as a SIP or FIP revisions, and

(D) The printing line is equipped with a capture system and control device that provides an overall reduction in VOM emissions of at least:

(*1*) 75 percent where a publication rotogravure printing line is employed, or

(*2*) 65 percent where a packaging rotogravure printing line is employed, or

(*3*) 60 percent where a flexographic printing line is employed, and

(E) The control device is equipped with the applicable monitoring equipment specified in paragraph (a)(4)(iv)(B) and the monitoring equipment is installed, calibrated, operated and maintained according to vendor specifications at all times the control device is in use, and

(F) The capture system and control device are operated at all times when the subject printing line is in operation. The owner or operator shall demonstrate compliance with this paragraph by using the applicable capture system and control device test methods and procedures specified in paragraphs (a)(4) (iii) through (vi) and by complying with the recordkeeping and reporting requirements specified in paragraph (h)(4)(iv).

(2) *Applicability.* (i) The limitations of paragraph (h)(1) apply to all flexographic and rotogravure printing lines at a subject facility. All facilities with flexographic and/or rotogravure printing lines are subject facilities unless:

(A) Total potential emissions of VOM from all flexographic and rotogravure printing line(s) at the facility are and will be 90.7 Mg (100 tons) or less per calendar year before the application of capture systems and control devices, or

(B) A federally enforceable construction permit or SIP or FIP revision for all flexographic and rotogravure printing line(s) at a facility requires the owner or operator to limit production or capacity of these printing line(s) to reduce total VOM emissions from all flexographic and rotogravure printing line(s) to 90.7 Mg (100 tons) or less per calendar year before the application of capture systems and control devices.

(ii) Upon achieving compliance with paragraph (h), the emission source is not required to meet subpart K of 35 Ill. Adm. Code 215. Emission sources exempt from paragraph (h) are subject to subpart K. Rotogravure or flexographic equipment used for both roll printing and paper coating are subject to paragraph (h).

(iii) Once subject to the limitations of paragraph (h)(1), a flexographic or rotogravure printing line is always subject to the limitations of paragraph (h)(1).

(iv) Any owner or operator of any flexgraphic or rotogravure printing line that is exempt from the limitations of paragraph (h)(1) because of the criteria in paragraph (h)(2) shall be subject to the recordkeeping and reporting requirements specified in paragraph (h)(4)(i).

(3) *Compliance schedule.* Every owner or operator of a flexographic and/or rotogravure printing line shall comply with the applicable requirements of paragraph (h)(1) and paragraph (h)(4) in accordance with the applicable compliance schedule specified in paragraph (h)(3) (i), (ii), (iii) or (iv) and (v) below.

(i) No owner or operator of a flexographic or rotogravure printing line which is exempt from the limitations of paragraph (h)(1) because the criteria in paragraph (h)(2) shall operate said printing line on or after April 1, 1991, unless the owner or operator has complied with, and continues to comply with, paragraph (h)(4)(i).

(ii) No owner or operator of a flexographic or rotogravure printing line complying by means of paragraph

(h)(1)(i) shall operate said printing line on or after April 1, 1991, unless the owner or operator has complied with, and continues to comply with, paragraph (h)(4)(ii).

(iii) No owner or operator of a flexographic or rotogravure printing line complying by means of paragraph (h)(1)(ii) shall operate said printing line on or after April 1, 1991, unless the owner or operator has complied with, and continues to comply with, paragraph (h)(4)(iii).

(iv) No owner or operator of a flexographic or rotogravure printing line complying by means of paragraph (h)(1)(ii) shall operate said printing line on or after April 1, 1991, unless the owner or operator has complied with, and continues to comply with, paragraph (h)(4)(iv).

(v) No owner or operator of a flexographic or rotogravure printing line complying which is subject to the requirements of section 215.401 and section 215.245(b) as a result of the applicability criteria in section 215.245 (a) (all of 35 Ill. Adm. Code 215), shall operate the printing line on or after the date of promulgation unless it complies with the requirements in paragraph (h)(1). No owner or operator of a flexographic or rotogravure printing line which (A) is *not* subject to the requirements of section 215.401 and section 215.245(b) as a result of the applicability criteria contained in section 215.245 (a) (all of 35 Ill. Adm. Code 215) and (B) is subject to paragraph (h)(1), shall operate the printing line on or after April 1, 1991, unless it complies with the requirements in paragraph (h)(1).

(4) Recordkeeping and reporting. The VOM content of each coating and ink and the efficiency of each capture system and control device shall be determined by the applicable test methods and procedures specified in paragraph (a)(4) to establish the records required under paragraph (h)(4).

(i) Any owner or operator of a printing line which is exempted from the limitations of paragraph (h)(1) because of the criteria in paragraph (h)(2) shall comply with the following:

(A) By April 1, 1991, the owner or operator of a facility to which paragraph (h)(4)(i) is applicable shall certify to the Administrator that the facility is exempt under the provisions of paragraph (h)(2). Such certification shall include:

(*1*) A declaration that the facility is exempt from the limitations of the criteria in paragraph (h)(1) because of paragraph (h)(2), and

(*2*) Calculations which demonstrate that total potential emissions of VOM from all flexographic and rotogravure printing lines at the facility are and will be 90.7 Mg (100 tons) or less per calender year before the application of capture systems and control devices. Total potential emissions of VOM for a flexographic or rotogravure printing facility is the sum of potential emissions of VOM from each flexographic and rotogravure printing line at the facility. The following equation shall be used to calculate total potential emissions of VOM per calendar year before the application of capture systems and control devices for each flexographic and rotogravure printing line at the facility:

$E_p = A \times B$

where:

E_p = Total potential emissions of VOM from one flexographic or rotogravure printing line in units of kg/year (lbs/year),

A = Weight of VOM per volume of solids of the coating or ink with the highest VOM content as applied each year on the printing line in units of kg VOM/1 (lbs VOM/gal) of coating or ink solids, and

B = Total volume of solids for all coatings and inks that can potentially be applied each year on the printing line in units of 1/year (gal/year). The instrument and/or method by which the owner or operator accurately measured or calculated the volume of each coating and ink as applied and the amount that can potentially be applied each year on the printing line shall be described in the certification to the Administrator.

(B) On and after April 1, 1991, the owner or operator of facility referenced in paragraph (h)(4)(i) shall collect and record all of the following information each year for each printing line and maintain the information at the facility for a period of three years:

(*1*) The name and identification number of each coating and ink as applied on each printing line.

(*2*) The VOM content and the volume of each coating and ink as applied each year on each printed line.

(C) On and after April 1, 1991, the owner or operator of a facility exempted from the limitations of paragraph (h)(1) because of the criteria in paragraph (h)(2) shall notify the Administrator in the following instance:

(*1*) Any record showing that total potential emissions of VOM from all printing lines exceed 90.7 Mg (100 tons) in any calendar year before the application of capture systems and control devices, shall be reported by sending a copy of such record to the Administrator within 30 days after the exceedence occurs.

(ii) Any owner or operator of a printing line subject to the limitations of paragraph (h)(1) and complying by means of paragraph (h)(1) (i) or (iii) to paragraph (h)(1)(i); the owner or operator of a subject printing line shall certify to the Administrator that the printing line will be in compliance with paragraph (h)(1)(i) on and after April 1, 1991, or on the after the initial start-up date. Such certification shall include:

(*1*) The name and identification number of each coating and ink as applied on each printing line.

(*2*) The VOM content of each coating and ink as applied each day on each printing line.

(B) On and after April, 1, 1991, or on and after the initial start-up date, the owner or operator of a printing line subject to the limitations of paragraph (h)(1) and complying by means of paragraph (h)(1)(i) shall collect and record all of the following information each day for each coating line and maintain the information at the facility for a period of three years:

(*1*) The name and identification number of each coating and ink as applied on each printing line.

(*2*) The VOM content of each coating and ink as applied each day on each printing line.

(C) On and after April 1, 1991, the owner or operator of a subject printing line shall notify the Administrator in the following instances:

(*1*) Any record showing violation of paragraph (h)(1)(i) shall be reported by sending a copy of such record to the Administrator within 30 days following the occurrence of the violation.

(*2*) At least 30 calendar days before changing the method of compliance with paragraph (h)(1) from paragraph (h)(1)(i) to paragraph (h)(1) (ii) or (iii), the owner or operator shall comply with all requirements of paragraph (h)(4) (iii)(A) or (iv)(A), respectively. Upon changing the method of compliance with paragraph (h)(1) from paragraph (h)(1)(i) to paragraph (h)(1) (ii) or (iii), the owner or operator shall comply with all requirements of paragraph (h)(4) (iii) or (iv), respectively.

(iii) Any owner or operator of a printing line subject to the limitations of paragraph (h)(1) and complying by means of paragraph (h)(1)(ii) shall comply with the following:

(A) By April 1, 1991, or upon start-up of a new printing line, or upon changing the method of compliance for an existing subject printing line from paragraph (h)(1)(i) or (iii) to paragraph (h)(1)(ii), the owner or operator of the subject printing line shall certify to the Administrator that the printing line will be in compliance with paragraph (h)(1)(ii) on and after April 1, 1991, or on and after the initial start-up date. Such certification shall include:

(*1*) The name and identification number of each printing line which will comply by means of paragraph (h)(1)(ii).

(*2*) The name and identification number of each coating and ink available for use on each printing line.

(*3*) The VOM content of each coating and ink as applied each day on each printing line.

(*4*) The instrument or method by which the owner or operator will accurately measure or calculate the volume of each coating and ink as applied each day on each printing line.

(*5*) The method by which the owner or operator will create and maintain records each day as required in paragraph (h)(4)(iii)(B).

(*6*) An example of the format in which the records required in paragraph (h)(4)(iii)(B) will be kept.

(B) On and after April 1, 1991, or on and after the initial start-up date, the owner or operator of a printing line subject to the limitations of paragraph (h)(1) and complying by means of paragraph (h)(1)(ii) shall collect and record all of the following information each day for each printing line and maintain the information at the facility for a period of three years:

(*1*) The name and identification number of each coating and ink as applied on each printing line.

(*2*) The VOM content and the volume of each coating and ink as applied each day on each printing line.

(*3*) The daily-weighted average VOM content of all coatings and inks as applied on each printing line.

(C) On and after April 1, 1991, the owner or operator of a subject printing line shall notify the Administrator in the following instances:

(*1*) Any record showing violation of paragraph (h)(1)(ii) shall be reported by sending a copy of such record to the Administrator within 30 days following the occurence of the violation.

(*2*) At least 30 calendar days before changing the method of compliance with paragraph (h)(1) from paragraph (h)(1)(ii) to paragraph (h)(1)(i) or (iii), the owner or operator shall comply with all requirements of paragraph (h)(4)(ii)(A) or (iv)(A), respectively. Upon changing the method of compliance with paragraph (h)(1) from paragraph (h)(1)(ii) to paragraph (h)(1)(i) or (iii), the owner or operator shall comply with all requirements of paragraph (h)(4)(ii) or (iv), respectively.

(iv) Any owner or operator of a printing line subject to the limitations of paragraph (h)(1) and complying by means of paragraph (h)(1)(iii) shall comply with the following:

(A) By April 1, 1991, or upon start-up of a new printing line, or upon changing the method of compliance for an existing printing line from paragraph (h)(1)(i) or (ii) to paragraph (h)(1)(iii), the owner or operator of the subject printing line shall perform all tests and submit to the Administrator the results of all tests and calculations necessary to demonstrate that the subject printing line will be in compliance with paragraph (h)(1)(iii) on and after April 1, 1991, or on and after the initial start-up date.

(B) On and after April 1, 1991, or on and after the initial start-up date, the owner or operator of a printing line subject to the limitations of paragraph (h)(1) and complying by means of paragraph (h)(1)(iii) shall collect and record all of the following information each day for each printing line and maintain the information at the facility for a period of three years:

(*1*) The VOM content of each coating and ink as applied each day on each printing line.

(*2*) Control device monitoring data.

(*3*) A log of operating time for the capture system, control device, monitoring equipment and the associated printing line.

(*4*) A maintenance log for the capture system, control device and monitoring equipment detailing all routine and non-routine maintenance performed including dates and duration of any outages.

(C) On and after April 1, 1991, the owner or operator of a subject printing line shall notify the Administrator in the following instances:

(*1*) Any record showing violation of paragraph (h)(1)(iii), shall be reported by sending a copy of such record to the Administrator within 30 days following the occurrence of the violation.

(*2*) At least 30 calendar days before changing the method of compliance with paragraph (h)(1) from paragraph (h)(1)(iii) to paragraph (h)(1) (i) or (ii), the owner or operator shall comply with all requirements of paragraph (h)(4) (ii)(A) or (iii)(A), respectively. Upon changing the method of compliance with paragraph (h)(1) from paragraph (h)(1)(iii) to paragraph (h)(1) (i) or (ii), the owner or operator shall comply with all requirements of paragraph (h)(4) (ii) or (iii), respectively.

(5) *Heatset-web-offset lithographic printing.* (i) Applicability. (A) The limitations of paragraph (h)(5)(ii) below apply to all heatset-web-offset lithographic printing lines at a subject facility. All facilities with heatset-web-offset lithographic printing lines are subject facilities unless:

(*1*) Total potential emissions of VOM from all heatset-web-offset lithographic printing lines at the facility are and would be 90.7 Mg (100 tons) or less per calendar year in the absence of air pollution control equipment, or

(*2*) A federally enforceable construction permit or SIP or FIP revision for all heatset-web-offset lithographic printing lines(s) at a facility requires the owner or operator to limit production or capacity of these printing line(s) to reduce total VOM emissions from all heatset-web-offset lithographic printing line(s) to 90.7 Mg (100 tons) per calendar year or less in the absence of air pollution control equipment, and

(B) Any owner or operator of any heatset-web-offset lithographic printing line that is exempt from the limitations in paragraph (h)(5)(ii) because of the criteria in paragraph (h)(5)(i)(A) shall be subject to the recordkeeping and reporting requirements in paragraph (h)(5)(iii)(A).

(ii) Specific provisions. No owner or operator of a subject heatset-web-offset printing line may cause or allow the operation of the subject heatset-web-offset printing line unless the owner or operator meets the requirments in paragraph (h)(5)(ii) (A) or (B) and the requirements in paragraphs (h)(5)(ii) (C) and (D) below.

(A) An incinerator system is installed and operated that reduces 90 percent of the VOM emissions from the dryer exhaust, or

(B) The fountain solution contains no more than 8 percent, by weight, of VOM and a condensation recovery system is installed and operated that removes at least 75 percent of the non-isopropyl alcohol organic materials from the dryer exhaust airstream, and

(C) The control device is equipped with the applicable monitoring equipment specified in paragraph (a)(4)(iv)(B) and the monitoring equipment is installed, calibrated, operated and maintained according to vendor specifications at all times the control device is in use, and

(D) The control device is operated at all times when the subject printing line is in operation. The owner or operator shall demonstrate compliance with paragraph (h)(5) by using the applicable test methods and procedures specified in paragraphs (a)(4) (i), (iv), and (vi) and by complying with the recordkeeping and reporting requirements specified in paragraph (h)(5)(iii) below.

(iii) Recordkeeping and reporting. The

VOM content of each fountain solution and ink and the efficiency of each control device shall be determined by the applicable test methods and procedures specified in paragraph (a)(4) to establish the records required under paragraph (h)(5)(iii).

(A) Any owner or operator of a printing line which is exempted from the limitations of paragraph (h)(5)(ii) because of the criteria in paragraph (h)(5)(i) shall comply with the following:

(*1*) By April 1, 1991, the owner or operator of a facility to which paragraph (h)(5)(iii)(A) is applicable shall certify to the Administrator that the facility is exempt under the provisions of paragraph (h)(5)(i). Such certification shall include:

(*i*) A declaration that the facility is exempt from the limitations of paragraph (h)(5)(ii) because of the criteria in paragraph (h)(5)(i), and

(*ii*) Calculations which demonstrate that total potential emissions of VOM from all heatset-web-offset lithographic printing lines at the facility are and will be 90.7 Mg (100 tons) or less per calendar year before the application of air pollution control equipment. Total potential emissions of VOM for a heatset-web-offset lithographic printing facility is the sum of potential emissions of VOM from each heatset-web-offset lithographic printing line at the facility. The following equation shall be used to calculate total potential emissions of VOM per calendar year in the absence of air pollution control equipment for each heatset-web-offset lithographic printing line at the facility.

$$Ep=(A\times B)+\frac{(C\times D)}{100}$$

where:

Ep=Total potential emissions of VOM form one heatset-web-offset printing line in units of kg/year (lbs/year),

A=Weight of VOM per volume of solids of ink with the highest VOM content as applied each year on the printing line in units of kg VOM/1 (lbs VOM/gal) of solids, and

B=Total volume of solids for all inks that can potentially be applied each year on the printing line in units of 1/year (gal/year). The instrument or method by which the owner or operator accurately measured or calculated the volume of each ink as applied and the amount that can potentially be applied each year on the printing line shall be described in the certification to the Administrator.

C=The weight percent VOM of the fountain solution with the highest VOM content.

D=The total volume of fountain solution that can potentially be used each year on the printing line in units of 1/year (gal/year). The instrument and/or method by which the owner or operator accurately measured or calculated the volume of each fountain solution used and the amount of each fountain solution used and the amount that can potentially be used each year on the printing line shall be described in the certification to the Administrator.

(*2*) On and after April 1, 1991, the owner or operator of a facility to which paragraph (h)(5)(iii)(A) is applicable shall collect and record all of the following information each year for each printing line and maintain the information at the facility for a period of three years:

(*i*) The name and identification of each fountain solution and ink as applied on each printing line.

(*ii*) The VOM content and the volume of each fountain solution and ink as applied each year on each printing line.

(*3*) On and after April 1, 1991, the owner or operator of a facility exempted from the limitations of paragraph (h)(5)(ii) because of the criteria in paragraph (h)(5)(i) shall notify the Administrator of any record showing that total potential emissions of VOM from all printing lines exceed 90.7 Mg (100 tons) in any calendar year in the absence of air pollution control equipment shall be reported by sending a copy of such record to the Administrator within 30 days after the exceedence occurs.

(B) Any owner or operator of a printing line subject to the limitations of paragraph (h)(5)(ii)(A) shall comply with the following:

(*1*) By April 1, 1991, or upon start-up of a new printing line, or upon changing the method of compliance for an existing printing line from paragraph (h)(5)(ii)(B) to (ii)(A); the owner or operator of the subject printing line shall perform all tests and submit to the Administrator the results of all tests and calculations necessary to demonstrate that the subject printing line will be in compliance with paragraph (h)(5)(ii)(A) on and after April 1, 1991, or on an after the initial start-up date.

(*2*) On and after April 1, 1991, or on and after the initial start-up date, the owner or operator of a printing line subject to the limitations of paragraph (h)(5)(ii) and complying by means of paragraph (h)(5)(ii)(A) shall collect and record the following information each day for each printing line and maintain the information at the facility for a period of three years:

(*i*) Control device monitoring data.

(*ii*) A log of operating time for the control device, monitoring equipment and the associated printing line.

(*iii*) A maintenance log for the control device and monitoring equipment detailing all routine and nonroutine maintenance performed including dates and duration of any outages.

(*3*) On and after April 1, 1991, the owner or operator of a subject printing line shall notify the Administrator in the following instances:

(*i*) Any record showing violation of paragraph (h)(5)(ii)(A) shall be reported by sending a copy of such record to the Administrator within 30 days following the concurrence of the violation.

(*ii*) At least 30 calendar days before changing the method of compliance with paragraph (h)(5)(ii) from paragraph (h)(5)(ii)(A) to (ii)(B), the owner or operator shall comply with all requirements of paragraph (h)(5)(iii)(C)(*1*). Upon changing the method of compliance with paragraph (h)(5)(ii) from paragraph (h)(5)(ii)(A) to (ii)(B), the owner or operator shall comply with all requirements of paragraph (h)(5)(iii)(C).

(C) Any owner or operator of a printing line subject to the limitations of paragraph (h)(5)(ii) and complying by means of paragraph (h)(5)(ii)B) shall comply with the following:

(*1*) By April 1, 1991, or upon start-up of a new printing line, or upon changing the method of compliance for an existing printing line from paragraph (h)(5)(ii)(A) to (ii)(B); the owner or operator of the subject printing line shall perform all tests and submit to the Administrator the results of all tests and calculations necessary to demonstrate that the subject printing line will be in compliance with paragraph (h)(5)(ii)(B) on and after April 1, 1991, or on and after the initial start-up date.

(*2*) On and after April 1, 1991, or on and after the initial start-up date, the owner or operator of a printing line subject to the limitations of paragraph (h)(5)(ii) and complying by means of paragraph (h)(5)(ii)(B) shall collect and record the following information each day for each printing line and maintain the information at the facility for a period of three years:

(*i*) The VOM content of the fountain solution used each day on each printing line.

(*ii*) A log of operating time for the control device and the associated printing line.

(*iii*) A maintenance log for the control device detailing all routine and non-routine maintenance performed including dates and duration of any outages.

(3) On and after April 1, 1991, the owner or operator of a subject printing line shall notify the Administrator in the following instances:

(*i*) Any record showing violation of paragraph (h)(5)(ii)(B) shall be reported by sending a copy of such record to the Administrator within 30 days following the occurrence of the violation.

(*ii*) At least 30 calendar days before changing the method of compliance with paragraph (h)(5)(ii) from paragraph (h)(5)(ii)(B) to (h)(5)(ii)(A), the owner or operator shall comply with all requirements of paragraph (h)(5)(iii)(B)(*1*). Upon changing the method of compliance with paragraph (h)(5)(ii) from paragraph (h)(5)(ii)(B) to (h)(5)(ii)(A), the owner or operator shall comply with all requirements of paragraph (h)(5)(iii)(B).

(iv) *Compliance schedule.* Every owner or operator of a heatset-web-offset lithographic printing line shall comply with the applicable requirements of paragraphs (h)(5) (ii) and (iii) in accordance with the applicable compliance schedule specified in paragraph (h)(5)(iv) (A), (B) or (C) and (D) below.

(A) No owner or operator of a heatset-web-offset lithographic printing line which is exempt from the limitations of paragraph (h)(5)(ii) because of the criteria in paragraph (h)(5)(i) shall operate said printing line on or after April 1, 1991, unless the owner or operator has complied with, and continues to comply with, paragraph (h)(5)(iii)(A).

(B) No owner or operator of a heatset-web-offset lithographic printing line complying by means of paragraph (h)(5)(ii)(A) shall operate said printing line on or after April 1, 1991, unless the owner or operator has complied with, and continues to comply with, paragraph (h)(5)(iii)(B).

(C) No owner or operator of a heatset-web-offset lithographic printing line complying by means of paragraph (h)(5)(ii)(B) shall operate said printing line on or after April 1, 1991, unless the owner or operator has complied with, and continues to comply with, paragraph (h)(5)(iii)(C).

(D) No owner or operator of a heatset-web-offset lithographic printing line which is subject to the requirements of section 215.408 of 35 Ill. Adm. Code 215, as a result of the applicability criteria contained therein, shall operate the printing line on or after the date of promulgation unless it complies with the requirements in paragraph (h)(5)(ii). No owner or operator of a heatset-web-offset printing line which:

(*1*) Is *not* subject to the requirements of section 215.408 as a result of the applicability criteria contained therein, and

(*2*) Is subject to paragraph (h)(5)(ii), shall operate the printing line on or after April 1, 1991, unless it complies with the requirements in paragraph (h)(5)(ii).

(i) *Leaks from synthetic organic chemical and polymer manufacturing equipment*—(1) *Inspection Program for Leaks.* The owner or operator of a synthetic organic chemical or polymer manufacturing plant subject to paragraph (i) and subpart Q (sections 215.430, 215.431, 215.433, 215.434, 215.435, and 215.437) of Ill. Adm. Code 215 shall, for the purposes of detecting leaks, conduct a component inspection program using the test methods specified in Method 21, 40 CFR part 60, appendix A (1986), consistent with the following provisions:

(i) Test annually those components operated near extreme temperature or pressure such that they would be unsafe to routinely monitor and those components which would require the elevation of monitoring personnel higher than two meters above permanent worker access structures or surfaces.

(ii) Test quarterly all other pressure relief valves in gas service, pumps in light liquid service, valves in light liquid service and in gas service, and compressors.

(iii) If less than or equal to 2 percent of the valves in light liquid service and in gas service tested pursuant to paragraph (i)(1)(ii) are found not to leak for five consecutive quarters, no leak tests shall be required for three consecutive quarters. Thereafter, leak tests shall resume for the next quarter. If that test shows less than or equal to 2 percent of the valves in light liquid service and in gas service are leaking, then no tests are required for the next three quarters. If more than 2 percent are leaking, then tests are required for the next five quarters.

(iv) Observe visually all pump seals weekly.

(v) Test immediately any pump seal from which liquids are observed dripping.

(vi) Test any relief valve within 24 hours after it has vented to the atmosphere.

(vii) Routine instrument monitoring of valves which are not externally regulated, flanges, and equipment in heavy liquid service, is not required. However, any valve which is not externally regulated, flange or piece of equipment in heavy liquid service that is found to be leaking on the basis of sight, smell or sound shall be repaired as soon as practicable but no later than 30 days after the leak is found.

(viii) Test immediately after repair any component that was found leaking.

(ix) Within one hour of its detection, a weatherproof, readily visible tag, in bright colors such as red or yellow, bearing an identification number and the date on which the leak was detected must be affixed on the leaking component and remain in place until the leaking component is repaired.

(x) The following components are exempt from the monitoring requirements in paragraph (i)(1):

(A) Any component that is in vacuum service, and

(B) Any pressure relief valve that is connected to an operating flare header or vapor recovery device.

(2) *Alternative Program for Leaks.* The Agency shall approve an alternative program of monitoring, recordkeeping, or reporting to that prescribed in paragraph (i) and subpart Q (sections 215.430, 215.431, 215.433, 215.434, 215.435, and 215.437) of Ill. Adm. Code 215, upon a demonstration by the owner or operator of such plant that the alternative program will provide plant personnel and Agency personnel with an equivalent ability to identify and repair leaking components. Any alternative program can only be allowed if approved by the Administrator as a SIP or FIP revision.

(j) *Petroleum refining and related industries: asphalt materials.*—(1) *Monitoring program for leaks.*

(i) The owner or operator of a petroleum refinery subject to subpart R (section 215.445) of Ill. Adm. Code 215 shall, for the purpose of detecting leaks, conduct a component monitoring program consistent with the following provisions:

(A) Test once between March 1 and June 1 of each year, by methods referenced in paragraph (a)(4)(vii), all pump seals, pipeline valves in liquid service and process drains.

(B) Test once each quarter of each calendar year, by methods referenced in paragraph (a)(4)(vii), all pressure relief valves in gaseous service, pipeline valves in gaseous service and compressor seals.

(C) Inaccessible valves may be tested once each calendar year instead of once each quarter of each calendar year.

(D) Observe visually all pump seals weekly.

(E) Test immediately any pump seal from which liquids are observed dripping.

(F) Test any relief valve within 24 hours after it has vented to the atmosphere, and

(G) Test immediately after repair any component that was found leaking.

(ii) Storage tank valves and pressure relief devices connected to an operating flare header or vapor recovery device are exempt from the monitoring requirements in paragraph (j)(1)(i).

(iii) The Agency may require more frequent monitoring than would otherwise be required by paragraph (j)(1)(i) for components which are demonstrated to have a history of leaking.

(2) *Alternative Program for Leaks.* The Agency may approve an alternative program of monitoring, recordkeeping or reporting to that prescribed in paragraph (j)(1) and subpart R (sections 215.446, 215.448, and 215.449) of Ill. Adm. Code 215, upon a demonstration by the owner or operator of a petroleum refinery that the alternative program will provide refinery and Agency personnel with an equivalent ability to identify and repair leaking components. Any alternative program can only be allowed if approved by the Administrator as a SIP or FIP revision.

(3) *Compliance schedule for leaks.* The owner or operator of a petroleum refinery shall adhere to the increments of progress contained in the following schedule:

(i) Submit to the Agency a monitoring program consistent with subpart R (section 215.446) of Ill. Adm. Code 215 prior to June 1, 1990.

(ii) Submit to the Agency the first monitoring report pursuant to Subpart R (Section 215.449) of Ill. Adm. Code 215 prior to July 1, 1990.

(k) [reserved]

(l) *Pharmaceutical manufacturing*—(1) *Applicability.* (i) The rules of paragraph (1), except for paragraphs (1)(4) through (1)(6), apply to all emission sources of VOM, including but not limited to reactors, distillation units, dryers, storage tanks for VOL, equipment for the transfer of VOL, filters, crystallizers, washers, laboratory hoods, coating operations, mixing operations and centrifuges used in manufacturing, including packaging, or pharmaceuticals, and emitting more than 6.8 kg/day (15 lbs/day) and more than 2,268 kg/year (2.5 tons/year) of VOM. If an emission source emits less than 2,268 kg/year (2.5 tons/year), the rules of these paragraphs still apply to the source if emissions from the emission source exceed 45.4 kg/day (100 lbs/day).

(ii) Notwithstanding paragraph (l)(1)(i), fluid-bed driers, tunnel dryers and Accelacotas located in Libertyville Township, Lake County, Illinois shall be exempt from the rules of paragraph (l), except for paragraphs (1)(4) through (1)(6), if emissions of VOM not vented to air pollution control equipment do not exceed the following levels: for each fluid bed dryer: 4,535 kg/year (5.0 tons/year); for each tunnel dryer: 4,535 kg/year (5.0 tons/year); and for each Accelacota: 6,803 kg/year (7.5 tons/year).

(iii) Paragraphs (1)(4) through (1)(6) apply to a plant having one or more emission sources that:

(A) Are used to manufacture pharmaceuticals, and

(B) Emit more than 6.8 kg/day (15 lbs/day) of VOM and more than 2,268 kg/year (2.5 tons/year) of VOM, or, if less than 2,268 kg/year (2.5 tons/year), these paragraphs still apply if emissions from one or more sources exceed 45.4 kg/day (100 lbs/day).

(iv) No person shall violate any condition in a permit when the condition results in exclusion of an emission source from paragraph (1).

(v) Any pharmaceutical manufacturing source that becomes subject to the provisions of paragraph (1) at any time shall remain subject to the provisions of paragraph (1) at all times.

(2) *Control of reactors, distillation units, crystallizers, centrifuges and vacuum dryers.* (i) The owner or operator shall equip all reactors, distillation units, crystallizers, centrifuges and vacuum dryers that are used to manufacture pharmaceuticals with surface condensers or other equivalent air pollution control equipment.

(A) If a surface condenser is used, it shall be operated such that the condenser outlet gas temperature does not exceed:

(*1*) 248.2 K (−13 °F) when condensing VOM of vapor pressure greater than 40.0 kPa (5.8 psi) at 294.3 K (70 °F), or

(*2*) 258.2 K (5 °F) when condensing VOM of vapor pressure greater than 20.0 kPa (2.9 psi) at 294.3 K (70 °F), or

(*3*) 273.2 K (32 °F) when condensing VOM of vapor pressure greater than 10.0 kPa (1.5 psi) at 294.3 K (70 °F), or

(*4*) 283.2 K (50 °F) when condensing VOM of vapor pressure greater than 7.0 kPa (1.0 psi) at 294.3 K (70 °F), or

(*5*) 298.2 K (77 °F) when condensing VOM of vapor pressure greater than 3.45 kPa (0.5 psi) at 294.3 K (70 °F).

(B) If air pollution control equipment other than a surface condenser is used, such equipment shall provide a reduction in the overall emissions of VOM of 90 percent or more.

(ii) The owner or operator shall enclose all centrifuges used to manufacture pharmaceuticals and that have an exposed VOL surface, where the VOM in the VOL has a vapor pressure of 3.45 kPa (0.5 psi) or more at 294.3 K (70 °F).

(3) *Control of air dryers, production equipment exhaust systems and filters.* (i) The owner or operator of an air dryer or production equipment exhaust system used to manufacture pharmaceuticals shall control the emissions of VOM from such emission sources by air pollution control equipment which reduces by 90 percent or more the VOM that would otherwise be emitted into the atmosphere.

(ii) The owner or operator shall enclose all rotary vacuum filters and other filters used to manufacture pharmaceuticals and that have an exposed VOL surface, where the VOM in the VOL has a vapor pressure of 3.45 kPa (0.5 psi) or more at 294 K (70 °F).

(iii) Emissions subject to paragraphs (l)(3) (i) and (ii) shall be controlled at all times.

(4) Material storage and transfer. (i) The owner or operator of a pharmaceutical manufacturing plant shall:

(A) Provide a vapor balance system that is at least 90 percent effective in reducing VOM emissions from truck or railcar deliveries to storage tanks with capacities equal to or greater than 7.57 m^3 (2,000 gal) that store VOL with vapor pressures greater than 28.0 kPa (4.1 psi) at 294.3 K (70 °F), and

(B) Install pressure/vacuum conservation vents set at 0.2 kPa (0.03 psi) on all storage tanks that store VOL with vapor pressures greater than 10 kPa (1.5 psi) at 294.3 K (70 °F).

(ii) The Agency shall approve alternative control devices to those required in paragraph (1)(4)(i) upon a demonstration by the owner or operator that the alternative control device will provide equivalent or greater emission reductions on a daily basis. Any alternative control device can only be allowed if approved by the Administrator as a SIP or FIP revision.

(iii) Control devices used to comply with paragraph (1)(4) (i) or (ii) must be operated at all times.

(5) *In-process tanks.* The owner or operator shall install covers on all in-process tanks used to manufacture pharmaceuticals and containing a VOL at any time. These covers must remain closed, except when production, sampling, maintenance or inspection procedures require operator access.

(6) *Leaks.* The owner or operator of a pharmaceutical manufacturing plant shall repair any component from which a leak of VOL can be observed. The repair shall be completed as soon as practicable but no later than 15 days after the leak is found. If the leaking component cannot be repaired until the process unit is shut down, the leaking

component must then be repaired before the unit is restarted.

(7) *Other emission sources.* The owner or operator of a washer, laboratory hood, capsule coating operation, mixing operation or any other process emission source not subject to paragraphs (1)(2) through (1)(6), and used to manufacture pharmaceuticals shall control the emissions of VOM from such emission sources by:

(i) Air pollution control equipment which reduces by 81 percent or more the VOM that would otherwise be emitted to the atmosphere, or

(ii) A surface condenser which captures all the VOM which would otherwise be emitted to the atmosphere and which meets the requirements of paragraph (1)(2)(i).

(iii) Emissions subject to paragraph (1)(7) shall be controlled at all times.

(8) *Testing.* (i) Upon request by the Agency, the owner or operator of any VOM emission source subject to paragraph (1) or exempt from paragraph (1) by virtue of the provisions of paragraph (l)(1) shall, at his own expense, demonstrate compliance to the Agency by the methods or procedures listed in paragraph (1)(8)(iii) below.

(ii) A person planning to conduct a VOM emissions test to demonstrate compliance with paragraph (1) shall notify the Agency of that intent not less than 30 calendar days before the planned initiation of the test.

(iii) Test procedures to determine operation and maintenance compliance with paragraph (1) are 40 CFR 60, Appendix A, Method 25, 25A, or 25B.

(9) *Monitoring and recordkeeping for air pollution control equipment.* (i) Monitoring. (A) At a minimum, continuous monitors for the following parameters shall be installed on air pollution control equipment subject to paragraph (1):

(*1*) Destruction device combustion temperature.

(*2*) Temperature rise across a catalytic afterburner bed.

(*3*) Breakthrough of VOM on a carbon adsorption unit.

(*4*) Outlet temperature of a refrigerated condenser.

(B) Each monitor shall be equipped with a recording device.

(C) Each monitor shall be calibrated quarterly.

(D) Each monitor shall operate at all times while the associated control equipment is operating.

(ii) *Recordkeeping.* (A) The owner or operator of a pharmaceutical manufacturing facility shall maintain the following records:

(*1*) Parameters listed in paragraph (1)(9)(i)(A) shall be recorded on an hourly basis.

(*2*) For sources subject to paragraph (1)(2), the vapor pressure of VOM being controlled shall be recorded on a daily basis.

(*3*) For sources subject to paragraph (1)(5), a record shall be kept of the days and times on which covers are opened, the duration of opening, and the reason for opening.

(*4*) For each leak subject to paragraph (1)(6), records shall be made of the date and time the leak is detected, the name of the leaking equipment, the date and time the leak is repaired, and the action taken to repair the leak.

(B) Records required under paragraph (1)(9)(ii)(A) shall be maintained by the owner or operator for a minimum of two years after the date on which they are made.

(C) Copies of the records shall be made available to the Agency upon verbal or written request.

(m) [Reserved]

(n) [Reserved]

(o) [Reserved]

(p) [Reserved]

(q) *Gasoline distribution*—(1) *Bulk gasoline plants.* (i) Subject to paragraph (q)(1)(v), no person may cause or allow the transfer of gasoline from a delivery vessel into a stationary storage tank located at a bulk gasoline plant unless:

(A) The delivery vessel and the stationary storage tank are each equipped with a vapor collection system that meets the requirements of paragraph (q)(1)(iv)(D),

(B) Each vapor collection system is operating,

(C) The delivery vessel displays the appropriate sticker pursuant to the requirements of sections 215.584 (b) or (d) of 35 Ill. Adm. Code 215,

(D) The pressure relief valve(s) on the stationary storage tank and the delivery vessel are set to release at no less than 0.7 psi or the highest pressure allowed by state or local fire codes or the guidelines of the National Fire Prevention Association, and

(E) The stationary storage tank is equipped with a submerged loading pipe.

(ii) Subject to paragraph (q)(1)(vi), no person may cause or allow the transfer of gasoline from a stationary storage tank located at a bulk gasoline plant into a delivery vessel unless:

(A) The requirements set forth in paragraphs (q)(1)(i)(A) through (1)(i)(D) are met, and

(B) Equipment is available at the bulk gasoline plant to provide for the submerged filling of the delivery vessel or the delivery vessel is equipped for bottom loading.

(iii) Subject to paragraph (q)(1)(v), each owner of a stationary storage tank located at a bulk gasoline plant shall:

(A) Equip each stationary storage tank with a vapor control system that meets the requirements of paragraph (q)(1)(i) or (1)(ii), whichever is applicable,

(B) Provide instructions to the operator of the bulk gasoline plant describing necessary maintenance operations and procedures for prompt notification of the owner in case of any malfunction of a vapor control system, and

(C) Repair, replace or modify any worn out or malfunctioning component or element of design.

(iv) Subject to paragraph (q)(1)(v), each operator of a bulk gasoline plant shall:

(A) Maintain and operate each vapor control system in accordance with the owner's instructions,

(B) Promptly notify the owner of any scheduled maintenance or malfunction requiring replacement or repair of a major component of a vapor control system, and

(C) Maintain gauges, meters or other specified testing devices in proper working order,

(D) Operate the bulk plant vapor collection system and gasoline loading equipment in a manner that prevents:

(*1*) Gauge pressure from exceeding 45.7 cm (18 in.) of water and vacuum from exceeding 15.2 cm (6 in.) of water, as measured as close as possible to the vapor hose connection, and

(*2*) A reading equal to or greater than 100 percent of the lower explosive limit (LEL measured as propane) when tested in accordance with the procedure described in EPA 450/2–78–051, Appendix B, and

(*3*) Avoidable leaks of liquid during loading or unloading operations.

(E) Provides a pressure tap or equivalent on the bulk plant vapor collection system in order to allow the determination of compliance with paragraph (q)(1)(iv)(D)(*1*), and

(F) Within 15 business days after discovery of the leak by the owner, operator, or the Agency, repair and retest a vapor collection system which exceeds the limits of paragraph (q)(1)(iv)(D) (*1*) or (*2*).

(v) The requirements of paragraphs (q)(1)(i), (1)(iii) and (1)(iv) shall not apply to:

(A) Any stationary storage tank with a capacity of less than 2,177 1 (575 gal), or

(B) Any bulk gasoline plant whose daily throughput is less than 15,140 1

(4,000 gal/day) on a thirty-day rolling average.

(vi) The requirements of paragraph (q)(1)(ii) shall only apply to bulk gasoline plants:

(A) Whose daily throughput is greater than or equal to 15,140 l (4,000 gal/day) on a thirty-day rolling average, and

(B) That either distribute gasoline to gasoline dispensing facilities subject to the requirements of section 215.583(a)(2) of 35 Ill. Adm. Code 215 or that are located in Cook, DuPage, Kane, Lake, McHenry or Will County.

(vii) Any bulk gasoline plant which is ever subject to paragraphs (q)(1) (i), (ii), (iii) or (iv) shall always be subject to these paragraphs.

(r) [Reserved]

(s) *Paint and Ink Manufacturing—Applicability.* (i) Paragraph (s) shall apply to all paint and ink manufacturing plants which:

(A) Include process emission sources not subject to paragraph (d), (e) (excluding paragraph (e)(1)(i)(L)), (h) (excluding paragraph (h)(5)), or (q)(1), or Subpart (B), (Q), (R), (S), (V), (X), (Y) (Sections 215.582, 215.583, and 215.584), or (Z) of 35 Ill. Adm., Code 215; and which as a group both:

(*1*) Have the potential to emit 91 Mg (100 tons) or more per calendar year VOM if no air pollution control equipment were used, and

(*2*) Are not limited to less than 91 Mg (100 tons) of VOM emissions per calendar year in the absence of air pollution control equipment, through production or capacity limitations contained in a federally enforceable construction permit or a SIP or FIP revision, or

(B) Produce more than 7,570,820 l (2,000,000 gal) per calendar year of paint or ink formulations, which contain less than 10 percent (by weight) water, and ink formulations not containing as the primary solvents water, Magie oil or glycol.

(ii) For the purposes of paragraph (s), uncontrolled VOM emissions are the emissions of VOM which would result if no air pollution control equipment were used.

(2) *Exemption for waterbase material and heatset-offset ink.* The requirements of paragraphs (s)(4) and (s)(5) and paragraph (s)(7)(i) shall not apply to equipment while it is being used to produce either:

(i) Paint or ink formulations which contain 10 percent or more (by weight) water, or

(ii) Inks containing Magie oil and glycol as the primary solvent.

(3) *Permit conditions.* No person shall violate any condition in a federally enforceable permit when the condition results in exclusion of the plant or an emission source from paragraph (s).

(4) *Open-top mills, tanks, vats or vessels.* No person shall operate an open-top mill, tank, vat or vessel with a volume of more than 45 l (12 gal) for the production of paint for ink unless:

(i) The mill, tank, vat or vessel is equipped with a cover which completely covers the mill, tank, vat or vessel opening except for an opening no larger than necessary to allow for safe clearance for a mixer shaft. Such cover shall extend at least 1.27 cm (0.5 in.) beyond the outer rim of the opening or be attached to the rim.

(ii) The cover remains closed except when production, sampling, maintenance or inspection procedures require access.

(iii) The cover is maintained in good condition such that, when in place, it maintains contact with the rim of the opening for at least 90 percent of the circumference of the rim.

(5) *Grinding mills.*

(i) No person shall operate a grinding mill for the production of paint or ink which is not maintained in accordance with the manufacturer's specifications.

(ii) No person shall operate a grinding mill fabricated or modified after the effective date of paragraph (s) which is not equipped with fully enclosed screens.

(iii) The manufacturer's specifications shall be kept on file at the plant by the owner or operator of the grinding mill and be made available to any person upon verbal or written request during business hours.

(6) *Storage tanks.*

(i) The owner or operator shall equip tanks storing VOL with a vapor pressure greater than 10 kPa (1.5 psi) at 20 °C (68 °F) with pressure/vacuum conservation vents set as a minimum at +/−0.2 kPa (0.029 psi). These controls shall be operated at all times. An alternative air pollution control system may be used if it results in a greater emission reduction than these controls. Any alternative control system can only be allowed if approved by the Administrator as a SIP or FIP revision.

(ii) Stationary VOL storage containers with a capacity greater than 946 l (250 gal) shall be equipped with a submerged-fill pipe or bottom-fill. These controls shall be operated at all times. An alternative control system can only be allowed if approved by the Administrator as a SIP or FIP revision.

(7) *Leaks.* The owner or operator of a paint or ink manufacturing plant shall, for the purpose of detecting leaks, conduct an equipment monitoring program as set forth below:

(i) Each pump shall be checked by visual inspection each calendar week for indications of leaks, that is, liquids dripping from the pump seal. If there are indications of liquids dripping from the pump seal, the pump shall be repaired as soon as practicable, but no later than 15 calendar days after the leak is detected.

(ii) Any pump, valve, pressure relief valve, sampling connection, open-ended valve and flange or connector containing a fluid which is at least 10 percent VOM by weight which appears to be leaking on the basis of sight, smell or sound shall be repaired as soon as practicable, but no later than 15 calendar days after the leak is detected.

(iii) A weather proof, readily visible tag, in bright colors such as red or yellow, bearing an identification number and the date on which the leak was detected shall be attached to leaking equipment. The tag may be removed upon repair, that is, when the equipment is adjusted or otherwise altered to allow operation without leaking.

(iv) When a leak is detected, the owner or operator shall record the date of detection and repair and the record shall be retained at the plant for at least two years from the date of each detection or each repair attempt. The record shall be made available to any person upon verbal or written request during business hours.

(8) *Clean Up.* (i) No person shall clean paint or ink manufacturing equipment with organic solvent unless the equipment being cleaned is completely covered or enclosed except for an opening no larger than necessary to allow safe clearance for proper operation of the cleaning equipment, considering the method and materials being used.

(ii) No person shall store organic wash solvent in other than closed containers, unless closed containers are demonstrated to be a safety hazard, or dispose of organic wash solvent in a manner such that more than 20 percent by weight is allowed to evaporate into the atmosphere.

(9) *Compliance schedule.* Every owner or operator of an emission source subject to the control requirements of paragraph (s) which is not subject to the requirements of Subpart AA, of 35 Ill. Adm. Code 215 because of the provisions specified in subpart AA (section 215.620) of 35 Ill. Adm. Code 215, shall comply with the requirements of paragraph (s) on and after April 1, 1991.

(10) *Recording keeping and reporting.* (i) Upon request by the administrator, the owner or operator of an emission

sourch which claims to be exempt from the requirements of paragraph (s) shall submit records to the Administrator within 30 calendar days from the date of the request which document that the emission source is in fact exempt from paragraph (s). These records shall include (but is not limited to) the percent water (by weight) in the paint or ink being produced and the quantity of Magie oil, glycol and other solvents in the ink being produced.

(ii) Every owner or operator of an emission source which is subject to the requirements of paragraph (s) shall maintain all records necessary to demonstrate compliance with those requirements at the facility for three years.

(t) [Reserved]

(u) *Miscellaneous fabricated product manufacturing processes.* (1) *Applicability.* (i) The requirements of paragraph (u) shall apply to a plant's miscellaneous fabricated product manufacturing process emission sources which are not regulated by paragraph (d), (e), (h), or (q)(1), or Subpart (B), (Q), (R), (S), (U), (V), (X), (Y) (Sections 215.582, 215.583, and 215.584), or (Z) of 35 Ill. Adm. Code 215; if the plant is subject to paragraph (u). A plant is subject to paragraph (u) if it contains process emission sources, not regulated by paragraph (d), (e) (excluding paragraph (e)(1)(i)(L), (h) (excluding paragraph (h)(5)), (q)(1), or Subpart (B), (Q), (R), (S), (V), (X), (Y) (sections 215.582, 215.583, 215.584), or (Z) of 35 Ill. Adm. Code 215; which as a group both:

(A) Have the potential to emit 91 Mg (100 tons) or more per calendar year of VOM if no air pollution control equipment were used, and

(B) Are not limited to less than 91 Mg (100 tons) of VOM emissions per calendar year in the absence of air pollution control equipment, through production or capacity limitations contained in a federally enforceable construction permit or a SIP or FIP revision.

(ii) If a plant ceases to fulfill the criteria of paragraph (u)(1)(i), the requirements of paragraph (u) shall continue to apply to a miscellaneous fabricated products manufacturing process emission source which was ever subject to the conrol requirements of paragraph (u)(3).

(iii) No limits under paragraph (u) shall apply to emission sources with emissions of VOM to the atmosphere less than or equal to 0.91 Mg (1.0 ton) per calendar year if the total emissions from such sources not complying with paragraph (u)(3) does not exceed 4.5 Mg (5.0 tons) per calendar year.

(iv) For the purposes of paragraph (u), an emission source shall be considered regulated by a subpart or paragraph if it is subject to the limits of that Subpart or paragraph. An emission source is not considered regulated by a Subpart or paragraph if its emissions are below the applicability cutoff level or if the source is covered by an exemption.

(v) For the purposes of paragraph (u), uncontrolled VOM emissions are the emissions of VOM which would result if no air pollution control equipment were used.

(2) *Permit conditions.* No person shall violate any condition in a permit when the condition results in exclusion of the plant or an emission source from paragraph (u).

(3) *Control requirements.* Every owner or operator of an emission source subject to paragraph (u) shall comply with the requirements of paragraph (u)(3) (i), (ii) or (iii) below:

(i) Emission capture and control techniques which achieve an overall reduction in uncontrolled VOM emissions of at least 81 percent, or

(ii) For coating lines, the daily-weighted average VOM content shall not exceed 0.42 kg VOM/1 (3.5 lbs VOM/gal) of coating as applied (minus water and any compounds which are specifically exempted from the definition of VOM) during any day. Owners and operators complying with this paragraph are not required to comply with section 215.301 of 35 Ill. Adm. Code 215, or

(iii) An alternative control plan which has been approved by the USEPA as a SIP or FIP revision.

(4) *Compliance schedule.* Every owner or operator of an emission source subject to the control requirements of paragraph (u) which is not subject to the requirements of subpart PP of 35 Ill. Adm. Code 215 because of the provisions specified in Subpart PP (section 215.920) of 35 Ill. Adm. Code 215, shall comply with the requirements of paragraph (u) on and after April 1, 1991.

(5) *Testing.* Any owner or operator of a VOM emission source which is subject to paragraph (u) shall demonstrate compliance with paragraph (u)(3) by using the applicable test methods and procedures specified in paragraph (a)(4).

(v) *Miscellaneous formulation manufacturing processes*—(1) *Applicability.* (i) The requirements of paragraph (v) shall apply to a plant's miscellaneous formulation manufacturing process emission sources, which are not regulated by paragraph (d), (e), (h), or (g)(1), or subpart (B), (Q), (R), (S), (U), (V), (X), (Y) (sections 215.582, 215.583, and 215.584), or (Z) of 35 Ill. Adm. Code 215; if the plant is subject to paragraph (v). A plant is subject to paragraph (v) if it contains process emission sources, not regulated by paragraph (d), (e) (excluding paragraph (e)(1)(i)(L), (h) (excluding paragraph (h)(5)), or (q)(1), or subpart (B), (Q), (R), (S), (V), (X), (Y) (sections 215.582, 215.583, and 215.584), or (Z) of 35 Ill. Adm. Code 215; which as a group both:

(A) Have the potential to emit 91 Mg (100 tons) or more per calendar year of VOM if no air pollution control equipment were used, and

(B) Are not limited to less than 91 Mg (100 tons) of VOM emissions per calendar year in the absence of air pollution control equipment, through production or capacity limitations contained in a federally enforceable construction permit or a SIP or FIP revision.

(ii) If a plant ceases to fulfill the criteria of paragraph (v)(1)(i), the requirements of paragraph (v) shall continue to apply to a miscellaneous formulation manufacturing process emission source which was ever subject to the control requirements of paragraph (v)(3).

(iii) No limits under paragraph (v) shall apply to emission sources with emissions of VOM to the atmosphere less than or equal to 2.3 Mg (2.5 tons) per calendar year if the total emissions from such sources not complying with paragraph (v)(3) does not exceed 4.5 Mg (5.0 tons) per calendar year.

(iv) For the purposes of paragraph (v), an emission source shall be considered regulated by a subpart or paragraph if it is subject to the limits of that subpart or paragraph. An emission source is not considered regulated by a subpart or paragraph if its emissions are below the applicability cutoff level or if the source is covered by an exemption.

(v) For the purposes of paragraph (v), uncontrolled VOM emissions are the emissions of VOM which would result if no air pollution control equipment were used.

(2) *Permit conditions.* No person shall violate any condition in a permit when the condition results in exclusion of the plant or an emissions source from paragraph (v).

(3) *Control requirements.* Every owner or operator of an emissions source subject to paragraph (v) shall comply with the requirements of paragraph (v)(3) (i) or (ii) below.

(i) Emission capture and control techniques which achieve an overall reduction in uncontrolled VOM emissions of at least 81 percent, or

(ii) An alternative control plan which has been approved by the USEPA as a SIP or FIP revision.

(4) *Compliance schedule.* Every owner or operator of an emission source subject to the control requirements of paragraph (v) which is not subject to the requirements of subpart QQ of 35 Ill. Adm. Code 215 because of the provisions specified in subpart QQ (section 215.940) of 35 Ill. Adm. Code 215, shall comply with the requirements of paragraph (v) on and after April 1, 1991.

(5) *Testing.* Any owner or operator of a VOM emission source which is subject to paragraph (v) shall demonstrate compliance with paragraph (v)(3) by using the applicable test methods and procedures specified in paragraph (a)(4).

(w) *Miscellaneous organic chemical manufacturing processes*—(1) *Applicability.* (i) The requirements of paragraph (w) shall apply to a plant's miscellaneous organic chemical manufacturing process emission sources which are not regulated by paragraph (d), (e), (h), or (g)(1), or subpart (B), (Q), (R), (S), (U), (V), (X), (Y) (sections 215.582, 215.583, and 215.584), or (Z) of 35 Ill. Adm. Code 215; if the plant is subject to paragraph (w). A plant is subject to paragraph (w) if it contains process emisison sources, not regulated by paragraph (d), (e) (excluding paragraph (e)(1)(i)(L)), (h) (excluding paragraph (h)(5)), or (g)(1), or subpart (B), (Q), (R), (S), (V), (X), (Y) (sections 215.582, 215.583, and 215.584), or (Z) of 35 Ill. Adm. Code 215; which as a group both:

(A) Have the potential to emit 91 Mg (100 tons) or more per calendar year of VOM if no air pollution control equipment were used, and

(B) Are not limited to less than 91 Mg (100 tons) of VOM emissions per calendar year in the absence of air pollution control equipment, through production or capacity limitations contained in a federally enforceable construction permit or a SIP or FIP revision.

(ii) If a plant ceases to fulfill the criteria of paragraph (w)(1)(i), the requirements of paragraph (w) shall continue to apply to a miscellaneous organic chemical manufacturing process emission source which was ever subject to the control requirements of paragraph (w)(3).

(iii) No limits under paragraph (w) shall apply to emission sources with emissions of VOM to the atmosphere less than or equal to 0.91 Mg (1.0 ton) per calendar year is the total emissions from such sources not complying with paragraph (w)(3) does not exceed 4.5 Mg (5.0 tons) per calendar year.

(iv) For the purposes of paragraph (w), an emission source shall be considered regulated by a subpart or paragraph if it is subject to the limits of that Subpart or paragraph. An emission source is not considered regulated by a Subpart or paragraph if its emissions are below the applicability cutoff level or if the source is covered by an exemption.

(v) For the purposes of paragraph (w), uncontrolled VOM emissions are the emissions of VOM which would result if no air pollution control equipment were used.

(2) *Permit conditions.* No person shall violate any condition in a permit when the condition results in exclusion of the plant or an emission source from paragraph (w).

(3) *Control requirements.* Every owner or operator of an emission source subject to paragraph (w) shall comply with the requirements of paragraph (w)(3) (i) or (ii) below.

(i) Emission capture and control techniques which achieve an overall reduction in uncontrolled VOM emissions of at least 81 percent, or

(ii) An alternative control plan which has approved by the USEPA as a SIP or FIP revision.

(4) *Compliance schedule.* Every owner or operator of an emission source subject to the control requirements of paragraph (w) which is not subject to the requirements of subpart RR of 35 Ill. Adm. Code 215 because of the provisions specified in Subpart RR (section 215.960) of 35 Ill. Adm. Code 215, shall comply with the requirements of paragraph (w) on and after April 1, 1991.

(5) Testing. Any owner or operator of a VOM emission source which is subject to paragraph (w) shall demonstrate compliance with paragraph (w)(3) by using the applicable test methods and procedures specified in paragraph (a)(4).

(X) *Other emission sources*—(1) *Applicability.* (i) The requirements of paragraph (x) shall apply to a plant's VOM emission sources, which are not regulated by paragraph (d), (e), (h), (q)(1), (s), (u), (v), or (w), or subpart (B), (Q), (R), (S), (U), (V), (X), (Y) (sections 215.582, 215.583, and 215.584, or (Z) of 35 Ill. Adm. Code 215; if the plant is subject to paragraph (x). A plant is subject to paragraph (x) if it contains process emission sources, not regulated by paragraph (d), (e) (excluding paragraph (e)(1)(i)(L)), (h) (excluding paragraph (h)(5)), or (q)(1), or Subpart (B), (Q), (R), (S), (V), (X), (Y) (sections 215.582, 215.583, and 215.584), or (Z) or 35 Ill. Adm. 215; which as a group both:

(*1*) Have the potential to emit 91 Mg (100 tons) or more per calendar year of VOM if no air pollution control equipment were used and

(*2*) Are not limited to less than 91 Mg (100 tons) of VOM emissions per calendar year in the absence of air pollution control equipment, through production or capacity limitations contained in a federally enforceable construction permit or a SIP or EIP revision.

(ii) If a plant ceases to fulfill the criteria of paragraph (x)(1)(i), the requirements of paragraph (x) shall continue to apply to an emission source which was ever subject to the control requirements of paragraph (x)(3).

(iii) No limits under paragraph (x) shall apply to emission sources with emissions of VOM to the atmosphere less than or equal to 2.3 Mg (2.5 tons) per calendar year if the total emissions from such sources not complying with paragraph (x)(3) does not exceed 4.5 Mg (5.0 tons) per calendar year.

(iv) For the purposes of paragraph (x), an emission source shall be considered regulated by a subpart or paragraph if it is subject to the limits of that subpart or paragraph. An emission source is not considered regulated by a Subpart or paragraph of its emissions are below the applicability cutoff level or if the source is covered by an exemption.

(v) The control requirements in paragraph (x) shall not apply to coke ovens (including by-product recovery plants), fuel combustion sources, bakeries, barge loading facilities, jet engine test cells, non-synthetic pharmaceutical manufacturing, production of polystyrene foam insulation board (including storage and extrusion of scrap where blowing agent is added to the polystyrene resin at the plant), production of polystyrene foam packaging (*not* including storage and extrusion of scrap where blowing agent is added to the polystyrene resin at the plant), and iron and steel production.

(2) *Permit conditions.* No person shall violate any condition in a permit when the condition results in exclusion of the plant or an emission source from paragraph (x).

(3) *Control requirements.* Every owner or operator of an emission source subject to paragraph (x) shall comply with the requirements of paragraph (x)(3) (i), (ii) or (iii) below.

(i) Emission capture and control equipment which achieve an overall reduction in uncontrolled VOM emissions of at least 81 percent, or

(ii) For coating lines, the daily-weighted average VOM content shall not exceed 0.42 kg VOM/1 (3.5 lbs VOM/gal) of coating (minus water and any compounds which are specifically

exempted from the definition of VOM) as applied during any day. Owners and operators complying with this paragraph are not required to comply with section 215.301 of 35 Ill. Adm. Code 215, or

(iii) An alternative control plan which has been approved by the USEPA as a SIP or FIP revision.

(4) *Compliance schedule.* Every owner or operator of an emissions source which is subject to paragraph (x) shall comply with the requirements of paragraph (x) on and after April 1, 1991.

(5) *Testing.* Any owner or operator of a VOM emission source which is subject to paragraph (x) shall demonstrate compliance with paragraph (x)(3) by using the applicable test methods and procedures specified in paragraph (a)(4).

(y) *Recordkeeping and reporting for non-CTG sources*—(1) *Exempt emission sources.* Upon request by the Administrator, the owner or operator of an emission source which is exempt from the requirements of paragraphs (u), (v), (w), (x) or (e)(3)(ii) shall submit records to the Administrator within 30 calendar days from the date of the request that document that the emission source is exempt from those requirements.

(2) *Subject emission sources.* (i) Any owner or operator of a VOM emission source which is subject to the requirements of paragraph (u), (v), (w) or (x) and complying by the use of emission capture and control equipment shall comply with the following:

(A) By April 1, 1991, or upon start-up of a new emission source, the owner or operator of the subject VOM emission source shall perform all tests and submit to the Administrator the results of all tests and calculations necessary to demonstrate that the subject emission source will be in compliance on and after April 1, 1991, or on and after the initial start-up date.

(B) On and after April 1, 1991, or on and after the initial start-up date, the owner or operator of a subject VOM emission source shall collect and record all of the following information each day and maintain the information at the facility for a period of three years:

(*1*) Control device monitoring data.

(*2*) A log of operating time for the capture system, control device, monitoring equipment and the associated emission source.

(*3*) A maintenance log for the capture system, control device and monitoring equipment detailing all routine and non-routine maintenance performed including dates and duration of any outages.

(C) On and after April 1, 1991, the owner or operator of a subject VOM emission source shall notify the Administrator in the following instances:

(*1*) Any record showing a violation of the requirements of paragraphs (u), (v), (w), or (x) shall be reported by sending a copy of such record to the Administrator within 30 days following the occurrence of the violation.

(*2*) At least 30 calendar days before changing the method of compliance with paragraph (u) or (x) from the use of capture systems and control devices to the use of complying coatings, the owner or operator shall comply with all requirements of paragraph (y)(2)(i)(A). Upon changing the method of compliance with paragraph (u) or (x) from the use of capture systems and control devices to the use of complying coatings, the owner or operator shall comply with all requirements of paragraph (y)(2)(ii).

(ii) Any owner or operator of a coating line which is subject to the requirements of paragraphs (u) or (x) and complying by means of the daily-weighted average VOM content limitation shall comply with the following:

(A) By April 1, 1991, or upon start-up of a coating line subject to paragraphs (u) or (x); the owner of operator of the subject coating line shall certify to the Administrator that the coating line will be in compliance on and after April 1, 1991, or on and after the initial start-up date. Such certification shall include:

(*1*) The name and identification number of each coating line which will comply by means of the daily-weighted average VOM content limitation.

(*2*) The name and identification number of each coating as applied on each coating line.

(*3*) The weight of VOM per volume and the volume of each coating (minus water and any compounds which are specifically exempted from the definition of VOM) as applied each day on each coating line.

(*4*) The instrument or method by which the owner or operator will accurately measure or calculate the volume of each coating as applied each day on each coating line.

(*5*) The method by which the owner or operator will create and maintain records each day as required in paragraph (y)(2)(ii)(B).

(*6*) An examply of the format in which the records required in paragraph (y)(2)(ii)(B) will be kept.

(B) On and after April 1, 1991, or on and after the initial start-up date, the owner or operator of a subject coating line shall collect and record all of the following information each day for each coating line and maintain the information at the facility for a period of three years:

(*1*) The name and identification number of each coating as applied on each coating line.

(*2*) The weight of VOM per volume and the volume of each coating (minus water and any compounds which are specifically exempted from the definition of VOM) As applied each day on each coating line.

(*3*) The daily-weighted average VOM content of all coatings as applied on each coating line as defined in paragraph (a)(3).

(C) On and after April 1, 1991, the owner or operator of a subject coating line shall notify the Administrator in the following instances:

(1) Any record showing violation of the requirements of paragraph (u) or (x) shall be reported by sending a copy of such record to the Administrator within 30 days following the occurrence of the violation.

(2) At least 30 calendar days before changing the method of compliance with paragraphs (u) or (x) from the use of complying coatings to the use capture systems and control devices, the owner or operator shall comply with all requirements of paragraph (y)(2)(i)(A). Upon changing the method of compliance with paragraphs (u) or (x) from the use of complying coatings to the use capture systems and control devices, the owner or operator shall comply with all requirements of paragraph (y)(2)(i).

(iii) Any owner or operator of a VOM emission source which is subject to the requirements of paragraphs (u), (v), (w) or (x) and complying by means of an alternative control plan which has been approved by the USEPA as a SIP or FIP revision shall comply with the recordkeeping and reporting requirements specified in the alternative control plan.

(z) [Reserved]

(aa) List of chemicals defining synthetic organic chemical and polymer manufacturing.

OCPDB No.[1]	Chemical
20	Acetal
30	Acetaldehyde
40	Acetaldol
50	Acetamide
65	Acetanilide
70	Acetic Acid
80	Acetic anhydride
90	Acetone
100	Acetone cyanohydrin
110	Acetonitrile
120	Acetophenone
125	Acetyl chloride
130	Acetylene
140	Acrolein
150	Acrylamide
160	Acrylic acid & esters

OCPDB No.[1]	Chemical
170	Acrylonitrile
180	Adipic acid
185	Adiponitrile
190	Aklyl naphthalenes
200	Allyl alcohol
210	Allyl chloride
220	Aminobenzoic acid
230	Aminoethylethanolamine
235	p-aminophenol
240	Amyl acetates
250	Amyl alcohols
260	Amyl amine
270	Amyl chloride
280	Amyl mercaptans
290	Amyl phenol
300	Aniline
310	Anilins hydrochloride
320	Anisidine
330	Anisole
340	Anthranilic acid
350	Anthraquinone
360	Benzaldehyde
370	Benzamide
380	Benzene
390	Benzenedisulfonic acid
400	Benzene-sulfonic acid
410	Benzil
420	Benzilic acid
430	Benzoic acid
440	Benzoin
450	Benrzonitrile
460	Benzophenone
480	Benzotrichloride
490	Benzoyl chloride
500	Benzyl chalcohol
510	Benzyl amine
520	Benzyl benzoate
530	Benzyl chloride
540	Benzyl dichloride
550	Biphenyl
560	Bisphenol A
570	Bromobenzene
580	Bromonaphthalene
590	Butadiene
592	1-butene
600	n-butyl acetate
630	n-butyl acrylate
640	n-butyl alcohol
650	s-butyl alcohol
660	t-butyl alcohol
670	n-butylamine
680	s-butylamine
690	t-butylamine
700	p-pert-butyl benzoic acid
750	n-butyraldehyde
760	Butyric acid
770	Butyric anhydride
780	Butyronitrile
785	Caprolactam
790	Carbon disulfide
800	Carbon tetrabromide
810	Carbon tetrachloride
820	Cellulose acetate
840	Chloroacetic acid
850	m-chloroaniline
860	o-chloroaniline
870	p-chloroaniline
880	Chlorobenzaldehyde
890	Chlorobenzene
900	Chlorobenzoic acid
905	Chlorobenzotrichloride
910	Chlorobenzoyl chloride
920	Chlorodifluoroethane
921	Chlorodifluoromethane
930	Chloroform
940	Chloronaphthalene
950	o-chloronitrobenzene
951	p-chloronitrobenzene
960	Chlorophenols
964	Chloroprene
965	Chlorosulfonic acid
970	m-chlorotoluene
980	o-chlorotoluene
990	p-chlorotoluene
992	Chlorotrifluoromethane
1000	m-cresol
1010	o-cresol
1020	p-cresol
1021	Mixed cresols
1030	Cresylic acid
1040	Crontonaldehyde
1050	Crontonic acid
1060	Cumene
1070	Cumene hydroperoxide
1080	Cyanoacetic acid
1090	Cyanogen chloride
1100	Cyanuric acid
1110	Cyanuric chloride
1120	Cyclohexane
1130	Cyclohexanol
1140	Cyclohexanone
1150	Cyclohexene
1160	Cyclohexylamine
1170	Cyclooctadiene
1180	Decanol
1190	Diacetone alcohol
1200	Diaminobenzoic acid
1210	Dichloroaniline
1215	m-dichlorobenzene
1216	o-dichlorobenzene
1220	p-dichlorobenzene
1221	Dichlorodifluoromethane
1240	Dichloroethyl ether 1,2-dichloroethane
1250	Dichlorohydrin
1270	Dichloropropene
1280	Dicyclohexylamine
1290	Diethylamine
1300	Diethylene glycol
1304	Diethylene glycol diethyl ether
1305	Diethylene glycol dimethyl ether
1310	Diethylene glycolmonobutyl ether
1320	Diethylene glycolmonobutyl ether acetate
1330	Diethylene glycolmonoethyl ether
1340	Diethylene glycolmonoethyl ether acetate
1360	Diethylene glycolmonomethyl ether
1420	Diethyl sulfate
1430	Diflurorethane
1440	Diisobutylene
1442	Diisodecyl phthalate
1444	Diisooctyl phthalate
1450	Diketene
1460	Dimethyhlamine
1470	N,N-dimethylaniline
1480	N,N-dimethylether
1490	N,N-dimethylformamide
1495	Dimethylhydrazine
1500	Dimethyl sulfate
1510	Dimethyl sulfide
1520	Dimethylsulfoxide
1530	Dimethylterephthalate
1540	3,5-dinitrobenzoic acid
1545	Dinitrophenol
1560	Dioxane
1570	Dioxolane
1580	Diphenylamine
1590	Diphenyl oxide
1600	Diphenyl thiourea
1610	Dipropylene glycol
1620	Dodecene
1630	Dodecylaniline
1640	Dodecylphenol
1650	Epichlorohydrin
1660	Ethanol
1661	Ethanolamines
1670	Ethyl acetate
1680	Ethyl acetoacetate
1690	Ethyl acrylate
1700	Ethylamine
1710	Ethylbenzene
1720	Ethyl bromide
1730	Etyhlcellulose
1740	Ethyl chloride
1750	Ethyl chloroacetate
1760	Ethylcyanoacetate
1770	Ethylene
1780	Ethylene carbonate
1790	Ethylene chlorodhydrin
1800	Ethylendiamine
1810	Ethylene dibromide
1830	Ethylene glycol
1840	Ethylene glycol diacetate
1870	Ethylene glycol dimethyl ether
1890	Ethylene glycol monobutyl ether
1900	Ethylene glycol monobutyl ether acetate
1910	Ethylene glycol monoethyl ether
1920	Ethylene glycol monoethyl ether acetate
1930	Ethylene glycol monoethyl ether
1940	Ethylene glycol monomethyl ether acetate
1960	Ethylene glycol monophenyl ether
1970	Ethylene glycol monopropyl ether
1980	Ethylene oxide
1990	Ethyl ether
2000	2-ethylhexanol
2010	Ethyl orthoformate
2020	Ethyl oxalate
2030	Ethyl sodium oxalacetate
2040	Formaldehyde
2050	Formamide
2060	Formic acid
2070	Fumaric acid
2073	Furfural
2090	Glycerol (Synthetic)
2091	Glycerol dichlorohydrin
2100	Glycerol triether
2110	Glycine
2120	Glyoxal
2145	Hexachlorobenzene
2150	Hexachloroethane
2160	Hexadecyl alcohol
2165	Hexamethylenediamine
2170	Hexamethylene glycol
2180	Hexamethylentetramine
2190	Hydrogen cyanide
2200	Hydroquinone
2210	p-hydroxy-benzoic acid
2240	Isoamylene
2250	Isobutanol
2260	Isobutyl acetate
2261	Isobutylene
2270	Isobutyraldehyde
2280	Isobutyric acid
2300	Isodecanol
2320	Isooctyl alcohol
2321	Isopentane
2330	Isophorone
2340	Isophthalic acid
2350	Isoprene
2360	Isopropanol
2370	Isopropyl acetate
2380	Isopropylamine
2390	Isopropyl chloride
2400	Isopropylphenol
2410	Ketene
2414	Linear alkylsulfonate
2417	Linear alkylbenzene
2420	Maleic acid
2430	Maleic anhyride
2440	Malic acid
2450	Mesityl oxide
2455	Metanilic acid
2460	Methacrylic acid
2490	Methallyl chloride
2500	Methanol
2510	Methyl acetate
2520	Methyl acetoacetate
2530	Methylamine
2540	n-methylaniline
2545	Methyl bromide
2550	Methyl butynol
2560	Methyl chloride
2570	Methyl cyclohexane
2590	Methyl cyclohexanone

OCPDB No.[1]	Chemical
2620	Methylene chloride
2630	Methylene dianiline
2635	Methylene diphenyl diisocyanate
2640	Methyl ethyl ketone
2644	Methyl formate
2650	Methyl isobutyl carbinol
2660	Methyl isobutyl ketone
2665	Methyl methacrylate
2670	Methyl pentynol
2690	a-methyl styrene
2700	Morpholine
2710	a-napthalene sulfonic acid
2720	B-napthalene sulfonic acid
2730	a-naphthol
2740	B-naphthol
2750	Neopentanoic acid
2756	o-nitroaniline
2757	p-nitroaniline
2760	o-nitroanisole
2762	p-nitroanisole
2770	Nitrobenzene
2780	Nitrobenzoic acid (o, m & p)
2790	Nitroethane
2791	Nitromethane
2792	Nitrophenol
2795	Nitropropane
2800	Nitrotoluene
2810	Nonene
2820	Nonyl phenol
2830	Octyl phenol
2840	Paraldehyde
2850	Pentaerythritol
2851	n-pentane
2855	l-pentene
2860	Perchloroethylene
2882	Perchloromethylmercaptan
2890	o-phenetidine
2900	p-phenetidine
2910	Phenol
2920	Phenolsulfonic acids
2930	Phenyl anthranilic acid
2940	Phenylenediamine
2960	Phthalic anhydride
2970	Phthalimide
2973	b-picoline
2976	Piperazine
3000	Polybutenes
3010	Polyethylene glycol
3025	Polypropylene glycol
3063	Propionaldehyde
3066	Propionic acid
3070	n-propyl alcohol
3075	Propylamine
3080	Propyl chloride
3090	Propylene
3100	Propylene chlorohydrin
3110	Propylene dichloride
3111	Propylene glycol
3120	Propylene oxide
3130	Pyridine
3140	Quinone
3150	Resorcinol
3160	Resorcylic acid
3170	Salicylic acid
3180	Sodium acetate
3181	Sodium benzoate
3190	Sodium carboxymethicellulose
3191	Sodium chloroacetate
3200	Sodium formate
3210	Sodium phenate
3220	Sorbic acid
3230	Styrene
3240	Succinic acid
3250	Succinitrile
3251	Sulfanilic acid
3260	Sulfolane
3270	Tannic acid
3280	Terephthalic acid
3290 & 3291	Tetrachloroethanes
3300	Tetrachlorophthalic anhydride
3310	Tetraethyllead
3320	Tetrahydronaphthalene
3330	Tetrahydrophthalic anhydride
3335	Tetramethyllead
3340	Tetramethylenediamine
3341	Tetramethylethylenediamine
3349	Toluene
3350	Toluene-2,4-diamine
3354	Toluene-2,4-diisocyanate
3355	Toluene diisocyanates (mixture)
3360	Toluene sulfonamide
3370	Toluene sulfonic acids
3380	Toluene sulfonylchloride
3381	Toluidines
3393	Trichlorobenzenes
3395	1,1,1-trichloroethane
3400	1,2,2-trichloroethane
3410	Trichloroethylene
3411	Trichlorofluoromethane
3420	1,2,3-trichloropropane
3430	1,1,2-trichloro-1,2,2-trifluoroethane
3450	Triethylamine
3460	Triethylene glycol
3470	Triethylene glycoldimethyl ether
3480	Triisobutylene
3490	Trimethylamine
3510	Vinyl acetate
3520	Vinyl chloride
3530	Vinylidene chloride
3540	Vinyl toluene
3541	Xylene (mixed)
3560	o-xylene
3570	p-xylene
3580	Xylenol
3590	Xylidine
	1,3-butylene glycol
	Dinitrotoluene
	Methyltertbutyl ether
	Phosgene
	Polyethylene
	Polypropylene
	Polystyrene
	Urea

[1] The OCPDB Numbers are reference indices assigned to the various chemicals in the Organic Chemical Producers Data Base developed by the USEPA.

[FR Doc. 89-29743 Filed 12-26-89; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 180

[PP8F3640/P500; FRL-3684-2]

Pesticide Tolerances for 2-[1-(Ethoxyimino)Butyl]-5-[2-(Ethylthio)Propyl]-3-Hydroxy-2-Cyclohexene-1-One

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to establish tolerances for the combined residues of the herbicide 2-[1-(ethoxyimino)-butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one (sethoxydim) and its metabolites containing the 2-cyclohexene-1-one moiety, calculated as parent, in or on the raw agricultural commodities (RACs) dry beans at 20.0 parts per million (ppm), succulent beans at 5.0 ppm, bean forage at 10.0 ppm, bean hay at 50 ppm, dry peas at 40.0 ppm, succulent peas at 10.0 ppm, pea forage at 20.0 ppm, pea hay at 40.0 ppm, eggs at 2.0 ppm, and poultry meat byproducts at 2.0 ppm. These regulations were requested by BASF Wyandotte Corp, and propose to establish the maximum permissible level for residues of the herbicide in or on these RACs.

DATES: Comments, identified by the document control number, [PP8E3640/P500], must be received on or before January 26, 1990.

ADDRESS: By mail submit comments to: Public Information Branch, Field Operations Division (H-7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 246, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as 'Confidential Business Information' (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Robert J. Taylor, Product Manager (PM) 25,(H7505C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 245, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703-557-1800.

SUPPLEMENTARY INFORMATION: EPA issued notices, published in the Federal Register of July 20, 1988 (53 FR 27391), which announced that BASF Wyandotte, Corp., Chemical Division, 100 Cherry Hill Rd., Parsippany, NJ 07054, had submitted pesticide petition (PP) 8F3640 proposing to amend 40 CFR 180.412 by establishing a regulation to permit residues of the herbicide 2-[1-(ethoxyimino)butyl]-5-[2-(ethylthio)-propyl]-3-hydroxy-2-cyclohexene-1-one (sethoxydim) and its metabolites containing the 2-cyclohexene-1-one

moiety in or on peas (dry and succulent) at 40 ppm and beans (dry and succulent) at 15 ppm and a food additive petition (FAP) 8H5557 proposing that 21 CFR part 561 be amended by establishing a regulation to permit residues of the same herbicide and metabolites in or on peas (forage and hay) at 40 ppm and beans (forage and hay) at 40 ppm.

No comments were received in response to the notices of filing.

The Agency issued a recodification document, published in the **Federal Register** of June 29, 1988 (53 FR 24688), redesignating 21 CFR part 561 as 40 CFR part 186 and assigning this chemical as 40 CFR 186.2800. During the course of the review, the Agency determined that the commodities (pea forage and hay and bean forage and hay) filed udner FAP 8H5557 were RACs, rather than processed human foods or animal feeds, and should have been filed under PP 8F3640. The petitioner subsequently amended PP 8F3640 by submitting a revised Section F proposing the establishment of tolerances for residues of the herbicide 2-[1-(ethoxyimino)butyl-5-[2-(ethylthio)-propyl]-3-hydroxy-2-cyclohexene-1-one and its metabolites containing the 2-cyclohexene-1-one moiety in or on the following RACs: dry beans at 20.0 ppm, succulent beans at 5.0 ppm, bean forage at 10.0 ppm, bean hay at 50.0 ppm, dry peas at 40.0 ppm, succulent peas at 10.0 ppm, pea forage at 20.0 ppm, pea hay at 40.0 ppm, and proposing to increase the established tolerances for eggs from 0.5 to 2.0 ppm and poultry, meat byproducts from 0.2 to 2.0 ppm. Because there is a potential increase in risk to humans from these revisions, the tolerances of dry beans at 20.0 ppm, bean hay at 50.0 ppm, the increase in tolerance in eggs from 0.5 to 2.0 ppm, and the increased tolerances in poultry, meat byproducts from 0.2 to 2.0 ppm are being proposed for 30 days to allow for public comment.

The data submitted in the petition and other relevant material have been evaluated. The toxicology data listed below were considered in support of these tolerances.

1. Several acute toxicology studies placing technical-grade sethoxydim in Toxicity Category III.

2. A subchronic feeding study in dogs fed dosages of 0, 2, 20, and 200 milligrams per kilogram of body weight per day (mg/kg bwt/day) with a no-observed-effect level (NOEL) of 20 mg/kg/day based on liver effects and nonspecific anemia at 200 mg/kg/day.

3. A 1-year feeding study with dogs fed dosages (based on consumption) of 0, 8.86/9.41, 17.5/19.9, and 110/129 mg/kg/day (males/females) with a NOEL of 8.86/9.41 mg/kg/day (males/females) based on equivocal anemia in males at 17.5 mg/kg/day.

4. A 2-year chronic feeding/oncogenicity study with mice fed dosages of 0, 6, 18, 54, and 162 mg/kg/day with no oncogenic effects observed under the conditions of the study at dose levels up to and including 162 mg/kg/day (highest dose tested [HDT]) and a systemic NOEL of 18 mg/kg/day based on nonneoplastic liver lesions at 54 mg/kg/day.

5. A 2-year chronic feeding/oncogenicity study with rats fed dosages of 0, 2, 6, and 18 mg/kg/day (HDT) with no oncogenic effects observed under the conditions of the study at dose levels up to and including 18 mg/kg/day (HDT) and a systemic NOEL greater than or equal to 18 mg/kg/day.

6. A developmental toxicity study in rats fed dosages of 0, 40, 100, and 250 mg/kg/day with no teratologic effects occurring at 250 mg/kg/day (HDT), a maternal NOEL of 40 mg/kg/day based on significantly decreased adrenal weights at 100 mg/kg/day, and a fetotoxic NOEL of 250 mg/kg/day (HDT).

7. A developmental toxicity study in rabbits fed dosages of 0, 40, 160, and 480 mg/kg/day with a maternal toxicity NOEL of 160 mg/kg/day (severe weight loss, an excess number of maternal deaths, abortions, and fetal resorptions occurred at 480 mg/kg/day [HDT]); and a fetoxicity/teratogenicity NOEL of 160 mg/kg/day (decreased litter sizes, low fetal weight, an increase in fetal resorptions and abortions and a significant increase in fetal malformations occurred at 480 mg/kg/day [HDT]). Owing to the extreme maternal toxicity of the chemical at the 480 mg/kg/day dose, it was difficult to determine whether the increase of resortptions and abortions was due to maternal toxicity or fetotoxicity.

8. Mutagenic studies including a host-mediated assay (mouse with *S. typhimurium*, negative at 2.5 grams/kg/day of chemical and recombinant assay and forward mutations in *B. subtilis, E. coli,* and *S. typhimurium* (all negative at concentrations of the chemical up to 100 percent).

The acceptable daily intake (ADI), based on a 1-year feeding study in dogs (NOEL=8.86 mg/kg bwt/day) and using a hundredfold safety factor is calculated to be 0.09 mg/kg/day. The theoretical maximum residue contribution (TMRC) for published tolerances is 0.023917 mg/kg/day. The current action will contribute 0.007135 mg/kg/day to the TMRC and will utilize 7.9 percent of the ADI. Published tolerances utilize 26.6 percent of the ADI. Tolerances for this chemical on citrus fruits, blueberries and grapes, and certain feed items which are being published elsewhere in this issue of the **Federal Register** (see [PP8F3606, 8F3660, 8H5553, 8H5561/R1052] in the Rules and Regulations section) will use an additional 1.5 percent of the ADI.

Data lacking are a repeat of a rat primary hepatocyte unscheduled DNA synthesis assay on a hydroxylated plant metabolite of the parent compound. The company has been notified of this deficiency and has agreed to repeat the study.

The pesticide is useful for the purposes for which these tolerances are sought. The nature of the residue is adequately understood for the purpose of establishing the tolerances. Adequate analytical methodology (gas chromatography using sulfur-specific flame photometric detection) is available for enforcement purposes. The method is listed in the *Pesticide Analytical Manual* (PAM II) as Method I. There are currently no actions pending against the registration of this chemical. Any secondary residues occurring in meat, milk, poultry (meat), and poultry (fat) will be covered by existing tolerances on these commodities.

Based on the above information considered by the Agency, the tolerances established by amending 40 CFR part 180 would protect the public health. It is proposed, therfore, that the tolerances be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 8E3640/P500]. All written comments filed in response to this petition will be available in the Information Services Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-

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

List of Subjects in 40 CFR Part 180

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

Dated: December 6, 1989.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

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

Authority: 21 U.S.C. 346a and 371.

2. In § 180.412(a), by revising the entries for eggs and poultry meat byproducts (mbyp) and by adding and alphabetically inserting entries for beans, dry, forage, hay, and succulent and peas, dry, forage, hay, and succulent, to read as follows:

§ 180.412 2-[1-(Ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one; tolerances for residues.

(a) * * *

Commodities	Parts per million
* * * * *	
Beans, dry	20.0
Beans, forage	10.0
Beans, hay	50.0
Beans, succulent	5.0
* * * * *	
Eggs	2.0
* * * * *	
Pea, dry	40.0
Peas, forage	20.0
Peas, hay	40.0
Peas, succulent	10.0
* * * * *	
Poultry, mbyp	2.0
* * * * *	

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[FR Doc. 89–29892 Filed 12–26–89; 8:45 am]

BILLING CODE 6560–50–D

40 CFR Part 180

[PP8E3651/P498; FRL–3664–3]

Pesticide Tolerances for Ethyl 3-Methyl-4-(Methylthio)Phenyl (1-Methylethyl) Phosphoramidate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that a tolerance be established for the combined residues of the nematicide ethyl 3-methyl-4-(methylthio)phenyl (1-methylethyl) phosphoramidate (also referred to in this document as fenamiphos) and its cholinesterase-inhibiting metabolites in or on the raw agricultural commodities garden beet roots and garden beet tops. The proposed regulation to establish maximum permissible levels for residues of the nematicide in or on the commodities was requested in a petition submitted by the Interregional Research Project No. 4 (IR–4).

DATE: Comments, identified by the document control number, [PP8E3651/P498], must be received on or before January 26, 1990.

ADDRESS: By mail submit comments to: Public Information Branch , Field Operations Division (H–7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 246, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as 'Confidential Business Information' (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Emergency Response and Minor Use Section (H7505C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716C, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–2310.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition (PP) 8E3651 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR–4 Project, and the Agricultural Experiment Stations of New York and Pennsylvania.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for residues of the nematicide fenamiphos, ethyl 3-methyl-4-(methylthio)phenyl (1-methylethyl) phosphoramidate and its cholinesterase-inhibiting metabolites ethyl 3-methyl-4-(methylsulfinyl)phenyl (1-methylethyl)phosphoramidate and ethyl 3-methyl-4-(methylsulfonyl)phenyl (1-methylethyl) phosphoramidate in or on the raw agricultural commodities garden beet roots at 1.5 parts per million (ppm) and garden beet tops at 1.0 ppm.

The petitioner proposed that this use be limited to the Illinois, Indiana, Michigan, New York, Ohio, and Pennsylvania based on the geographical representation of the residue data submitted. Additional residue data will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's registration Division at the address given above.

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicological data considered in support of the proposed tolerance include:

1. A 2-year dog feeding study with no-observed-effect level (NOEL) for choinesterase inhibition (ChE) at 1 ppm (equivalent to 0.025 milligram (mg)/kilogram (kg)/day) and no systemic effects at 10 ppm (the highest dose tested).

2. A 2-year feeding/oncogenicity study in rats with a NOEL for cholinesterase inhibition at less than 2.0 ppm (equivalent to 0.1 mg/kg/day) and no systemic effects at 10 ppm (equivalent to 0.5 mg/kg/day). The study was negative for oncogenic effects under the conditions of the study at all feeding levels.

3. An 18-month oncogenicity study in mice with feeding levels of 2, 10, and 50 ppm (equivalent to 0.3, 1.5, and 7.5 mg/kg/day) that was negative for oncogenic effects under the conditions of the study at all levels tested.

4. A three-generation reproduction study in rats with no reproductive effects at 30 ppm (highest dose tested).

5. A teratology study in rabbits with developmental and maternal NOEL's at 0.5 mg/kg.

6. A neurotoxicity study in hens with no neurotoxicity damage at 12.5 mg/kg (highest dose tested).

7. In a metabolism study in rats, fenamiphos was metabolized to its sulfoxide and sulfone analogs with 50 percent excreted in the urine within 12 to 15 hours.

8. Genotoxicity studies including an Ames Test (negative), a dominant lethal test in mice (negative), an *in vitro* assay in Chinese hamster ovary cells (negative for nonactivation assay at concentrations up to 130 micrograms/milliliter and for activation assay up to 230 micrograms/milliliter), and gene mutation using *Bacillus subtilis* (negative).

Data currently lacking include a teratology study in a second species. Data requirements for registration of fenamiphos are identified in a Registration Standard for the chemical, which was issued in June of 1987.

The reference dose (RfD, formerly referred to as ADI), based on the 2-year feeding study in dogs with a NOEL for cholinesterase inhibition at 1.0 ppm (0.025 mg/kg/day) and using an uncertainty factor of 100, is calculated to be 0.00025 mg/kg of body weight (bw)/day. The anticipated residue contribution (ARC) from existing tolerances is calculated to be 0.000103 mg/kg bw/day, which is equivalent to 41.2 percent of the RfD. The current action will contribute an additional 0.000033 mg/kg bw/day of residues to the human diet, an additional 13.2 percent.

The nature of the residues is adequately understood, and an adequate analytical method, gas chromatography using a thermionic detector, is available in the Pesticide Analytical Manual, Vol. II (PAM) II, for enforcement purposes. There are currently no actions pending against the continued registration of this chemical.

Based on the above information considered by the Agency, the tolerance established by amending 40 CFR 180.349 would protect the public health. Garden beets are a minor feed item for cattle, horses, goats, hogs, and sheep. They are not a feed item for poultry. The secondary residues, if any, in meat and milk resulting from the proposed use should be adequately covered by the tolerances established for meat and milk under 40 CFR 180.349(b). Therefore, it is proposed that the tolerances be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 8E3651/P498]. All written comments filed in response to this petition will be available in the Information Services Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

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

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

List of Subjects in 40 CFR Part 180

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

Dated: December 1, 1989.

Anne E. Lindsay.

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

PART 180—[AMENDED]

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

Authority: 21 U.S.C. 346a and 371.

2. Section 180.349(c) is amended by adding and alphabetically inserting a tolerance for regional registration for the raw agricultural commodities garden beet roots and garden beet tops, to read as follows:

§ 180.349 Ethyl 3-methyl-4-(methylthio)phenyl (1-methylethyl)phosphoramidate; tolerances for residues.

* * * * *

(c) * * *

Commodities	Parts per million
* * * * *	
Beets, garden, roots	1.5
Beets, garden, tops	1.0
* * * * *	

[FR Doc. 89-29893 Filed 12-26-89; 8:45 am]

BILLING CODE 6560-50-D

40 CFR Part 180

[PP9E3736/P497; FRL-3659-5]

Pesticide Tolerance for Paraquat

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that a tolerance be established for the residues of the desiccant, defoliant, and herbicide paraquat (1,1'-dimethyl 4,4'-bipyridium ion) in or on the raw agricultural commodity taro (corms). The proposed regulation to establish a maximum permissible level for residues of paraquat in or on the commodity was requested in a petition submittted by the Interregional Research Project No. 4 (IR-4).

DATE: Comments, identified by the document control number, [PP9E3736/P497], must be received on or before January 26, 1990.

ADDRESS: By mail submit comments to: Information Services Section, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 246, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information"(CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly

by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Emergency Response and Minor Use Section (H7505C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716C, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703–557–2310.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition (PP) 9E3736 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR–4 Project, and the Agricultural Experiment Station of Hawaii.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for residues of the pesticide paraquat derived from application of either the bis (methyl sulfate) or the dichloride salt (both calculated as the cation) in or on the raw agricultural commodity taro (corms) at 0.1 part per million (ppm).

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

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicological data considered in support of the proposed tolerance include:

1. A 90-day dog feeding study with a no-observed-effect level (NOEL) of 20 parts per million (ppm) of paraquat cation (equivalent to 0.5 milligram (mg)/ kilogram (kg) body weight (bw)/day), and a lowest effect level (LEL) of 60 ppm (1.5 mg/kg bw/day).

2. A mouse oncogenicity study with no oncogenic effect observed under the conditions of the study at all levels tested (12.5, 37.5, and 100/125 ppm of paraquat ion, equivalent to 1.88, 5.63, and 15/18.8 mg/kg bw/day). (The highest dose tested, 100 ppm, was increased to 125 ppm during the study because no toxic signs occurred at 100 ppm.)

3. Two developmental toxicity studies, rat and mouse, with maternal toxicity NOEL's of 1.0 mg/kg bw/day and developmental toxicity NOEL's of 1.0 and 5.0 mg/kg/ bw/day, respectively.

4. A three-generation rat reproduction study with a reproductive NOEL equal to 150 ppm (highest dose tested, equivalent to 7.5 mg/kg bw/day) and a systemic NOEL of 25 ppm (1.25 mg/kg bw/day).

5. A 1-year dog feeding study with a systemic NOEL of 15 ppm (0.45 mg of paraquat ion/kg bw/day).

6. Sixteen acceptable mutagenicity studies were submitted for paraquat. Paraquat was negative in eight studies (mostly in gene mutation and chromosomal aberration assays); weakly positive in four studies (two gene mutation, one chromosomal aberration assay, and one DNA damage/repair assay); and positive in four studies (all DNA damage/repair assays).

7. A 2-year rat chronic feeding/ oncogenicity study in the Wister strain with a systemic NOEL of 100 ppm (equivalent to 5 mg/kg/day) and no oncogenic effects observed under the conditions of the study at all levels tested; levels tested were 0, 6, 30, 100, and 300 ppm paraquat dichloride.

8. A rat chronic feeding/oncogenicity study in the Fischer 344 strain indicated a NOEL for systemic effects slightly below 25 ppm (1.25 mg/kg/ bw/day of paraquat ion). In this study, squamous cell neoplasms of the skin and the subcutaneous areas of the head region of the high-dose (150 ppm) group of male rats were significantly increased over the concurrent control group. The HED Peer Review Committee concluded, however, that the increased incidence of squamous cell neoplasms in the head region of the high-dose group of male rats was not associated with oral exposure but was probably the result of topical exposure to paraquat. Since paraquat is a topical irritant, the neoplasms in the head regions of the rats are believed to have resulted from the chronic topical exposure to paraquat in the powdered diet of the test animals. Exposure to paraquat in the human diet is not expected to elicit topical irritation.

The reference dose (RFD), based on the 1-year dog feeding study (NOEL of 0.45 mg/kg/day) and using an uncertainty factor of 100 is calculated to be 0.0045 mg/kg of body weight (bw)/ day. The theoretical maximum residue contribution (TMRC) from existing tolerances is calculated to be 0.001865 mg/day; the current action will increase the TMRC by less than 0.000001 mg/day. Published tolerances utilize 41.4 percent of the RFD; the current action will result in an increase of less than 0.02 percent.

The Agency has concluded that the amount of paraquat added to the diet from the proposed use will not significantly increase dietary exposure. Thus the tolerance established by the proposed rule is considered to pose a negligible increment in risk. Tolerances have previously been established for paraquat in a wider variety of food commodities, including meat, milk, grain, fruits, vegetables, and nuts at levels ranging from 0.01 to 5 ppm. The nature of the residues is adequately understood and an adequate analytical method, spectrophotometry, is available in the *Pesticide Analytical Manual*, Vol. II (PAM-II), for enforcement purposes.

No secondary residues in meat, milk, poultry, or eggs are expected since taro (corms) are not considered a livestock feed commodity. There are currently no actions pending against the continued registration of paraquat.

Based on the above information considered by the Agency, the tolerance established by amending 40 CFR 180.205 would protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 9E3736/P497]. All written comments filed in response to this petition will be available in the Information Services Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising requirements do not have a

significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

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

Dated: December 6, 1989.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

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

Authority:21 U.S.C. 346a and 371.

2. Section 180.205(b) is amended by adding and alphabetically inserting a tolerance for regional registration for the raw agricultural commodity taro (corms), to read as follows:

§ 180.205 Paraquat; tolerances for residues.

* * * * *

(b) * * *

Commodities	Parts per million
* * * * *	
Taro (corms)	0.1
* * * * *	

[FR Doc. 89-29894 Filed 12-26-89; 8:45 am]

BILLING CODE 6560-50-D

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 89-26; Notice 1]

RIN 2127-AD24

Federal Motor Vehicle Safety Standards; Cross-View Mirrors and Other Measures To Prevent Pedestrians From Being Struck by School Buses

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This advance notice announces that NHTSA is considering measures to increase school bus drivers' awareness of children near the buses during loading and unloading operations, as a means of preventing children from being struck by the buses. One such measure would be an amendment to Federal Motor Vehicle Safety Standard No. 111, *Rearview Mirrors*, with respect to convex cross-view mirrors on school buses. In addition, the agency is considering the possibility of requiring school buses to be equipped with other devices such as crossing control arms, sensors, and video monitors. The agency seeks comments and information on the extent to which such measures would increase the safety of school children, as well as information about the costs entailed and any potential negative effects.

This notice comprises one part of NHTSA's comprehensive effort to assess the safety need related to school buses. While the agency has issued several notices related to the protection of school bus passengers, this notice (and a companion notice related to stop arms that will be published in the near future) are intended to improve the safety of children while boarding and leaving school buses.

DATE: Comments on this notice must be received on or before February 12, 1990.

ADDRESS: All comments on this notice should refer to Docket No. 89-26; Notice 1 and be submitted to the following: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590 (Docket hours 9:30 a.m. to 4 p.m.)

FOR FURTHER INFORMATION CONTACT: Ms. Patti Gardner, Office of Crash Avoidance, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590, (202) 366-5269.

SUPPLEMENTARY INFORMATION:

Background

The Surface Transportation and Uniform Relocation Assistance Act of 1987 (sec. 204(a), Pub. L. 100-17) required the Department of Transportation to contract with the National Academy of Sciences (NAS) to conduct a comprehensive study to determine "the safety measures that are most effective in protecting the safety of school children while boarding, leaving, and riding in school buses."

The NAS issued its report in May 1989. The report's data and recommendations provide the basic context in which to consider the issues discussed in this notice. [Copies of the report, "Improving School Bus Safety," Special Report No. 222, may be obtained by contacting the Transportation Research Board, National Research Council, 2101 Constitution Avenue NW., Washington, DC 20418, (202) 334-3218.]

The first accomplishment of the NAS report was to present a comprehensive review of the existing data on school bus crashes. Although the report confirmed that school buses have an excellent safety record (e.g., the occupant fatality rate per vehicle mile driven is only one-fourth that of passenger cars), it noted that some deaths and injuries do occur, and it suggested that further improvements could be made on the safety of school buses and bus operations. For data on fatal injuries, the report drew on NHTSA's Federal Accident Reporting System (FARS) from the years 1982 through 1986. These data indicate that in an average year approximately 49 children are killed in school bus-related crashes. Of these, 12 are passengers in school buses or vehicles operated as school buses and 37 are student pedestrians struck by school buses or other vehicles. Of the 37 school bus pedestrian fatalities, approximately 26 are killed by school buses or vehicles operating as school buses, and 11 by vehicles that pass a school bus that has stopped to load or unload passengers. NHTSA's further analysis of the FARS data indicates that about half of the bus-caused fatalities—13 on average—occur in the bus loading zones, and the remainder while the bus is elsewhere on its route.

The data thus indicate that children are at a much greater risk of being killed while boarding or leaving a school bus or in the vicinity of the bus stop than while they are riding in a bus. Based on these considerations, the NAS report concluded that "(i)f the cost and effectiveness of the various safety measures are the same, those measures designed to reduce or prevent pedestrian fatalities are better safety investments than measures designed to prevent passenger fatalities" (p. 134).

With respect to non-fatal injuries, the NAS report drew upon a number of data sources, including the National Safety Council, NHTSA's National Accident Sampling System, and data from State accident files. Using these sources, the NAS report estimated that each year there are 950 pedestrians injured in school bus-related crashes of whom about 800 are estimated to be children. Approximately 35 percent are injured as a result of being struck by a school bus; the remainder are struck by other vehicles. Although these numbers are much smaller than the number of bus passenger injuries (estimated by NAS at about 9,500 a year), the proportion of

serious injuries is higher for pedestrians than for passengers. Twenty percent of pedestrian injuries are categorized as being "incapacitating," defined by the American National Standards Institute (ANSI) as any injury that prevents the injured person from walking, driving or normally continuing activities he or she was capable of performing before the injury occurred.

To address the safety problems revealed by these data, the NAS panel evaluated the potential safety benefit of a number of measures to prevent pedestrian fatalities and injuries. In NAS's view, the best approach to improving safety relies on the efforts of parents and local schools and communities, as well as those of the States, the Federal government and the vehicle manufacturers. In addition to recommendations on mirrors and other equipment to improve driver awareness, which are the subject of this notice, the NAS report recommended a number of changes in bus operating practices: Better driver training, with emphasis on loading zone safety; improved programs to educate children about safe walking to and from the stop, how and where to wait safely for the bus, and how to board and leave the bus safely; and better planning of school bus routes, including programs to develop loading and unloading plans for all vehicles at school locations.

The full scope of the NAS recommendations was addressed in a **Federal Register** notice published by NHTSA on July 13, 1989 (54 FR 29629). As directed by the legislation which authorized the NAS report, NHTSA reviewed the measures identified in the NAS report to determine those which are potentially "most effective" in protecting children "while boarding, leaving, and riding school buses" (204(a)(3), Pub.L. 100–17). Those measures that involve operating practices are being addressed through NHTSA's State and community highway safety grant program (23 U.S.C. 402). The agency issued a notice concerning the use of section 402 funds to improve school bus safety. (54 FR 30497, July 20, 1989). As a result, the agency set aside $4.5 million out of Section 402 highway safety funds in fiscal year 1990 for school bus safety grants to qualifying States.

Of the measures recommended by NAS that relate to changes in the school buses themselves, NHTSA concluded in the July 13 notice that programs to require the installation of additional outside cross-view mirror systems and stop signal arms on school buses are potentially "most effective" in improving school bus safety. This conclusion is the basis for this notice and for a companion notice proposing that stop arms be required on school buses, which will be published shortly. Both notices are issued under the authority conferred on the agency by the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*, the "Vehicle Safety Act") to issue motor vehicle safety standards.

Cross-View Mirrors On School Buses

Federal Motor Vehicle Safety Standard No. 111, *Rearview Mirrors*, (49 CFR 571.111) includes a provision requiring each school bus that is not a forward control vehicle to have an outside cross-view mirror of a specified size and shape (S9.2), "mounted so as to provide the driver a view of the front bumper and the area in front of the bus" (S9.2(b)). The standard also requires each school bus to have outside rear-view mirrors of unit magnification on each side of the bus, to provide the driver a view to the rear along both sides of the bus (S9.1).

The requirements in FMVSS No. 111 establish a minimum level of safety performance for mirrors on school buses. A purchaser of a school bus (e.g., State, public school district, or private school) may, however, purchase additional cross-view mirrors, or mirrors with larger reflective surfaces, to supplement the mirrors required by the standard. Many school districts have purchased such additional mirrors. A number of States have enacted laws requiring more than one cross-view mirror on school buses, consistent with a ruling by the agency that such laws are limited to vehicles procured for the States' own use, and are therefore not preempted under 103(d) of the Vehicle Safety Act.

In Congress, Rep. Dennis Eckart has introduced legislation (H.R. 3107) which would require NHTSA to establish safety standards to "require that school buses be equipped with a system of mirrors which provides the driver with a view of the area under the front of the schoolbus." Testimony from a November 2, 1989, hearing on this bill before the Subcommittee on Transportation and Hazardous Materials of the House Committee on Energy and Commerce will be entered into the rulemaking docket on this notice. As noted in NHTSA's testimony at the hearing, the agency intends to proceed with the rulemaking, even without new legislation.

Any requirements that may be issued under the Vehicle Safety Act on the subject of cross-view mirrors or related equipment will be coordinated with the guidelines issued by NHTSA under the authority of the Highway Safety Act (23 U.S.C. 401–411). The existing guideline, Highway Safety Program Guideline No. 17, *Pupil Transportation Safety* (23 CFR 1204.4), includes guidance for the correct adjustment of cross-view mirrors:

> When a rod, 30 inches long, is placed upright on the ground at any point along a traverse line 1 foot forward of the forward-most point of a school bus, and extending the width of the bus, at least 7½ inches of the length of the rod should be visible to the driver, either by direct view or by means of an indirect visibility system.

The agency intends to consider this approach to mirror performance in the context of this rulemaking, and to make appropriate amendments in Guideline No. 17 to reflect any changes in FMVSS No. 111. As elaborated in the issues section below, the agency requests comments about the adequacy of the mirror adjustment guideline.

Additional information relating to mirrors and related equipment may result from research efforts that NHTSA has begun in response to the NAS report. The report stated that further research would be helpful in determining whether FMVSS No. 111 could be modified or other requirements mandated to improve a driver's awareness of the areas in front of, immediately beside, and behind the school bus. Such additional information would help to optimize the requirements for the number, location, aiming, and other characteristics of cross-view mirrors installed on school buses. When it completes this research, the agency will submit the results to the rulemaking docket for this notice.

Additional Equipment To Prevent Pedestrians From Being Struck By Buses

The NAS study examined several additional measures that might reduce the number of student pedestrians struck by the buses they were boarding or leaving. In particular, the report reviewed the potential effectiveness of such equipment as school bus crossing control arm barriers, audible back-up warning devices, video monitors, and other proximity sensors such as radar or sonar.

A crossing control arm is a device that swings out from the front bumper of a school bus to create an obstacle that student pedestrians must walk around. Control arms now in use typically swing out six to eight feet. They are activated either electronically or by an air vacuum when the door of a school bus is opened to admit or discharge students. By forcing children to walk away from the bumper and around the control arm, the

children are more likely to remain in a driver's direct field of vision.

Other devices serve to alert drivers to the presence of children and objects beneath and around school buses when stopped to load or discharge passengers. These devices rely on radar, microwave, ultrasound, or physical contact to detect children who might be struck by a school bus as it begins to move and to sound an alarm warning the driver of the potential hazard. Another sensor device uses two plastic shields which attach to the front bumper of the bus and in front of the rear wheels. Both shields extend to within 6 inches of the ground. If a child or other object is detected, the brakes of the bus are automatically activated. Both the electronic and mechanical sensor systems are equipped with logic circuitry that allows the devices to operate at low speeds (speeds typical of a bus pulling away from a loading zone) but prevents activation at higher speeds when a false positive signal might be a nuisance or even a hazard.

A closed circuit television system could also be installed near the driver to provide information of areas outside his or her normal view, especially to the rear of the bus, where mirrors are least effective. It would consist of a video camera mounted on the rear of the bus connected with cables to a monitor by the driver.

Issues

This notice discusses a range of issues that NHTSA is considering in deciding whether to issue a proposal relating to cross-view mirror systems or other devices to protect pedestrians from being struck by the school bus. The notice also makes a number of requests for information and data. Since this is an ANPRM, no rule will be issued on this subject without a notice of proposed rulemaking (NPRM) and further opportunity to comment.

In commenting on a particular matter or in responding to a particular question, interested persons are requested to provide any relevant factual information to support their conclusions or opinions, including, but not limited to, narrative accounts of crashes, statistical and cost data, and the source of such information. NHTSA would like commenters to respond to questions concerning the following issues:

(a) The safety need for amending the mirror requirements, requiring additional mirrors or mirrors with different characteristics, or requiring additional equipment such as the crossing control arm;

(b) The need to develop performance requirements to better ensure that a driver sees or is otherwise aware of pedestrians in school bus loading zones;

(c) The costs of requiring different types of or additional mirror systems and of requiring other types of equipment; and

(d) The potential impact of new requirements on school bus users currently in compliance with FMVSS 111 and on current State laws that would differ from the proposed Federal requirements.

For ease of reference, the questions are numbered consecutively. The agency requests commenters to give the number of each question they answer.

Safety Need

The critical issue in considering whether to introduce a new safety standard or amend an existing safety standard concerns the safety need. The agency wishes to explore the need to enhance pedestrian safety in school bus loading zones. Although the NAS report contains recommendations, some of which NHTSA has identified as "most effective," these do not necessarily represent judgments by the agency that a sufficient case has been made for the issuance of new requirements under the criteria of the Vehicle Safety Act.

The analysis conducted by the NAS panel, and NHTSA's subsequent analysis, provide a reasonably complete count of fatal injuries in school bus crashes, but only an estimate of non-fatal injuries. As to both types of injury, detailed information about the buses involved, the mirrors and other crash avoidance equipment on them, and circumstances of the crash is often lacking. Supplementary information would therefore be useful, particularly information about non-fatal incidents. Bus drivers, State and local school systems, and private services that transport students to and from school and school-related activities are uniquely qualified to supply NHTSA with first-hand information on their actual in-field experiences with pedestrian crashes in school bus loading zones. Therefore, the agency is seeking comment from school boards, counties, States, pupil transportation services, bus drivers, and others about their experiences in which pedestrians were struck or nearly struck by school buses.

1. What injury and non-injury data exist regarding real-world crashes and near crashes with school buses striking pedestrians in school bus loading zones? What type of bus was involved in the crash? What mirror systems (and other equipment related to pedestrian safety) were on the school bus at the time of the crash? While FMVSS No. 111 requires mirrors to provide a view of the area in front and on the sides of school buses, the agency is aware of the potential for pedestrian crashes behind school buses. Where were the victims located in relation to the bus? In front of the bus? On the driver's side of the bus? The entrance door side? The rear of the bus? While it was backing up? Did the incident occur while the bus was coming to a stop? While it was starting up? While in motion?

2. What were the ages and heights of the victims? Were they standing up or had they fallen or were otherwise low to the ground? Were they stationary, walking, or running? How close to the bus were the children immediately prior to the crash?

3. At the time of the event, what were the driving conditions and weather environment? Did the crash occur on an urban, suburban, or rural road? Did the crash occur on a major thoroughfare or a side street, or in a school yard? Was there rain, snow, fog, or other inclement weather? To what degree did these adverse weather conditions reduce the driver's visibility? What time of day and under what lighting conditions did the crash occur? Was the effectiveness of any of the mirrors or other equipment reduced by weather conditions or other factors?

Based on those data and other information, if the bus had been equipped with more mirrors, mirrors with specifications other than those in Standard No. 111, or other devices which help increase the driver's awareness of pedestrians in school bus loading zones, could they have prevented the school bus from striking the pedestrian?

4. In helping the agency understand such crashes, information about the physiology and experiences of school bus drivers would be very helpful. What information does a driver need regarding pedestrian movement? How large and clear must the image be for the driver to be aware that a child is in danger? How quickly does he or she need to interpret this information? Where are a typical driver's eyes located relative to the seat or seating reference point? While seated, what area must a driver see to prevent the bus from striking pedestrians? What area is directly visible to the driver without the aid of a mirror? What area is only visible with the aid of the mirror required by FMVSS 111? How does this amount and location of visible area differ for short and tall drivers, e.g., a 5th percentile female and a 95th percentile male? What additional areas become visible if additional mirrors are used? What areas do drivers perceive to

be difficult to see either directly or with a mirror? What field of view obtainable directly and with additional mirror(s) would best assist the driver in preventing a school bus from striking a pedestrian? What limitations on distortion of the pedestrian's image are necessary? What guidelines are currently provided to the driver for aiming mirrors? Would requiring several mirrors obstruct the driver's direct vision, or confuse or distract the driver from normal driving tasks?

5. What requirements do the States or local jurisdictions have to assist a driver to avoid striking pedestrians? What experiences or information led the various States or local jurisdictions to adopt such requirements beyond the minimum Federal requirements specified in FMVSS 111? What has been their effect, if any, on pedestrian safety in school bus loading zones? What has been the experience of companies and school districts that order school buses with additional mirror systems or other safety devices that increase driver awareness of pedestrians? What instructions are given to drivers on the use of cross-view mirrors or related equipment? Under real-world situations, how frequently and in what manner (if at all) does the driver rely on these additional mirror systems and other safety devices?

Requirements Concerning Additional Mirror Systems

If NHTSA were to amend FMVSS No. 111 to increase the required minimum number of mirrors, amend the performance requirements of the mirrors, or otherwise amend the performance requirements to increase a driver's visibility of the area in front of and elsewhere around school buses, the agency would first have to determine that the amendment met the Vehicle Safety Act's criteria: that the requirement "shall be practicable, shall meet the need for motor vehicle safety, and shall be stated in objective terms" (section 103(a)).

NHTSA notes that while its current research project is focusing on mirror systems, it also is considering field of view in general and the other devices mentioned above. NHTSA welcomes comments and data on a number of questions related to the performance characteristics of mirror systems and on other specifications the agency is considering related to pedestrian safety. To formulate objective requirements, the agency requests that, where possible, commenters specify measurements and other criteria in objective terms (e.g., 5th percentile female, x feet in front of the bus). Similarly, any demonstration procedure should be specified in objective terms.

6. Is it desirable and feasible to develop new performance requirements and test procedures for convex cross-view mirrors? If so, what specific test procedures and performance requirements for such mirrors would best enhance safety? The agency notes that several States require two cross-view mirrors, others require three, and others require four such mirrors. The agency requests comments on experiences with requiring more than one cross-view mirror. How many mirrors would be appropriate to ensure that a driver has an adequate view of the area in front of the bus and elsewhere near the school bus to be aware of student pedestrians? When multiple mirrors are required, do drivers typically use each of them? Can there be too many mirrors?

7. What size or surface area for a mirror would be most appropriate in increasing visibility in school bus loading zones? What range of radii of curvature should be permitted to ensure that the field of view would be large enough to see without being unreasonably distorted?

8. The current standard requires the cross-view mirrors to be "approximately spherical." As a result, mirrors with shapes or radii of curvature outside the specified range fail to comply with S9.2(a)(1)–(3) of FMVSS No. 111. Some inventors and users have informed the agency that they believe particular non-complying mirrors, e.g., a mirror which is a section of a torus rather than a section of a sphere or one that is banana-shaped, are equal to or are superior to the currently required mirrors. The agency welcomes comments about such alternative mirror designs, especially evaluations of their actual in-field use. Do these mirrors present an adequate field of view, depth perception, spatial relationship, image size, and clarity? Are there any other problems with their performance? How do such mirrors perform as a supplemental mirror in addition to the mirror required by FMVSS No. 111? Should such a mirror(s) replace or merely supplement the currently required mirror? What intermix of mirror systems would result in the largest and most effective degree of visibility? What changes would be necessary in Standard No. 111 to accommodate these designs? Would the establishment of uniform Federal specifications requiring a specific mirror design hinder future innovations related to mirror designs?

9. Should requirements be proposed to specify mirror location and/or aim? If so, where should the mirrors be located? How does mirror location affect field of view and other visibility characteristics? How should the mirrors be aimed? Does HSPG No. 17's current guideline for mirror aiming adequately assure a driver's visibility of the area in front of the bus? If not, should a different target, different location(s) (e.g., the side of the bus), or an entirely different procedure be adopted? For instance, some jurisdictions specify that the centerline of the mirror must point toward the driver's foot. The agency requests comments on this and other procedures related to the placement and aim of mirror systems.

10. How large must a child's image be for the driver to identify the presence of a child and interpret the image to represent a possible safety threat? What area in front of the bus would have to be visible? How could the current requirement in S9.2(b) be made more objective? Should the standard require areas on the side or the rear of the bus to be visible? Would such additional requirements be feasible?

11. Would requiring additional mirror systems have any adverse impacts on safety? Should there be a maximum limit on the size of mirrors to reduce blind spots blocking the direct field of view? Would a requirement for additional mirrors cause a driver to become overly reliant on the mirrors and neglect direct observations? Would additional mirrors require so much time to survey that traffic hazards might be neglected or students might face other potential risks?

12. NHTSA notes that section S9.2 of the current standard exempts forward control buses from the cross-view mirror requirements. Without cross-view mirrors, some forward control bus configurations may have blind spots relative to pedestrians in front or on the sides of the bus. The agency welcomes comments as to whether forward control buses should be required to meet the existing or potentially revised cross-view mirror requirements. If so, should the specifications for mirrors on forward control buses be different than for those buses which are currently required to have a cross-view mirror?

Requirements Related to Devices Other Than Mirror Systems

13. The crossing control arm is intended to force students to cross further away from the bus's front bumper, thus increasing the likelihood that they would be in the driver's direct field of view. The agency welcomes

comments, including designs and drawings, about the characteristics of such control arms from manufacturers, States, school districts, pupil transportation organizations, and other entities that have installed or have otherwise used these items. Have users of such devices found them to be effective? The agency welcomes comments about the real-world results of installing such devices.

14. How should the crossing control arm be activated? Should the device be automatically activated by the opening of the door? With that type of activation, what, if any, problem might occur if a driver leaves the door open while the bus is in motion?

15. The New York City Board of Education informed NHTSA that a crossing control arm might pose a risk to safety, especially in congested urban areas. It stated that this and other devices might cause children and drivers to become overly dependent on them, neglecting first-hand observation. It was also concerned that children might jump over or otherwise misbehave around this device. Have users of control arms experienced any such problems? Have users experienced any mechanical failures with the control arms? Would a control arm be functional in areas of extremely cold weather, where snow or ice buildup might impede their operation?

16. The agency notes that crossing control arms require approximately six to eight additional feet in front of a bus to operate. Would the need for such additional space cause problems in areas where school buses line up to load or discharge children, or in other places involving tight quarters such as where maintenance work is performed on buses?

17. If a crossing control arm were required, the aiming and location requirements of the cross-view mirrors might have to be reassessed. The agency welcomes comments about how requiring use of the crossing control arm would affect the requirements related to cross-view mirrors.

18. Proximity sensors would provide the bus driver an additional source of information about the presence of a child near the bus. The agency welcomes comments from those who have installed such devices or used buses equipped with such devices. Should the sensors be located by the front wheels, front bumper, rear wheels, rear bumper? How sensitive should such sensors be? Should the sensors be connected with audible or visual warning devices, or both? Is such information necessary or would it be redundant? Should the sensors automatically apply the brakes?

19. Pedestrians struck by the back of the bus pose a safety problem distinct from those struck by the front. The agency requests comments about how to avoid pedestrian crashes to the rear of the bus. Such devices as an audible back-up warning device, a television monitor, a wide angle lens, or additional mirrors may be effective in preventing crashes at the rear of the bus. Would the above-mentioned devices prove effective in avoiding such events? What other devices have been used to prevent such incidents? How successful have they been? Would these devices unreasonably distract the driver from directly observing student pedestrians or traffic conditions in the area in front of the bus?

20. What requirements would be necessary to ensure that video monitors accurately and adequately display the area to the rear of the bus? How should requirements regarding distortion be specified?

21. As with the crossing control arm, NHTSA is concerned that requiring sensors or monitors could have negative safety impacts. Would some drivers become overly reliant on them and ignore their first-hand observations or otherwise be less cautious? Would sensors or video monitors result in an "information overload" for drivers who already have to be aware of traffic, look at the mirrors, open the door, and supervise passengers? As a practical result, would some drivers ignore the sensors and monitors? Would the monitor unreasonably distract the driver from viewing the roadway while the vehicle is moving? Similarly, if the sensors activated whenever the bus hit a bump or came in contact with any small object, would a driver ignore or disconnect the device? Would school children view the sensors as being an item of misuse like a fire alarm? How susceptible would the sensors and video monitors be to vandalism? How sensitive are the sensors to climatic conditions such as high temperatures, rain, or snow?

22. Are there any other devices that would increase pedestrian safety around school buses in addition to those discussed in this notice?

Miscellaneous Programs Related to Pedestrian Safety Near School Buses

23. Do behavioral programs, or countermeasures such as crossing guards or monitors enhance or diminish the value of these devices? What are States and/or local school districts doing—

To select school bus routes and stop locations so as to minimize the necessity for children to cross the street on which their bus is operating in order for them to board the bus or in order for them to exit the bus and walk to their home or school?

To permit crossing only if the child is accompanied by a responsible person such as a parent, bus monitor, crossing guard, or older student?

To ensure that school children have proper training in safe street crossing behavior?

To train bus drivers about students boarding or leaving a bus?

To train motorists regarding proper driving behavior around school buses, especially in loading and unloading zones?

Costs of Additional Mirrors and Other Devices

NHTSA has made an initial estimate of the cost of some of the additional devices. The agency notes that the costs related to requiring a device must be considered in relation to the cost of the other devices, since each device is intended to prevent the same type of crash. Requiring four items of equipment, each with the same purpose, would be redundant.

After contacting various manufacturers, NHTSA estimates the aftermarket cost for various devices to be as follows. The agency emphasizes that while these cost estimates are based on supplier aftermarket price quotations, the agency welcomes comments that reflect OEM discounts.

The unit cost for a convex cross-view mirror with a bracket plus installation would range from $52 to $107. For the crossing control arm, an air, or a simple vacuum-operated device would range between $184 and $197, a vacuum-operated device with a diesel engine $376 to $388, and an electrically operated device $307 to $360. Radar warning systems would range between $687 and $1990 and an ultrasonic sensor which activates an audible signal and a flashing warning when a child is detected would cost between $395 and $695. Closed circuit television systems would cost between $895 and $1,280. NHTSA requests comments about these initial cost estimates for these or similar devices and any additional pertinent cost information.

24. For each of the devices mentioned above in this section on cost, what would be the likely cost to final purchasers resulting from its addition to a school bus? For each such device, what maintenance costs, if any, would

result from its addition? How often do the various items need to be replaced?

25. What intermix of devices would be the least costly, while still adequately protecting student pedestrians from being struck by a school bus?

26. What is the current number and type of new school buses that have been ordered or delivered with additional devices to increase driver awareness? What was the additional cost for such devices? What factors resulted in the decision to add such safety devices despite increased costs?

Impact Assessments

NHTSA has considered costs and other factors associated with this advance notice. The agency has determined that Executive Order 12291 is inapplicable because that Order applies only to notices of proposed rulemakings and final rules. NHTSA has further determined that this advance notice is not a significant rulemaking action under the Department of Transportation's Regulatory Policies and Procedures. Although there is general public and Congressional interest in school bus safety matters, that interest is focused primarily upon the types of school bus safety issues (number of exits, flammability of interior materials, and fuel system integrity) involved in the rulemakings being conducted in the aftermath of the 1988 bus crash and fire in Kentucky.

The agency may determine to propose a rule requiring additional mirrors, upgraded mirror specifications, or additional devices. Before the agency can make a full assessment of the potential benefits of taking such an action, it must complete a full review of the available information on pedestrian crashes in school bus loading zones, including information to be provided in the comments to this notice.

As detailed above, NHTSA has obtained cost estimates for retrofitting devices in the aftermarket. The agency emphasizes that the cost of installing devices on new school buses should decrease if the installation is part of the manufacturer's regular production run for new vehicles. The agency notes that approximately 38,000 new school buses are produced each year.

NHTSA has analyzed this action under the principles and criteria in Executive Order 12612. The agency has determined that this advance notice does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The agency welcomes comment on this issue.

The Regulatory Flexibility Act does not apply to advance notices of proposed rulemakings. If the agency decides to issue a proposed rule, this Act will be addressed.

Comments

NHTSA invites comments from interested persons on the questions presented in this advance notice and on other relevant issues. It is requested but not required that 10 copies be submitted.

Comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

NHTSA will consider all comments received before the close of business on the comment closing date indicated in the "Dates" caption of this advance notice. To the extent possible, the agency will consider comments filed after the closing date. Comments on the advance notice will be available for inspection in the docket. After the closing date, NHTSA will continue to file relevant information in the Docket as this information becomes available, and recommends that interested persons continue to examine the Docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicle.

Authority: (15 U.S.C. 1392, 1401, 1407; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: December 20, 1989.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 89-29967 Filed 12-26-89; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB36

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for White-necked Crow

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine endangered status for the white-necked crow (*Corvus leucognaphalus*), a bird found in the Dominican Republic and Haiti, and formerly in Puerto Rico and the Virgin Islands. It disappeared in the latter areas because of human hunting and destruction of its natural forest habitat, and is now confronted by the same problems in those places where it does survive. This proposal, if made final, would implement the protection of the Endangered Species Act of 1973, as amended, for this crow. The Service seeks relevant data and comments from the public.

DATES: Comments must be received by February 26, 1990. Public hearing requests must be received by February 12, 1990.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Chief, Office of Scientific Authority, Mail Stop: Room 725, Arlington Square, U.S. Fish and Wildlife Service, Washington, DC 20240. Comments and materials received will be available for public inspection from 8:00 a.m. to 4:00 p.m., Monday through Friday, in Room 750, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane, Chief, Office of Scientific Authority, at the above address (703-358-1708 or FTS 358-1708).

SUPPLEMENTARY INFORMATION:

Background

The white-necked crow (*Corvus leucognaphalus*) resembles the crows of the mainland United States in physical appearance, but is distinguished by the pure white base of the feathers of the hind neck (Wetmore and Swales 1931). Also, in habits and voice, this species is more like ravens than like other crows. The ordinary call note is a high-pitched *klock* (Wetmore 1916).

This crow originally occurred in the Dominican Republic, Haiti, Puerto Rico, and St. Croix in the U.S. Virgin Islands.

It seems to thrive only where there are extensive growths of natural forest, and to disappear when these growths are cut down (Welmore 1916). Because of this factor, and human hunting, the crow has been exterminated throughout its range, except in limited parts of the Dominican Republic and Haiti.

On July 25, 1986, the Service received a petition from Mr. Alexander R. Brash, Department of Biology, Rutgers University, requesting that the white-necked crow be added to the U.S. List of Endangered and Threatened wildlife. On October 31, 1986, the Service made a finding that this petition had presented substantial information. On August 4, 1987, and again the following year, the Service made a finding that the requested measure was warranted but precluded by other listing activity. Section 4(b)(3) of the Endangered Species Act, as amended in 1982, requires that, if a warranted but precluded finding is made with respect to a petition, a subsequent finding be made within 12 months as to whether the requested measure is warranted, not warranted, or warranted but precluded. This proposal incorporates the Service's finding that listing of the white-necked crow is warranted.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to the white-necked crow (*Corvus leucognaphalus*) are as follows.

A. *The present or threatened destruction modification, or curtailment of its habitat or range.* Crows are generally thought to be highly adaptable birds that can thrive in large numbers in a variety of habitats, even if extensively disturbed by people. Actually, various island species of crows are restricted to very limited conditions and do not tolerate changes or the close prximity of human activity. Examples are the Hawaiian crow (*Corvus hawaiiensis*) and the Mariana crow (*C. kubaryi*), both of which the Service already classifies as endangered.

The white-necked crow has become progressively rarer and more restricted in distribution as its natural forest habitat has been invaded and modified by people. This bird once occurred on Saint Croix in the U.S. Virgin Islands, but was extirpated there long ago (Raffaele 1983). It survived on much of Puerto Rico until the 19th century, but then declined as most of the island's forests were cleared for agricultural purposes (Brash 1987). By the early 20th century the species was considered to be almost gone from Puerto Rico (Wetmore 1916). The last record for the island was in the Luquillo Mountains in 1963, and the crow is not thought to have completely vanished from Puerto Rico (Raffaele 1983).

The white-necked crow apparently still occurs in the Dominican Republic and Haiti, which share the island of Hispaniola. However, the same process of forest destruction, which eliminated the species from Puerto Rico, now seems to be occurring on Hispaniola. According to Lewis and Coffey (1985), only 6.7 percent of Haiti was still forested in 1978, and all remaining large areas of forest are expected to disappear within 50 years. The forested portion of the Dominican Republic has declined from about 95 percent originally to less than 15 percent, and only about a third of the remaining forest is considered undisturbed (Hartshorn *et al.* 1981). The white-necked crow remained locally common in the Dominican Republic until the early 20th century (Wetmore 1931), but recent surveys there either have had difficulty locating this bird, which is extremely localized in dry forests (Chandler Robbins, Patuxent Research Center, U.S. Fish and Wildlife Service, pers. comm.), or have been unable to find the species at all (Robert Waide, Center For Energy and Environmental Research, San Juan, pers. comm.)

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* The white-necked crow is considered to have good-tasting flesh, and was extensively hunted as a game bird on Puerto Rico and Hispaniola. This factor contributed to its decline, especially as clearing of the forests made it accessible to hunters (Wetmore 1916; Wetmore and Swales 1931).

C. *Disease or predation.* Not known to be a factor.

D. *The inadequacy of existing regulatory mechanisms.* The main problem for the species is habitat loss, which is not restricted by regulations.

E. *Other natural or manmade factors affecting its continued existence.* None now known.

The decision to propose endangered status for the white-necked crow was based on an assessment of the best available scientific information, and of past, present, and probable future threats to the species. A decision to take no action would exclude this bird from benefits provided by the endangered Species Act. A decision to propose only threatened status would not adequately reflect the evident rarity and long-term problems confronting the species. Critical habitat is not being proposed, as its designation is not applicable outside of the United States.

Available Conservation Measures

Conservation measures provided to species listed as endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, Commonwealth, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the Commonwealth and requires tht recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. Some actions are initiated prior to listing, conditions permitting. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions that are to be conducted within the United States or on the high seas with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, Section 7(a)(2) requires Federal agencies to ensure that the continued existence of such a species or to destroy or adversely modify its critical habitat. If a proposed Federal action may affect a listed species, the responsible Federal agency must enter into formal consultation with the Service. With respect to the white-necked crow, no Federal activities are known that would require conferral or consultation. Such measures may be called for, however, if the species is rediscovered or reintroduced in the Commonwealth of Puerto Rico.

Section 9 of the Act, and implementing regulations found at 50 CFR 17.21, set forth a series of general

prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and Commonwealth conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance propagation or survival, or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, comments and suggestions concerning any aspect of this proposed rule are hereby solicited from the public, concerned governmental agencies, and other parties. Comments are particularly sought concerning the following:

(1) Biological, commercial, or other relevant data concerning any threat (or lack thereof) to the subject species;

(2) The location of any additional populations of the subject species;

(3) Additional information concerning the distribution of this species; and

(4) Current or planned activities in the involved areas, and their possible effect on the subject species.

Final promulgation of the regulation on the subject species will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal, should be in writing, and should be directed to the party named in the above "ADDRESSES" section.

National Environmental Policy Act

The Service has determined that an Environmental Assessment, as defined by 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, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** of October 25, 1983 (48 FR 49244).

References Cited

Brash, A.R. 1987. The history of avian extinction and forest conversion on Puerto Rico. Biological Conservation 39:97–111.

Hartshorn, G., G. Antonii, R. Dubois, D. Harcharik, S. Heckadon, H. Newton, C. Quesada, J. Shores, and G. Staples. The Dominican Republic. Country environmental profile. A field study. JRB Associates, McLean, Virginia, 84 pp.

Lewis, L.A., and W.V. Coffey. 1985. The continuing deforestation of Haiti. Ambio 14:158–160.

Raffeaele, H.A. 1983. A guide to the birds of Puerto Rico and the Virgin Islands. Fondo Educativo Interamericano, San Juan, 255 pp.

Wetmore, A. 1916. Birds of Puerto Rico. U.S. Dept. Agriculture Bull., Number 326, 140 pp.

Wetmore, A., and B.H. Swales. 1931. The birds of Haiti and the Dominician Republic. U.S. National Museum Bull., Number 155, 483 pp.

Author

The primary author of this proposed rule is Ronald M. Novak, Office of Scientific Authority, U.S. Fish and Wildlife Service, Washington, DC. 20240 (703–358–1708 or FTS 358–1708).

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1543; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order under "BIRDS," to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
BIRDS							
*	*	*	*	*	*		
Crow, white-necked	Corvus leucoqnaphalus	U.S.A. (PR), Dominician Republic, Haiti.	Entire	E	NA	NA	
*	*	*	*	*	*		

Dated: November 6, 1989.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 89–29952 Filed 12–26–89; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 228

Public Hearing—Incidental Take of Marine Mammals in Beaufort and Chukchi Seas

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

ACTION: Notice of public hearing on proposed rule to allow an incidental take of marine mammals in the Beaufort and Chukchi Seas.

SUMMARY: The National Marine Fisheries Service is holding an additional public hearing on a proposed rule (54 FR 40703) that would allow the harassment of marine mammals during exploration for oil and gas in the Chukchi and Beaufort Seas for the next 5 years.

DATES: A hearing was held in Barrow, Alaska on November 10, 1989. An additional hearing has been scheduled for Tuesday, January 16, 1989 from 1:30 to 4 p.m. Written comments on the proposed rule are due by January 16, 1989.

ADDRESSES: Written comments on the proposed rule may be mailed to Dr. Nancy Foster, Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910. A copy of the proposed rule may be obtained by writing to this address or from the information contact listed below. The location for the Washington, DC area hearing is the Lobby Conference Room at the above address.

FOR FURTHER INFORMATION CONTACT: Margaret C. Lorenz in Washington, DC at (301) 427–2322. Notify Ms. Lorenz if you wish to testify, and please submit a written copy of your testimony at the hearing.

Dated: December 18, 1989.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs.

[FR Doc. 89–29943 Filed 12–26–89; 8:45 am]

BILLING CODE 3510–22–M

50 CFR Part 675

[Docket No. 91165–9265]

Groundfish of the Gulf of Alaska; Groundfish Fishery of the Bering Sea and Aleutian Islands Area

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

ACTION: Advance notice of proposed rulemaking.

SUMMARY: NOAA issues this advance notice of proposed rulemaking (NAPR) to make the public aware of a proposal to implement regulations that would prohibit the use of pots in the Gulf of Alaska and Bering Sea and Aleutian Islands area groundfish fisheries conducted in the exclusive economic zone off Alaska other than those that are modified or constructed to minimize the catch of Pacific halibut. This ANPR is in response to a recommendation made by the North Pacific Fishery Management Council (Council) that a rulemaking be proposed that would reduce the incidental catch of Pacific halibut in pots used in the groundfish fishery. By this action, NMFS is soliciting public comments on possible modifications of groundfish pot gear that would effectively reduce the catch of Pacific halibut.

DATE: Comments are invited through February 26, 1990.

ADDRESS: Comments on this ANPR may be sent to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802–1668.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg (Fishery Management Biologist, NMFS), 907–586–7230.

SUPPLEMENTARY INFORMATION:

Background

At its June 20–23, 1989, meeting, the Council requested that NMFS prepare a regulatory amendment that would prohibit the use of pots in the groundfish fisheries that do not reduce the catch of Pacific halibut (halibut) below levels being experienced with pots of contemporary design. The purpose underlying the Council's recommendation is to reduce halibut bycatches by requiring each groundfish pot be modified or constructed in such a way that halibut could not easily enter it. Reduced halibut bycatch would foster the Council's objective to develop management measures that encourage the use of gear that reduces the discard of fish, including prohibited species such as halibut, which are caught as bycatch in groundfish fisheries.

Discussions with management personnel in the Alaska Department of Fish and Game (ADF&G) suggest that merely partitioning the pot opening into smaller openings may accomplish this objective. Narrow openings impede entry by halibut but do not impede entry by groundfish species targeted with pot gear, such as Pacific cod. Partitioning the pot opening might be accomplished by tying strong cords vertically across the vertical plane of a pot opening in such a way that either side of the partitioned opening would be no more than about eight inches. It might also be accomplished by constructing a pot opening that has a width of no more than 8 inches, with no restrictions on the height of the opening.

Data to define the extent of the halibut bycatch problem in groundfish pot fisheries are scarce. However, data are available from crab indexing surveys using pot gear near Kodiak, Island, which were conducted in summer months during 1972–1980 by the ADF&G. This data indicate the potential problem of halibut bycatch in groundfish fisheries using pots. Total numbers of pots checked annually during these years ranged from 895 to 2,390. During these years, a total of 16,079 pots were checked, and 4,158 halibut were caught for an average catch rate of 0.26 halibut/pot.

In contrast, the ADF&G monitored four commercial pot vessels in the Kodiak area during 1987–1988. These vessels used crab pots to fish for Pacific cod. Each pot was modified in various ways to reduce the catch of halibut. Some modifications were accomplished simply by partitioning the pot opening along the vertical plane by tying heavy twine at eight inch intervals, thereby forming openings narrower than the single wide entrance. During these years, ADF&G monitored 667 pot lifts. Forty-five halibut were caught for an average catch rate of 0.07 halibut/pot. Although the catch rate by modified pots is small, the results cannot be compared to those from the king crab index surveys, because the time series and fishing locales are different.

Nonetheless, information from ADF&G personnel who are familiar with fisheries in the Kodiak area suggests that narrow pot openings significantly reduce halibut bycatch.

Use of pots is not currently common in the groundfish fisheries. The NMFS Enforcement Official database lists 32 vessel owners who have recorded use of pots on their vessel groundfish permit, but few of these vessels have fished groundfish in 1989. Pot catches of groundfish in 1989 total about 100 metric tons of groundfish, most of which was Pacific cod. About 50 pots are used on each vessel. If all vessels were fishing at the same time, 1,600 pots would be employed, and if each pot were lifted one time 112 halibut would be caught, assuming each pot was modified to reduce halibut bycatch and 0.07 halibut/pot was a typical catch rate. For comparison, 416 halibut would be caught, using a higher rate that might occur if unmodified pots were used (e.g., 0.26 halibut/pot observed during the king crab index surveys).

Although not much information exists to quantitatively assess the value of using modified pots to reduce halibut bycatches while not imposing an unreasonable cost to fishermen in terms of labor, manufacturing costs, or fishing time lost in modifying the pots, NMFS would consider ways to enforce such a gear regulation (e.g., prohibit the presence on board a vessel of any pot that did not comply with the regulation). NMFS invites comments from all interested parties on options presented to reduce the catch of halibut in pots used in the groundfish fishery. In addition, comments on any other option for reducing halibut catches by any gear type are welcomed and encouraged

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

Dated: December 20, 1989.

James E. Douglas, Jr.,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 89-29998 Filed 12-26-89; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 54, No. 247
Wednesday, December 27, 1989

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

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

Feed Grain Donations for the Lower Brule Sioux Tribe Indian Reservation in South Dakota

Pursuant to the authority set forth in section 407 of the Agricultural Act of 1949, as amended (7 U.S.C. 1427) and Executive Order 11336, I have determined that:

1. The chronic economic distress of the needy members of the Lower Brule Sioux Tribe Reservation in South Dakota has been materially increased and become acute because of severe and prolonged drought, thereby creating a serious shortage of feed and causing increased economic distress. This reservation is designated for Indian use and is utilized by members of the Lower Brule Sioux Tribe for grazing purposes.

2. The use of feed grain or products thereof made available by the Commodity Credit Corporation (CCC) for livestock feed for such needy members of the Tribe will not displace or interfere with normal marketing of agricultural commodities.

3. Based on the above determinations, I hereby declare the reservation and grazing land of the Tribe to be acute distress areas and authorize the donation of feed grain owned by the CCC to livestock owners who are determined by the Bureau of Indian Affairs, United States Department of the Interior, to be needy members of the Tribe utilizing such lands. These donations by the CCC may commence upon December 15 and shall be made available through April 30, 1990, or such other date as may be stated in a notice issued by the USDA.

Signed at Washington, DC, on December 20, 1989.

Keith D. Bjerke,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 89-29992 Filed 12-26-89; 8:45 am]
BILLING CODE 3410-05-M

Farmers Home Administration

Housing Demonstration Program

AGENCY: Farmers Home Administration, FmHA.

ACTION: Notice of Housing Demonstration Program.

SUMMARY: The Farmers Home Administration (FmHA) of the U.S. Department of Agriculture (USDA) will accept, in fiscal year 1990, proposals for a Housing Demonstration program under section 506(b) of title V of the Housing Act of 1949. However, if the proposal is authorized, loan funds may not be available until fiscal year 1991. Under section 506(b), FmHA may provide loans for innovative housing units and systems which do not meet existing published standards, rules, regulations, or policies. The intended effect is to increase to the availability of affordable housing for low-income families, through innovative designs and systsems.

FOR FURTHER INFORMATION CONTACT: Mathias J. Felber, Branch Chief, Special Programs Branch, Single Family Housing Processing Division, Farmers Home Administration, 14th and Independence Avenue, SW, Room 5334, South Building, Washington, DC 20250, telephone 202-382-1474 or Ray McCracken, Senior Loan Officer, Special Programs Branch, Single Family Housing Processing Divison, Farmers Home Administration, 14th and Independence Avenues, SW, Room 5334, South Building, Washington, DC 20250, Telephone 202-382-1486.

SUPPLEMENTARY INFORMATION: Under current standards, regulations, and policies, some low-income rural families lack sufficient incomes to qualify for loans to obtain adequate housing. Section 506(b) of title V of the Housing Act of 1949 authorizes a housing demonstration program that could result in housing that these families can afford. The Congress of the United States made two conditions: (1) That the health and safety of the population of the areas in which the demonstrations are carried out will not be adversley affected, and (2) that the aggregate expenditures for the demonstration may not exceed $10 million in any fiscal year. Proposals authorize in fiscal year 1989 may use most of these monies in fiscal year 1990.

FmHA State Directors are authorized in fiscal year 1990 to continue to accept proposed demonstration concept proposals from nonprofit organizations, profit organizations and individuals as announced in 51 FR 19240 on May 28, 1986.

The State Directors will evaluate the proposals on a first-come first-served basis. An acceptable proposal is to be sent to the National Office for the Assistant Administrator, Housing concurrence before the State Director may approve it. If the proposal is not selected, the State Director will so notify the applicant, in writing, giving specific reasons why the proposal was not selected.

The funds for the demonstration program are Section 502 funds, and are available to housing applicants that may wish to purchase an approved demonstration dwelling. However, there is no guarantee that a market exists for demonstration dwellings and applicants for such a Section 502 RH loan must be eligible for the program in all other respects.

This program activity is listed in the Catalog of Federal Domestic Assisance under No. 10.410. For the reasons set forth in Final Rule related to Notice 7 CFR 3015, subpart V (48 F.R. 29115, June 24, 1983) and FmHA Instruction 1940-J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983) this program/activity is excluded from the scope of Executive Order 12372 which requires the intergovernmental consultation with state and local officials.

All interested parties should make a written request for a proposal package. The request should be made to the State Director in the state in which the proposal will be submitted for evaluation. The government will not reimburse or be liable for any expenses incurred by respondents in the development and submission of applications. Following is a list of State Director and the addresses:

Alabama	State Director, Farmers Home Administration, Room 717, Aronov Building, 474 South Court Street, Montgomery, Alabama 36104.
Alaska	State Director, Farmers Home Administration, 634 South Bailey, Suite 103, Palmer, Alaska 99645.
Arizona	State Director, Farmers Home Administration, 201 East Indianola, Suite 275, Phoenix, Arizona 85012.
Arkansas	State Director, Farmers Home Administration, 700 W. Capitol, Post Office Box 2778, Little Rock, Arkansas 72203.
California	State Director, Farmers Home Administration, Suite F, 194 West Main Street, Woodland, California 95695–2915.
Colorado	State Director, Farmers Home Administration, Room E 100, 655 Parfet Street, Lakewood, CO 80215.
Delaware/ Maryland.	State Director, Farmers Home Administration, 2319 South DuPont Highway, Dover, Delaware 19901.
Florida	State Director, Farmers Home Administration, Room 214, Federal Building, 410 S.E. First Avenue, Gainesville, Florida 32602.
Georgia	State Director, Farmers Home Administration, Stephens Federal Building, 355 E. Hancock Street, Athens, Georgia 30610.
Hawaii	State Director, Farmers Home Administration, Room 311, Federal Building, 154 Waianuenue Avenue, Hilo, Hawaii 96720.
Idaho	State Director, Farmers Home Administration, 3232 Elder Street, Boise, Idaho 83705.
Illinois	State Director, Farmers Home Administration, Illini Plaza, Suite 103, 1817 South Neil Street, Champaign, Illinois 61820.
Indiana	State Director, Farmers Home Administration, 5975 Lakeside Blvd., Indianapolis, Indiana 46278.
Iowa	State Director, Farmers Home Administration, Room 873, Federal Building, 210 Walnut Street, Des Moines, Iowa 50309.
Kansas	State Director, Farmers Home Administration, Room 176, Federal Building, 444 South East Quincy Street, Topeka, Kansas 66683.
Kentucky	State Director, Farmers Home Administration, 333 Waller Avenue, Lexington, Kentucky 40504.
Louisiana	State Director, Farmers Home Administration, 3727 Government Street, Alexandria, Louisiana 71302.
Maine	State Director, Farmers Home Administration, USDA Office Building, Orono, Maine 04473.
Mass/Conn./RI	State Director, Farmers Home Administration, 451 West Street, Amherst, Massachusetts 01002.
Michigan	State Director, Farmers Home Administration, Room 209, 1405 South Harrison Road, East Lansing, Michigan 48823.
Minnesota	State Director, Farmers Home Administration, 410 Farm Credit Bldg., 375 Jackson Street, St. Paul, Minnesota 55101.
Mississippi	State Director, Farmers Home Administration, Suite 831, Federal Building, 100 West Capital Street, Jackson, Mississippi 39269.
Missouri	State Director, Farmers Home Administration, 555 Vandiver Drive, Columbia, Missouri 65202.
Montana	State Director, Farmers Home Administration, Room 324, Federal Building, 10 East Babcock Street, Post Office Box 850, Boxeman, Montana 59715.
Nebraska	State Director, Farmers Home Administration, Room 308, Federal Building, 100 Centennial Mall North, Lincoln, Nebraska 68508.
New Jersey	State Director, Farmers Home Administration, 100 High, Suite 100, Mount Holly, New Jersey 08060.
New Mexico	State Director, Farmers Home Administration, Room 3414, Federal Building, 517 Gold Avenue, SW., Albuquerque, New Mexico 87102.
New York	State Director, Farmers Home Administration, Room 871, James M. Hanley Federal Building, 100 S. Clinton Street, Syracuse, New York 13260.
North Carolina	State Director, Farmers Home Administration, Room 525, 310 New Bern Avenue, Raleigh, North Carolina 27601.
North Dakota	State Director, Farmers Home Administration, Room 208, Federal Building, Third and Rosser, Post Office Box 1737, Bismarck, North Dakota 58502.
Ohio	State Director, Farmers Home Administration, Room 507, Federal Building, 200 North High Street, Columbus, Ohio 43215.

Oklahoma	State Director, Farmers Home Administration, Agricultural Center Office Building, Stillwater, Oklahoma 74074.
Oregon	State Director, Farmers Home Administration, Room 1590, Federal Building, 1220 S.W. 3rd Avenue, Portland, Oregon 97204.
Pennsylvania	State Director, Farmers Home Administration, Room 730, Federal Building, Post Office Box 905, Harrisburg, Pennsylvania 17108.
Puerto Rico	State Director, Farmers Home Administration, Room 623, Federico Degetau, Federal Building, Carlos Chardon Street, Hato Rey, Puerto Rico 00918.
South Carolina	State Director, Farmers Home Administration, Strom Thurmond Federal Building, Room 1007, 1835 Assembly Street, Columbia, South Carolina 29201.
South Dakota	State Director, Farmers Home Administration, Room 308, Federal Building, 200 4th Street, SW., Huron, South Dakota 57350.
Tennessee	State Director, Farmers Home Administration, Room 538, Federal Building, 801 Broadway, Nashville, Tennessee 37203.
Texas	State Director, Farmers Home Administration, Suite 102, Federal Building, 101 South Main, Temple, Texas 76501.
Utah/Nevada	State Director, Farmers Home Administration, Room 5438, Wallace F. Bennett, Federal Building, 125 South State Street, Salt Lake City, Utah 84138.
Vermont/N.H.	State Director, Farmers Home Administration, 141 Main Street, Post Office Box 588, Montepelier, Vermont 05602.
Virginia	State Director, Farmers Home Administration, Room 8213, Federal Building, 400 North Eighth Street, Richmond, Virginia 23240.
Washington	State Director, Farmers Home Administration, Room 319, Federal Office Building, Post Office Box 2427, Wenatchee, Washington 98807.
West Virginia	State Director, Farmers Home Administration, 75 High Street, Post Office Box 678, Morgantown, West Virginia 26505.
Wisconsin	State Director, Farmers Home Administration, 1257 Main Street, Stevens Point, Wisconsin 54481.
Wyoming	State Director, Farmers Home Administration, Room 1005, Federal Building, 100 East B. Street, Casper, Wyoming 82602.

Authorities: 42 USC 1480, 7 CFR 2.23, 7 CFR 2.70.

Dated: December 4, 1989.

Neal Sox Johnson,

Acting Administrator, Farmers Home Administration.

[FR Doc. 89-29991 Filed 12-26-89; 8:45 am]

BILLING CODE 3410-07-M

ARMS CONTROL AND DISARMAMENT AGENCY

The President's General Advisory Committee on Arms Control and Disarmament; Closed Meeting

In accordance with the Federal Advisory Committee Act, as amended, the U.S. Arms Control and Disarmament Agency announces the following Presidential Committee meeting:

Name: General Advisory Committee on Arms Control and Disarmament.

Date: January 10, 1990.

Time: 8:30 a.m.

Place: State Department Building, Washington, DC.

Type of Meeting: Closed.

Contact: William C. Golbitz, Executive Director, General Advisory Committee on Arms Control and Disarmament, room 5927, Washington, DC. 20451. (202) 647-5178.

Purpose of Advisory U.S. Committee: To advise the President, the Secretary of State, and Director of the Arms Control and Disarmament Agency respecting matters affecting arms control, disarmament, and world peace.

Agenda: The Committee will review specific arms control and related treaty issues; an Executive session will be held.

Reason for Closing: The GAC members will be reviewing and discussing matters specifically required by Executive Order to be kept secret in the interest of national defense and foreign policy.

Authority To Close Meeting: The closing of this meeting is in accordance with the determination by the Director of the Arms Control and Disarmament Agency dated November 27, 1989, made pursuant to the provisions of section 10(d) of the Federal Advisory Committee Act as amended.

William J. Montgomery,

Committee Management Officer.

[FR Doc. 89-29912 Filed 12-26-89; 8:45 am]

BILLING CODE 6820-32-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[A-29-89; Order No. 459]

Approval for Manufacture of Radios for Export Foreign-Trade Zone 150, El Paso, Texas

Pursuant to its authority under the Foreign-Trade Zones (FTZ) Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

The request of the WestPort Economic Development Corporation (7/25/89), grantee of FTZ 150, El Paso, Texas, on behalf of Mantor Electronics, Inc., for authority to manufacture automobile radios under zone procedures for export is approved.

This authority is granted subject to all other conditions in Board Order 386 (53 FR 28030, 7/26/88), which authorized establishment of Foreign-Trade Zone 150.

Signed at Washington, DC, this 15th day of December, 1989.

Foreign-Trade Zones Board.

Eric I. Garfinkel,

Assistant Secretary of Commerce for Import Administration Chairman, Committee of Alternates.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 89-29953 Filed 12-26-89; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-475-401]

Preliminary Results of Antidumping Duty Administrative Review: Certain Valves and Connections, of Brass, for Use in Fire Protection Systems From Italy

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: In response to requests from Rubinetteria A. Giacomini, S.p.A. ("Giacomini"), respondent in the case, and Badger-Powhatan, petitioner in the case, the Department of Commerce ("the Department") is conducting an administrative review of the antidumping duty order on certain valves and connections, of brass, for use in fire protection systems from Italy. The review covers Giacomini, a manufacturer/exporter of this merchandise to the United States, and the period March 1, 1988 through February 28, 1989.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: December 27, 1989.

FOR FURTHER INFORMATION CONTACT: Mark Wells or Bradford Ward, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 377-3798 or (202) 377-5288, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 29, 1989, the Department published in the **Federal Register** (54 FR 40155) the final results of its second administrative review of the antidumping duty order on certain valves and connections, of brass, for use in fire protection systems from Italy (50 FR 8354). No request for an administrative review for the third period was received. In accordance with § 353.22 of the Commerce Regulations, the Department received requests from both petitioner and respondent to conduct a fourth administrative review. We published in the **Federal Register** a notice of initiation of antidumping duty administrative review on April 28, 1989 (54 FR 18322). The Department is conducting the administrative review in accordance with section 751 of the Tariff Act of 1930, as amended ("the Act").

Scope of Review

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule ("HTS"), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS sub-heading.

Imports covered by this review are shipments of certain valves and connections, of brass, suitable for use in fire protection systems from Italy which are provided for in the *Tariff Schedules of the United States Annotated* (TSUSA) item numbers 680.1420 and 680.1440. The merchandise is currently classifiable under HTS sub-headings 8481.80.1050 and 8481.80.1070. The HTS sub-headings are provided for convenience and Customs purposes. Our written description of the products subject to this review remains dispositive.

This review covers one manufacturer/exporter of certain valves and connections, of brass, for use in fire protection systems to the United States and the period March 1, 1988 through February 28, 1989.

United States Price

In calculating United States price the Department used purchase price as defined in section 772(b) of the Act. Purchase price was based on the packed, C&F, CIF or delivered price, duty excluded, to unrelated distributors in the United States. Where applicable, we made adjustments for foreign inland freight, ocean freight, marine insurance, brokerage and handling charges, and U.S. inland freight.

Foreign Market Value

Giacomini, the only respondent, did not make any sales to Italian customers during the review period. Consequently, in calculating foreign market value, the Department used either sales to the third country, Canada, or constructed value, as defined in section 773 of the Act.

Third country sales price was based on the packed, FOB price to unrelated distributors in the third country market, Canada. In cases in which there were no Canadian sales of the subject merchandise, we calculated foreign market value based on constructed value.

When third country prices were used, we made deductions, where appropriate, for foreign inland freight. We deducted third country packing costs and added U.S. packing costs.

We made circumstances of sale adjustments for differences in credit terms and commissions pursuant to § 353.56 of the Department's regulations.

Where appropriate, we made further adjustments to the third country price to account for differences in the physical characteristics of the merchandise in accordance with section 353.57 of the Department's regulations.

We calculated constructed value in accordance with section 773(e) of the Act. For material and direct labor costs the Department used the respondent's submitted amounts. For factory overhead the Department increased the submitted amounts to account for factory supervisors' salary expenses. These expenses had been reported as general expenses by Giacomini in its questionnaire response.

General and administrative expenses were adjusted to remove income taxes. The remaining general and administrative expenses were then allocated to each model based on the calculated cost of sales. In adding imputed credit expense to the constructed value, the interest expense as reflected on Giacomini's books was reduced by the portion of expenses which relate to these activities to avoid double-counting.

Indirect selling expenses were included in the submitted amount for general and administrative expenses. Accordingly, these indirect expenses were allocated to each product based on the calculated cost of sales.

We made additions for direct selling expenses, profit and U.S. packing to arrive at a per product constructed value. For general and administrative expenses and profit, the Department used actual amounts because these amounts exceeded the statutory minimum percentages of 10 percent for general and administrative expenses and 8 percent for profit.

Currency Conversion

In accordance with § 353.60 of the Department's regulations, we used the official exchange rates in effect on the appropriate dates for determining foreign market value. All currency

conversions were made at the rates certified by the Federal Reserve Bank.

Preliminary Results of the Review

As a result of our review, we preliminarily determine the margin to be:

Manufacturer/Exporter	Time period	Margin (percent)
Rubinetteria A. Giacomini, S.p.A.	03/01/88–02/28/89.	4.01

The Department will issue appraisement instructions directly to the Customs Service upon completion of this administrative review. The following deposit requirements will be effective upon publication of our final results of this administrative review for all shipments of certain valves and connections, of brass, for use in fire protection systems from Italy entered, or withdrawn from warehouse, for consumption on or after that publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for any shipments of this merchandise manufactured or exported by the remaining known manufacturers/exporters not covered in this review will continue to be at the rate published in the final results of the second administrative review for this firm (54 FR 40155, September 29, 1989); (2) the cash deposit rate for Giacomini will be that established in the final results of this administrative review; and (3) the cash deposit rate for any future entries of this merchandise from a new producer and/or exporter, not covered in this review or any other prior review, whose first shipments occurred after February 28, 1989 and who is unrelated to the reviewed firm or any previously reviewed firm, will be the same as the rate established for Giacomini in the final results of this review.

Public Comment

In accordance with § 353.38 of the Departments' regulations, case briefs or any other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than 30 days after the date of publication of this notice in the **Federal Register**, and rebuttal briefs no later than 37 days after the date of publication. In accordance with § 353.38(b) of the Department's regulations, we will hold a public hearing, if requested, to afford interested parties and opportunity to comment on arguments raised in case or rebuttal briefs. Such hearing will be held on February 1, 1990 at 9:30 a.m., at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue, NW., Washington DC 20230. Interested parties who wish to participate in the hearing must submit a written request to the Assistant Secretary for Import Administration, room B–099, at the above address within ten days of the publication of this notice. Requests should contain: (1) The party's name, address and the telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed. In accordance with § 353.38(b) of the Department's regulations, an interested party may make an oral presentation only on arguments included in its briefs.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and § 353.22(c)(5) of the Department's regulations.

Dated: December 18, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89–29930 Filed 12–26–89; 8:45 am]

BILLING CODE 3510–DS–M

[A–580–803]

Final Determination of Sales at Less Than Fair Value: Certain Small Business Telephone Systems and Subassemblies Thereof From Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: We determine that certain small business telephone systems and subassemblies thereof (SBTS) from Korea are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to continue to suspend liquidation of all entries of SBTS from Korea as described in the "Continuation of Suspension of Liquidation" section of this notice. The ITC will determine within 45 days of the publication of this notice whether these imports materially injure, or threaten material injury to, the U.S. industry.

EFFECTIVE DATE: December 27, 1989.

FOR FURTHER INFORMATION CONTACT: Contact Nancy Saeed, Brad Hess, Joel Fischl or Tracey Oakes, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377–1777, 377–3003, or 377–3174 respectivley.

SUPPLEMENTARY INFORMATION:

Final Determination

We determine that SBTS from Korea are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a) (the Act). The estimated weight-average dumping margins are shown in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

On July 26, 1989, the Department issued an affirmative preliminary determination (54 FR 31980, August 3, 1989). The following events have occurred subsequent to publication of the preliminary determination.

Verification of the questionnaire responses of Samsung Electronics Co., Ltd. and Samsung Semiconductor & Telecommunications Co., Ltd., (Samsung) and Goldstar Telecommunications Co., Ltd. (GST) was conducted in Korea from August 21 to September 8, 1989. The exporter's sales price (ESP) verification for Goldstar was conducted in Scottsdale, Arizona on September 25–26, 1989, and in Darien, Connecticut on October 3, 9, and 10, 1989.

Interested parties submitted comments for the record in their case briefs dated November 9, 1989, and in their rebuttal briefs dated November 14, 1989. A public hearing was held on November 16, 1989.

Period of Investigation

The period of investigation (POI) is July 1, 1988, through December 31, 1988.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the *harmonized Tariff Schedule* (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after this date is now classified solely according to the appropriate HTS item number (s). The HTS Item numbers are provided for convenience and U.S. Customs Service purposes. The written description remains dispositive.

The products covered by this investigation are certain small business telephone systems and subassemblies

thereof, currently classifiable under *HTS* item numbers 8517.30.2000, 8517.30.2500, 8517.30.3000, 8517.10.0020, 8517.10.0040, 8517.10.0050, 8517.10.0070, 8517.10.0080, 8517.90.1000, 8517.90.1500, 8517.90.3000, 8518.30.1000, 8504.40.0004, 8504.40.0008, 8504.40.0010, 8517.81.0010, 8517.81.0020, 8517.90.4000, and 8504.40.0015. Prior to January 1, 1989, such merchandise was classifiable under items 684.5710, 684.5720, 684.5730, 684.5805, 684.5810, 684.5815, 684.5825, 684.5830, 682.6051, and 682.6053 of the *Tariff Schedules of the United States Annotated* (TSUSA).

Certain small business telephone systems and subassemblies thereof are telephone systems, whether complete or incomplete, assembled or unassembled, with intercom or internal calling capability and total non-blocking port capacities of between two and 256 ports, and discrete subassemblies designed for use in such systems. A subassembly is "designed" for use in a small business telephone system if it functions to its full capability only when operated as part of a small business telephone system. These subassemblies are defined as follows:

(1) Telephone sets and consoles, consisting of proporietary, corded telephone sets or consoles. A console has the ability to perform certain functions including: answer all lines in the system; monitor the status of other phone sets; and transfer calls. The term "telephone sets and consoles" is defined to include any combination of two or more of the following items, when imported or shipped in the same container, with or without additional apparatus: housing; hand set; cord (line or hand set); power supply; telephone set circuit cards; console circuit cards.

(2) Control and switching equipment, whether denominated as a key service unit, control unit, or cabinet/switch. "Control and switching equipment" is defined to include the units described in the preceding sentence which consist of one or more circuit cards or modules (including backplane circuit cards) and one or more of the following items, when imported or shipped in the same container as the circuit cards or modules, with or without additional apparatus: connectors to accept circuit cards or modules; building wiring.

(3) Circuit cards and modules, including power supplies. These may be incorporated into control and switching equipment or telephone sets and consoles, or they may be imported or shipped separately. A power supply converts or divides input power of not more than 2400 watts into output power of not more than 1800 watts supplying DC power of approximately 5 volts, 24 volts, and 48 volts, as well as 90 volt AC ringing capability.

The following merchandise has been excluded from this investigation: (1) Nonproprietary industry-standard ("tip/ring") telephone sets and other subassemblies that are not specifically designed for use in a covered system, even though a system may be adapted to use such nonproprietary equipment to provide some system functions; (2) telephone answering machines or facsimile machines integrated with telephone sets; and (3) adjunct software used on external data processing equipment.

We note that a number of ambiguities existed in the scope language previously published in the Notice of Initiation with regard to the definition of subassemblies. Therefore, in our preliminary determination, we clarified the language describing the subassemblies under investigation.

The Department continues to receive numerous inquiries regarding the inclusion of dual use subassemblies within the scope of this investigation. As noted in the preliminary determination notice, the Department defines dual use subassemblies as those subassemblies that function to their full capability when operated as part of a large business telephone system as well as a small business telephone system. Because dual use subassemblies by definition are not subassemblies "designed" for use in small business telephone systems, dual use subassemblies are excluded from the scope of the investigation.

Such or Similar Comparisons

For all respondent companies, pursuant to section 771(16)(C) of the Act, we established four categories of "such or similar" merchandise consisting of: (a) Control and switching equipment; (b) circuit cards and modules; (c) telephone sets and consoles; and (d) complete small business telephone systems ("systems").

Product comparisons were made using criteria which are ranked in order of importance. For control and switching equipment we used the following criteria: (1) Port capacity based on minimum operational configuration; (2) type of central microprocessor; and (3) read-only memory (ROM) size. For circuit cards and modules we considered: (1) Functions; and (2) physical appearance. For telephone sets and consoles we considered: (1) Number of buttons (regardless of function) excluding dialpad; and (2) number of individual visual indicators. For complete telephone systems, we made comparisons on the basis of the similarity of subassemblies, using the criteria described in the preceding sentences.

When there was no identical product in the home or third country market with which to compare a product imported into the United States, the most similar product was compared on the basis of the characteristics described above. We made adjustments for differences in the physical characteristics of the merchandise in accordance with section 773(a)(4)(C) of the Act. Consistent with our normal practice, when adjustments for differences in the merchandise proved to be substantial, we used constructed value (CV). In this case, we determined that an adjustment greater than 20 percent of the cost of manufacturing (COM) of the U.S. model is substantial.

In order to determine whether there were sufficient sales of SBTS in the home market to serve as the basis for calculating foreign market value (FMV), we compared the volume of home market sales within each such or similar category to the volume of third country sales within each respective such or similar category, in accordance with section 773(a)(1) of the Act.

Samsung had no sales of systems in the United States during the POI. We determined that there were sufficient home market sales to unrelated customers for each of the other such or similar categories.

For GST, we determined that the home market was viable as compared to third country sales for the following such or similar categories: control and switching equipment; telephone sets and consoles; and circuit cards and modules. As noted in comment 5 of the Goldstar issues section of this notice, however, we used third country sales for comparisons of circuit cards and modules. We also note that for each of the three such or similar categories with viable home market, we used CV in situations where we could not match U.S. sales to home market or third country sales of similar of identical products. GST had no third country sales of systems and a comparison of home market sales to U.S. sales did not provide an adequate basis to make comparisons. Therefore, we requested that GST report CV data for systems and we have used this data as the basis for FMV.

For circuit cards and modules, we determined that sales to third countries were the most appropriate basis for calculating FMV because the merchandise sold in third countries was the most comparable to merchandise sold in the United States, and because

the volume of sales of identical or similar merchandise to third countries constituted a sufficient basis for our comparisons.

Fair Value Comparisons

To determine whether sales of SBTS from Korea to the United States were made at less than fair value, we compared the U.S. price to the FMV, as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

For Samsung, we based the U.S. price on purchase price in accordance with section 772(b) of the Act because all sales were made directly to unrelated parties prior to importation into the United States. For GST, we based the U.S. price on exporter's sales price (ESP), in accordance with section 772(c) of the Act, because in each case the sale to the first unrelated purchaser took place after importation into the United States.

Samsung

We calculated purchase price based on packed, f.o.b. Korean port prices to unrelated customers in the United States. We made deductions, where appropriate, for inland freight, wharfage, container freight station fees, and customs clearance fees. We added rebated duties and uncollected taxes pursuant to section 772(d) (1)(B) and (C) of the Act.

GST

We calculated ESP based on packed, delivered prices in the United States. We made deductions, where appropriate, for brokerage, wharfage, inland freight in Korea, stuffing charges, ocean freight, marine insurance, U.S. customs duty, customs brokerage fees, U.S. inland freight, and inland insurance. In accordance with section 772(e)(2) of the Act, we made additional deductions, where appropriate, for bad debt expenses, installation labor expenses, warranty expenses, expenses for promotional materials, technical service expenses, credit expenses, cooperative advertising, commissions, and indirect selling expenses. We deducted promotional material expenses as indirect selling expenses for sales other than sales to original equipment manufacturers (OEM's), and as direct selling expenses for OEM sales. We treated the portion of the claimed technical services expenses not related to specific sales as indirect selling expenses. We adjusted the reported amounts for installation labor, corporate overhead, and corporate general and administrative ("G&A") in accordance with adjustments noted in our verification reports.

In accordance with section 772 (e)(3) of the Act, we deducted value added resulting from assembly performed on the imported merchandise after its importation. This value added included two parts: the process of assembly (also referred to as "further manufacturing"); and the portion of total profit attributable to further manufacturing (also referred to as "allocated profit"). For purposes of this investigation, we determined that, in addition to the cost of the installation parts and materials, further manufacturing included the proportions of installation labor, installation overhead, corporate overhead, and corporate G&A expenses attributable to the installation parts and materials. The allocated profit included two components: The portion of total profit attributable to further manufacturing; and the profit attributable to the portion of total selling, G&A expenses allocated to further manufacturing as explained above.

In accordance with section 772(d)(1) (B) and (C) of the Act, we made adjustments to the ESP as described in the foreign market value section of this notice. For comparisons to home market and third country sales, we added uncollected import duties to the ESP. For comparisons to home market sales we added uncollected or rebated taxes to the ESP. Although the statute is ambiguous with respect to the treatment of indirect taxes when, as here, home market sales are reported on a tax-exclusive basis, we added uncollected taxes pursuant to section 772(d)(1)(C) of the Act.

Foreign Market Value

In accordance with section 773 of the Act, we calculated FMV for Samsung based on home market sales prices or CV, as appropriate.

For GST, we calculated FMV based on home market sales prices, third country sales prices, and CV, as appropriate, in accordance with section 773 of the Act.

Samsung

For Samsung, we calculated FMV based on packed, delivered prices to unrelated customers in the home market.

We made deductions, where appropriate, for inland insurance, rebates, and discounts. We deducted home market packing costs from the FMV and added U.S. packing costs. We made circumstance of sale adjustments, where appropriate, for differences in credit terms, warranty expenses, advertising expenses, postage fees and foreign exchange fees, pursuant to section 773(a)(4)(B) of the Act. We did not allow a deduction for home market inland freight because it could not be verified. We did not consider the reported home market technical service expense to be a direct selling expense because it was of a promotional nature and could not be tied to specific sales. We also did not allow a portion of the claimed home market warranty expense because it could not be segregated between products under warranty and those not under warranty.

We made a circumstance of sale adjustment to eliminate any difference in VAT between the U.S. and home market. We computed the VAT adjustment based on a U.S. price net of all charges incurred in the United States and net of all movement charges incurred between the Korean port and the United States.

Where appropriate, we made further adjustments to the home market price to account for differences in the physical characteristics of the merchandise, in accordance with § 353.57 of the Department's regulations. For sales to one customer, we used best information available for difference in merchandise adjustments because we were unable to identify and adjust for the reporting of different costs for identical parts used in both the home market and U.S. models. (See the Department's response to Comment 1 of the Samsung issue section of this notice). As best information available, we adjusted the reported difference in merchandise adjustments for the sales to this customer by the weighted average percentage change of the difference in merchandise adjustments applicable to those other sales for which the Department was able to correct different costs reported for identical parts used in both the home market and U.S. models.

GST

When sales in the home market were used, we calculated FMV based on packed, delivered, or ex-works prices to unrelated customers. We deducted home market packing costs from the FMV and added U.S. packing costs. We made deductions, where appropriate, for inland freight, cash discounts, volume rebates, product rebates and exchange rebates. We made circumstance of sale adjustments, where appropriate, for differences in credit terms, and for advertising expenses, and warranty expenses. We also allowed a deduction for home market indirect selling expenses, such as warrant expenses, inventory carrying costs and other

indirect selling expenses. This deduction for indirect selling expenses was capped by the amount of indirect sellng expenses incurred in the U.S. market, in accordance with § 353.56 (b) of the Department's regulations.

We made a circumstance of sale adjustment to eliminate any difference in VAT between the U.S. and home market. We computed the VAT adjustment based on a U.S. price net of all charges incurred in the United States and net of all movement charges incurred between the Korean port and the United States. We did not use the VAT adjustment reported by GST because it was based on the home market model chosen by GST as the most similar comparison to the U.S. model, rather than on the U.S. model.

Where appropriate, we made further adjustments to the home market price to account for differences in the physical characteristics of the merchandise, in accordance with section 353.57 of the Department's regulations.

We calculated FMV in the third country markets based on packed, delivered, or ex-works prices to unrelated customers. We made deductions, where appropriate, for wharfage, ocean freight, inland freight in the third countries, brokerage, stuffing and marine insurance. We deducted the third country packing costs from the FMV and added U.S. packing costs. We made circumstance of sale adjustments, where appropriate, for credit expenses. We added duty rebates to the third country price. We allowed a deduction for third country commissions and other indirect selling expenses. We capped the amount deducted for indirect selling expenses by the amount of indirect selling expenses incurred on sales in the U.S. market, in accordance with § 353.56 (b) (2) of our regulations.

Where appropriate, we made further adjustments to the third country price to account for differences in the physical characteristics of the merchandise, in accordance with § 353.57 of the Department's regulations.

Constructed Value

For those products sold in the United States for which the difference in merchandise adjustment between the reported home market or third country product and the U.S. product was substantial, as explained previously in the "Such or Similar Comparisons" section of this notice, we calculated FMV based on CV in accordance with section 773(e) of the Act.

Samsung

We calculated the FMV based on CV for Samsung in accordance with section 773(e) of the Act. The CV includes the cost of materials and fabrication of the merchandise exported to the U.S., plus general expenses, profit and packing. In all cases, we used actual amounts for general expenses because these exceeded the statutory minimum amount of ten percent of the cost of materials and fabrication. For profit, we applied the statutory minimum amount of eight percent of the combined cost of materials, fabrication and general expenses, because actual profit amounts were less than this figure. We reduced the reported finance expense to account for the interest portion already included in the imputed credit and finished goods inventory carrying costs. We used the CVs submitted by the respondent, except in those instances when the costs were not appropriately quantified or valued. To develop the ration used to calculate the general and finance expenses for the subject merchandise, we used the general and finance expenses of Samsung as a percentage of the cost of Samsung's sales.

Samsung had used a ration based primarily on the relevant business segment's general and finance expenses instead of total corporate general and finance expenses. In addition, gains and losses on the disposal of fixed assets, write-off of research and development (R&D) amortization expenses, special depreciation, and other losses that were incurred by Samsung but not included in the reported CVs were allocated to the subject products as non-specific operating expenses in the computed general expenses. Dividend income, foreign currency translation/transaction gains or losses, or amortizations thereof, sales discounts, charges earned, rental income, and gains or losses on the disposition of marketable securities included in Samsung's submitted general expense calculations were not identified as specific costs of producing the subject merchandise. Accordingly, these items were not included in the Department's calculation of Samsung's general or finance expenses. We increased Samsung's reported costs of manufacturing (Material, labor and factory overhead) to reflect acutal costs recorded by Samsung for the exported merchandise.

From FMV we deducted home market direct selling expenses and added U.S. direct selling expenses. We deducted home market packing costs and added U.S. packing costs.

GST

We calculated the FMV based on CV for GST in accordance with section 773(e) of the Act,. The CV includes the cost of materials and fabrication for the exported merchandise, plus general expenses, profit and packing. We used actual amounts for general expenses because these exceeded the statutory minimum amount of ten percent of the cost of materials and fabrication. We used actual profit because GST's reported profit exceeded the statutory minimum amount of eight percent of the combined cost of materials, fabrication and general expenses. We reduced the reported finance expenses to account for the interest portion already included in the imputed credit and finished goods inventory carrying costs. The COM values submitted by GST did not include value added tax collected on the completed product. We based our CV calculations on these COM values. To develop the ratio used to calculate the general and finance expenses for the subject merchandise, we used the general and finance expenses of GST as a percentage of the cost of GST's sales. We did not use the general and finance expenses as reported by GST because GST had used a ratio based primarily on its "Keyphone" business segment instead of total corporate general and finance expenses. Foreign currency translation/transaction gains or losses, or amortization thereof, and interest earned on long-term investments in GST's submitted general expense calculations were not identified as specific costs of producing the subject merchandise. Accordingly, these items were not included in our calculation of GST's general or finance expenses.

In accordance with § 353.41(e)(3) of our regulations, we made the following adjustments to data reported by the related importer, Executive Information Systems, Inc. (EIS), which we then used in our calculations of value added in the United States: Installation labor was calculated based on paid labor wages and on payments to outside contractors for installation, as a percentage of corporate sales; corporate overhead was increased to include interest expense based on financial statement interest during the POI; a portion of general and administrative expense was reallocated to further manufacturing cost. We reduced the interest expense to account for the interest portion included in the imputed credit and finished goods inventory carrying costs.

From FMV we deducted home market direct selling expenses. We also deducted home market indirect selling expenses up to the amount of indirect selling expenses incurred in the U.S. market, in accordance with § 353.56(b) of the Department's regulations. We deducted home market packing costs

from the FMV and added U.S. packing costs.

Currency Conversion

In accordance with § 353.60 of the Department's regulations, we used the official exchange rates in effect on the appropriate dates for determining FMV.

Verification

Except where noted, we verified all information used in making our final determination in accordance with section 776(b) of the Act. We used standard verification procedures, including examination of relevant accounting records and original source documents of each of the respondents. Our verification results are outlined in the public versions of the verification reports which are on file in the Central Records Unit (room B-099) of the Main Commerce Building.

Interested Party Comments

General Issues

Comment 1

Petitioner disagrees with the adoption of the 20 percent difference in merchandise test that the Department used to determine the reasonableness of comparisons between home market and U.S. products. Petitioner argues againt the application of the 20 percent test because it: (1) Is not the most appropriate method to determine the reasonableness of a comparison; (2) is arbitrary; and (3) allows for manipulation to avoid otherwise proper home market comparisons. Specifically, petitioner states that the differences in production costs between products do not accurately reflect the physical differences between comparison products and the commercial substitutability of different products. Petitioner suggests that the Department should use model matches exceeding 20 percent when the comparison model differs only in the configuration of a particular model.

DOC Position

We disagree with the petitioner. Section 771(16)(C)(iii) of the Act confers upon the Department discretionary authority to identify similar merchandise which may reasonably be compared with the subject merchandise. To identify reasonable comparison products in this case, the Department adopted a two-prong approach which limited product comparisons to those comparisons: (1) Which satisfied all technical requirements as described in the "such or similar merchandise" section of this notice; and (2) for which the difference in merchandise adjustment was less than or equal to 20 percent of the COM of the U.S. merchandise ("20 percent guideline").

We found it necessary to adopt a 20 percent guideline as a second prong of our product comparison analysis in this case in order to minimize the effect of certain distortions created in our calculations caused by making a difference in merchandise adjustment. It is our current practice to use CV when differences in the merchandise prove to be substantial in order to minimize distortions and unfair results that follow from the inclusion in the home market price of that portion of selling, general and administrative (SG&A) expenses and profit attributable to the amount of the difference in merchandise adjustment. *See Certain Internal-Combustion, Industrial Forklift Trucks from Japan*, 53 FR 12552, 12567, (April 15, 1988). Essentially, the goal is to balance the statutory objective of a fair, precise apples-to-apples comparison, *see Smith-Corona Group, SCM Corp.* v. *United States*, 713 F.2d 1568, *cert. denied*, 465 U.S. 1022 (1983), with the need to complete antidumping investigations within the statutory deadlines. Through the application of the 20 percent guideline, the Department sought to limit to an acceptable level the extent to which the overstatement (or understatement) of SG&A expenses and profit distorts the final margin. Thus, the Department found that selection of comparison products using both criteria in the preceding paragraph resulted in reasonable and fair comparisons.

Comment 2

Petitioner argues that model comparisons submitted by GST and Samsung are incorrect because these comparisons are based on difference in merchandise adjustments that were overstated. Petitioner contends that there may have been more similar comparisons that were originally rejected because difference in merchandise adjustments exceeded 20 percent. Petitioner further argues that because Samsung did not consider comparisons with difference in merchandise adjustments greater than 20 percent, the Department does not have the information to ascertain whether the correct model was chosen.

Both Samsung and GST submit that the Department should follow their recommendations for model comparisons because they based their comparisons on the Department's questionnaire instructions. Samsung additionally contends that it did not rely solely on the 20 percent difference in merchandise limit. In cases where it could not find a match within the 20 percent guideline, it reported both constructed value and the most similar comparison with a difference in merchandise adjustment of 35 percent or less.

DOC Position

We based our selections on our own analysis of respondents' proposed model comparisons and on revisions made to the difference in merchandise adjustments. In determining product comparisons we first considered products that had similar technical specifications according to the criteria outlined in our questionnaire. If there were no technically similar models with difference in merchandise adjustments of 20 percent or less, we used CV for FMV.

For GST, we selected a small number of comparisons that differed from those recommended by GST. For Samsung, we also selected more appropriate matches for a few model comparisons based on our analysis of the proposed model comparisons. Although we did not have revised difference in merchandise information for every possible model match, we have determined that respondents followed our questonnaire instructions in choosing the matches and did not simply choose the most favorable comparisons. We also found several cases where the chosen comparisons were the most similar regardless of the revised difference in merchandise calculations. Therefore, we have accepted respondents' model matches except in the few instances where we found a more appropriate match.

Comment 3

Petitioner argues that Samsung and GST made incorrect adjustments for value-added tax ("VAT") in their questonnaire responses. Both respondents pay a 10 percent VAT for SBTS sold in Korea, but do not pay such a tax on exports to the United States. Petitioner contends that 19 U.S.C. 1677a(d)(1)(C) and decisions of the Court of International Trade require that U.S. price be adjusted by the amount of VAT that would have been paid on a product sold at the pre-tax U.S. price in Korea, but only to the extent that VAT is added to or included in the price of SBTS sold in Korea. In addition, petitioner argues that no circumstance of sale adjustment should be made for differences in the VAT amounts for home market and U.S. market price calculations.

Respondents disagree with petitioner, and argue that the Department should

apply the same methodology employed in its preliminary determination.

DOC Position

In our final determination, we added to U.S. price a tax adjustment calculated by multiplying the Korean VAT rate times the tax-exclusive U.S. price. This is the same amount that would have been paid on a product sold at the pre-tax U.S. price in Korea. Consistent with past practice, we made circumstance of sale adjustments to offset any differences between the VAT in Korea and the imputed VAT on U.S. sales in order to avoid artificially inflating or deflating margins.

In addition, consistent with our past practice, we placed no limitation on the addition to U.S. price based on the incidence of the VAT in Korea. We do not agree that the statute requires a measurement of tax incidences in Korea, and have neither attempted to measure, nor made any assumptions about, the incidence of the VAT in Korea.

Comment 4

Petitioner argues that it has not been able to comment meaningfully on respondents' questionnaire responses because both CST and Samsung refused to disclose in either the public or administrative protective order (APO) versions of their responses the names of their major original equipment manufacturer (OEM) customers or information about their products that might identify those customers. As a result, petitioner submits that the Department cannot rely on respondents' data and must instead base its final determination on the best information available.

DOC Position

We disagree with petitioner. Specifically, we do not agree with petitioner's contention that respondents' submissions should be rejected because of a lack of access to a narrow category of proprietary information, and that the Department should use the best information available for its final determination. During the investigation, the Department informed all parties that respondents would not have to disclose customer names or respondents would not have to disclose customer names or identifiers in the APO and public versions of their submissions. Instead, for the APO versions, they would have to provide complete model numbers when there were no customer indentifiers in the model numbers, and a substitute prefix when there was a coustomer identifier in the model numbers. With regard to the public summaries, the Department determined that respondents should provide substitute model numbers that were consistent with the APO numbers. With the exception of customer or supplier names or identifiers, petitioner's counsel received access to all business proprietary information, including the computer tapes, under the APO issued by the Department. Although petitioner has continued to complain about respondents' APO and public summaries, the Department has found no reason to reconsider the issue. Any objections to the Department's decision not to release the information in question should have been filed with the Court of International Trade within ten days of that decision. 19 U.S.C. 1677f(c)(2).

Comment 5

Petitioner contends that because the responses of both Samsung and GST are generally incomplete and contain errors, the Department cannot rely on the information submitted by respondents in making its final determination. Petitioner suggests that the Department use information in the petition as the best information available.

DOC Position

We disagree with petitioner. Our verifications of both questionnaire responses revealed only minor clerical errors. Given the volume of data sought in antidumping investigations, it is neither uncommon nor unexpected for minor errors or omissions to appear. Moreover, both respondents have been cooperative and forthcoming in providing data as requested. The omissions and errors in this case are not of a type or magnitude that would cause the Department to disregard completely respondents' information and use petitioner's information instead. *See, e.g., Porcelain-on-Steel Cooking Ware from Taiwan,* 51 FR 36425 (October 10, 1986); and *Granite Products from Italy,* 53 FR 27187 (July 19, 1988). However, for certain items of information that we are not satisfied were fully verified, the Department did use the best information available instead of respondents' information.

Samsung Issues

Comment 1

Petitioner contends that the Department should reject Samsung's difference in merchandise adjustment as originally reported because the amount reported was overstated. Petitioner argues that the difference in merchandise adjustment was overstated for the following reasons: (1) Samsung erroneously included costs associated with identical parts; (2) Samsung erroneously included costs on identical parts arising from differences in timing or procurement methods; (3) Samsung erroneously excluded duties related to identical components from the difference in merchandise adjustment; (4) Samsung erroneously reduced the denominator of the difference in merchandise precentage (the ratio of the difference in merchandise adjustment to the total U.S. COM) by the amount of duty paid on identical parts; and (5) Samsung reported material cost for home market models inclusive of duties paid on parts, but reported material costs for U.S. models net of duties paid on parts. Petitioner also argues that the Department cannot use the revised submission becasue inconsistencies exist between the COM charts and the computer tape. Samsung argues that the difference in merchandise adjustments were calculated correctly and that the components in question with identical part numbers were physically different. With regard to the COM charts, Samsung states that the revised data is the same as previously submitted, but in a different format.

DOC Position

At verification, the Department found that Samsung had incorrectly included costs related to indentical parts in the calculation of the difference in merchandise adjustment. Although we requested that Samsung substantiate the claimed physical differences for various identical part numbers, Samsung was unable to do so for the majority of these part numbers. Based on the limited information provided by Samsung in support of its argument, it appears that there may be some instances where components with indentical part numbers have minimal physical differences. However, there also appears to be instances where the cost differences are due to manufacturing rather than physical differences. Our regulations do not permit an adjustment for manufacturing differences.

To remedy this situation without discarding all data, we requested that Samsung eliminate the identical parts found in the difference in merchandise adjustment for each model match. We reviewed the revised data submitted by Samsung in response to our request. For comparison models for which identical part numbers corresponded to identical parts, the Department was able to utilize original data to delete costs associated with identical parts. Therefore, these corrections did not require utilization of new and unverified data. For those model comparisons, however, for which

identical parts were assigned part numbers under a different parts numbering system not allowing indentification of identical parts, the Department used the best information available as explained in the "U.S. price" section of this notice.

The Department rejected Samsung's recalculation of rebated local duties on identical parts and used best information available because the amounts attributable to the duty incurred on the identical parts constituted new and unverified information. Best information, in this instance, was determined to be the amount of rebated local duties for the complete models as provided in Samsung's original response. To calculate the difference in merchandise adjustment percentages, we used the total U.S. COM. We did not use Samsung's revised response for the U.S. COM because Samsung incorrectly reported US COM exclusive of duty on identical parts.

The Department finds that petitioner's assertion that Samsung failed to adjust for duties incurred on material costs for home market and U.S. models is incorrect. To compensate for the duties included in the COM on the home market models, Samsung added rebated local duties to the U.S. COM.

Regarding petitioner's allegation that there are inconsistencies between Samsung's difference in merchandise charts and its computer tape, we have found that the difference is due to packing labor which was correctly adjusted in the computer tape but inadvertently was not deducted from the difference in merchandise charts.

Therefore, we have used Samsung's revised tape except as noted above.

Comment 2

Petitioner argues that the Department should disallow as direct selling expenses amounts for the cost of seminars conducted by Samsung for its home market customers, because the expenses included were of a general promotional nature rather than actual technical services provided for specific customers in connection with specific sales.

Samsung argues that these expenses should be allowed as direct expenses because the seminars addressed specific problems that have been identified with the products under investigation and are not general promotional expenses.

DOC Position

We agree with petitioner that these expenses were of a promotional nature. Although these expenses were incurred for the products under investigation, they cannot be tied to specific sales. Therefore, we have disallowed these expenses as direct selling expenses.

Comment 3

Petitioner argues that the Department should disallow part of the claimed warranty expenses because Samsung could not allocate these expenses between products under warranty and those not under warranty. Furthermore, petitioner contends that several of the items claimed as warranty expenses do not constitute warranty expenses and could not be verified.

Samsung argues that the Department should at a minimum allow the portion of warranty expenses that was verified as a direct expense. For those warranty expenses that could not be isolated to the specific products under warranty, Samsung contends that a portion of the expenses should be allowed because they were reported conservatively and because the Department found no discrepancies in the total expense reported.

DOC Position

We agree with petitioner. Samsung reported warranty expenses associated with the cost of replacement parts and warranty expenses attributable to the "after sales service activity". At verification, the Department found that after sales service activity expenses were service department expenses attributable to products under warranty as well as products not under warranty. Samsung was unable to segregate these expenses. Therefore, we have disallowed these expenses as direct selling expenses. We have, however, allowed as a direct selling expense the cost of replacement parts.

Comment 4

Samsung claims the Department inappropriately adjusted the home market credit, advertising, and technical service expenses in the preliminary determination because the Department believed these expenses were calculated from a VAT-exclusive sales value, but were applied to a VAT-inclusive gross unit price. Samsung states that at verification the Department found that these expenses were appropriately calculated. Therefore, Samsung contends that the Department should use Samsung's calculation of these expenses in its final determination.

DOC Position:

We agree with Samsung. The Department found at verification that these expenses were calculated on a VAT-inclusive sales value. Therefore, we have applied the appropriate expenses to the VAT-inclusive gross unit price.

Comment 5

Petitioner contends that the Department should disallow any adjustment for home market inland freight because the Department was unable to verify Samsung's reported expense. Specifically, in the response, Samsung correctly stated that home market inland freight expenses included only expenses attributable to subject merchandise. At verification, however, the Department found that Samsung had included charges pertaining to non-subject merchandise as well as subject merchandise in the total expense reported for home market inland freight. In addition, Samsung was unable to provide other documentation of actual home market inland freight expenses to support the figures reported in the response.

Samsung claims that the Department should allow most of the foreign inland freight expense claimed in the response because, although the Department was unable to verify the amount of charges reported, it did verify that Samsung incurred some home market inland freight expense. Samsung argues that its inability to provide the necessary data was a result of the structure of its accounting system and the lack of time granted to prepare the response.

DOC Position

The Department agrees with petitioner. In the responses, Samsung claimed that the charges were related to subject merchandise only. During verification, however, we found that the charges included expenses incurred for subject and non-subject merchandise. The worksheets provided demonstrated that Samsung did not follow any verifiable allocation methodology. Furthermore, Samsung could not provide any supportive documentation for the amounts claimed in the response or at verification. Because the Department was unable to verify the amount of home market inland freight charges for the subject merchandise, no deduction for home market inland freight was allowed.

Comment 6

Samsung contends that the Department should exclude sales to one customer from the final determination because those sales constitute third country sales rather than sales to the United States. In support of its argument, Samsung claims that (1) the customer is located in a third country; (2) Samsung bills the customer who then

pays Samsung directly; and (3) the price of the merchandise sold is established prior to the date at which Samsung knows the destination of the merchandise. Samsung argues that because the destination is unknown at the time the price is determined, Samsung cannot practice price discrimination with respect to the United States.

In the alternative, Samsung asserts that, should the Department find that sales to the customer in question constitute U.S. sales, the Department should not consider such sales for the purpose of determining the deposit rate because during the investigation the contract between the customer and Samsung terminated and all sales under the contract were shipped. Furthermore, Samsung does not intend to sell to the customer in the future.

Petitioner argues that Samsung's sales to the customer in question constitute ordinary purchase price transactions because Samsung shipped the merchandise directly to the United States and no evidence exists that supports Samsung's contention that the destination was unknown at the time the sales were consummated. Petitioner further asserts that Samsung's alternative argument that sales to the customer should not be included in the calculations to determine the deposit rate is without merit.

DOC Position

We agree with petitioner. There is no basis for excluding such sales from this investigation. The merchandise in question was produced by Samsung in Korea and conforms to the product scope of this proceeding. Therefore, the Department has properly included those sales within its investigation of SBTS from Korea.

Samsung's argument that its lack of knowledge of the destination of the merchandise at the time price was determined requires the Department to exclude the sales at issue is incorrect. The argument raised by Samsung more appropriately relates to whether the Department has used the correct transaction as the basis for establishing United States price for these sales—*i.e.*, the price charged by Samsung to its customer in the third country or the price charged by the third country customer to the first unrelated purchaser in the United States. The information reported in Samsung's response as well as the information reviewed at verification indicate that the sales in question constitute purchase price transactions.

In its response, Samsung stated that at the time of contracting with the customer in question, the price schedule was blank and the prices and quantities were established through purchase orders. During verification, we found that the price and quantity were documented on the purchase orders and that the destination was established on the purchase order, bill of lading, and commercial invoice. Samsung also presented documentation of price changes that occurred intermittently throughout the period of the contract, including after the purchase order. Based on the information presented, however, the Department has determined that Samsung knew or had reason to know that the sales were destined for the United States. Therefore, all sales to the customer in question were properly treated as purchase price sales attributable to Samsung.

Samsung's argument that the sales should be excluded from the calculation of the deposit rate due to the termination of the contract also is without merit. Under § 353.42(b) of the Department's regulations, the Department normally examines all sales sold during "a period of 150 days prior to and 30 days after the first day of the month during which the petition was filed" or the investigation initiated. The date of sale for the sales made under the contract fell within the POI. Although there is precedent for excluding certain sales from our analysis in a fair value investigation, the Department generally does so only when certain sales are not representative of a firm's general pricing behavior or when the sales present difficult issues that cannot be resolved within the strict statutory deadlines. In this case, neither factor exists. Therefore, we have not excluded the sales in question from our calculations.

Comment 7

Samsung claims the Department should exclude from the final determination certain telephone set subassemblies, because such subassemblies function as dual use subassemblies, which are excluded from the scope of the investigation. Samsung states that the telephone sets in question function to their full capability in small business telephone systems and that "identical telephone sets also function to their full capability when part of a certain large system manufactured by Samsung."

Petitioner urges the Department to reject Samsung's argument and include the telephone sets in the final determination because: (1) Insufficient technical information exists on the record for the Department to determine whether the telephone sets in question function as dual use; (2) the technical information submitted is unverified; and (3) the alleged large system with which the telephone sets in question purportedly function was not introduced into the market prior to or during the POI.

DOC Position

The Department agrees with petitioner. Upon request of the Department, on November 30, 1989, Samsung submitted technical data in support of its exclusion request. From the information submitted, however, the Department is unable to determine whether the telephone sets qualify as dual use telephone sets. We note that the information provided indicates that the large business telephone system with which the telephone sets purportedly function was not introduced into the market prior to or during the POI. Therefore, because the technical data on the record fails to establish conclusively that the telephone sets in question qualify as dual use sets, the Department has not excluded them from the scope of the investigation. If an order is issued in this case, Samsung may want to consider seeking a scope letter ruling, as described in 19 U.S.C. 1516a(a)(2)(B)(vi).

Comment 8

Petitioner claims that the Department should treat the foreign currency exchange fee incurred on all U.S. sales as a direct expense if the fee is directly attributable to individual sales revenue.

DOC Position

The Department agrees with petitioner. During verfication, the Department found that Samsung's bank charged Samsung a fee, which was documented on the letter of credit settlement statement, for converting from U.S. dollars to Korean won revenue earned on sales to the United States. The Department has determined that this expense constitutes a direct selling expense in that the fee would not have been incurred but for the sales to the United States. Therefore, the Department has adjusted the FMV to reflect this circumstance of sale expense.

Comment 9

Petitioner states that Samsung's reported costs of manufacturing should be adjusted due to differences between reported costs and actual costs, which were discovered during the verification of Samsung's response. Samsung argues that the Department should accept Samsung's reported costs of

manufacturing as submitted, and attributes the minor differences between reported and actual costs to rounding and per unit basis differences.

DOC Position

The Department discovered that the reported costs of manufacturing were slightly understated on an aggregate basis for the subject merchandise as a whole when compared to Samsung's actual cost records examined during verification. Accordingly, for purposes of the final determination, Samsung's submitted costs of manufacturing were adjusted to reflect actual costs of manufacturing incurred by Samsung to produce the subject merchandise.

Comment 10

Petitioner argues that Samsung's general expenses should be increased to reflect the corporate-wide general expenses, instead of the division general expenses reported by Samsung. Petitioner notes that Samsung made purchases of materials used in the manufacture of the subject products from the division of the company that Samsung wishes to exclude from the calculation of general expenses. Petitioner alleges that Samsung's failure to include general expenses in the reported costs of components that were obtained from another division of Samsung resulted in the underreporting of costs for the subject merchandise.

Samsung argues that each of Samsung Electronic Corporation's business divisions are managed as an "individual corporation," and as such, no general expenses of the other two sectors that did not produce the subject merchandise should be included in the calculation of general expenses for the subject merchandise.

DOC position

We agree with petitioner. The Department considers general expenses to be those expenses incurred for the operations of the corporation as a whole and that are not related to a specific business segment of a corporation or the manufacture of a particular product. Accordingly, Samsung's use of "business segment general expenses" instead of corporate-wide general expenses resulted in an understatement of Samsung's general expenses allocated to the subject merchandise. Therefore, the Department calculated corporate-wide general expenses as a percentage of corporate cost of goods sold, and multiplied this percentage by each individual product's cost of manufacturing to obtain each product's reported general expense.

Comment 11

Petitioner argues that offsets to Samsung's reported general expenses due to non-operating income/expense items, including gains and losses on foreign currency transactions and sales discounts, should be disallowed.

Samsung maintains that these non-operating items properly belong in reported general expenses.

DOC Position

We agree with petitioner. The Department recognizes gains/losses on foreign currency transactions and sales discounts only if specifically identified by the manufacturer as part of the manufacturing costs incurred to produce the products under investigation. In Samsung's case, these costs were classified as general expenses of the corporation, and not as specific costs incurred exclusively to manufacture the products under investigation. Accordingly, these items were not included in the general expenses calculated for the subject merchandise by the Department.

Comment 12

Petitioner argues that Samsung's reported finance expenses should be recalculated to reflect all corporate finance expenses, instead of the corporate finance expenses allocated to the business segment producing the subject merchandise.

Samsung notes that the financing expenses are reported by Samsung included total corporate financing in the allocation of this expense to each business segment, and as such, should not be adjusted.

DOC position

We agree with petitioner. The Department considers financing expenses to be those costs incurred for the general operations of the corporation. The Department recognizes the fungible nature of a corporation's invested capital resources, including both debt and equity, and does not allocate corporate finance expenses to individual divisions of a corporation on the basis of fixed assets or sales per division, as Samsung had done in its submitted finance expenses. Instead, the Department allocates the interest expense related to the debt portion of the capitalization of the corporation, as appropriate, to the total operations of the consolidated corporation. For Samsung, the Department calculated corporate-wide finance expense as a percentage of corporate cost of goods sold, reduced by a proportional amount for the imputed credit and inventory carrying costs of Samsung.

Comment 13

Petitioner argues that Samsung's reported general expenses should be increased to reflect expense items, such as certain depreciation, a write-off of general research and development expense, and gains and losses on fixed assets, which had been excluded from the reported general expenses by Samsung due to Samsung's classification of these expenses as "extraordinary" in their financial statements.

Samsung cites Korean generally accepted accounting principles (GAAP) as allowing the classification of certain income and expense items as extraordinary items in Korean company income statements, thereby excluding them from calculation of the operating income for the corporation. Samsung maintains that the Department should comply with Korean GAAP and afford the same treatment to these items, thereby excluding these expenses from the reported costs of production.

DOC Position

In general, the Department adheres to GAAP and to an individual firm's recording of costs in accordance with the GAAP of its home country when the Department is assured that foreign GAAP accurately recognizes the actual costs incurred by that company. However, because GAAP was developed primarily as a conceptual framework to reflect profitability of a company and not per unit costs of each product sold, it does not always fully meet the needs of the Department. The Department must look at costs on a very specific, per unit basis. In Samsung's case, the exclusion of a write-off of capitalized general R&D instead of recording the amortization of the R&D, the exclusion of certain depreciation, and the exclusion of gains and losses on disposal of fixed assets, all represent the exclusion of actual costs incurred by Samsung in its manufacturing operations. This exclusion results in an understatement of reported general expenses, which, when allocated to the subject merchandise, results in an understatement of reported per unit costs. The Department therefore included the referenced costs in the general expenses allocated to the subject products in order to capture all costs incurred by Samsung in its manufacturing operations.

Goldstar Issues

Comment 1

Petitioner argues that GST incorrectly calculated the difference in merchandise adjustments in its response because GST reported different costs for identical components used in the United States and home market model matches. Although GST submitted revised data, petitioner claims that GST's revised data includes unverified revisions to the response, and that the revised COM charts must be verified if the Department is to rely on anything other than the best information available.

GST maintains that the revised COM charts consists of verified data and require no additional calculations or verification.

DOC Position

We are using GST's revised difference in merchandise adjustment charts as the best information available because of the facts that follow. For purposes of the adjustments for physical differences in merchandise, in our questionnaire we asked GST to include costs for parts that are not identical within each model match. However, at verification we noted that GST had included costs for identical as well as non-identical parts in its calculations. We requested that GST exclude the identical parts from its calculations. GST informed us that, due to the way its records are maintained, it would instead replace the costs for parts in the home market model with the costs for the identical U.S. part within each model match. However, in its revised submission, GST replaced the costs for parts in the home market models with costs for U.S. parts that are identical, but that are not from models included in the same model match. We have determined that the revised difference in merchandise data submitted by GST, although presented in a different format than that requested by the Department, is verified information. Therefore, we have used the revised difference in merchandise data as the best information available.

Comment 2

Petitioner notes that according to the Department's report from GST's verification in Korea, company officials indicated that a portion of U.S. packing expenses needed to be verified in the United States. This U.S. portion of U.S. packing is not reported separately in the response and is not treated in either of the Department's reports on verification of sales data in the United States.

DOC Position

The portion of packing referred to by petitioner is included in EIS's warehousing expenses. The only packing performed in the United States, however, involved one product that was replaced in boxes for shipment to a few customers. These packing expenses were too small to be accounted for separately on EIS's books, and comprised a very small portion of EIS's warehousing activity. Because the activity was negligible, we did not note it in our verification report.

Comment 3

GST contends that there are two clerical errors in the computer program used by the Department to calculate the preliminary dumping margin.

DOC Position

We agree with GST. We have corrected the clerical errors in our final determination.

Comment 4

EIS contends that the Department should correct clerical errors regarding corporate overhead, credit expense, and inland freight charges that were noted in the Department's report on verification of EIS sales data in Darien, Connecticut.

DOC Position

We have corrected the clerical errors regarding corporate overhead and credit expense. For the inland freight charges we have used the amount that is set forth in an October 30, 1989 correction to the report on the Darien, Connecticut EIS verification.

Comment 5

Petitioner argues that the Department should use GST's home market sales of circuit cards and modules in its final determination because the home market is viable for that such or similar category. According to petitioner, the Department incorrectly based its preliminary determination on sales to third countries. Moreover, because GST did not provide the home market information needed to determine product matches and to make the appropriate adjustments for differences in merchandise, the Department must resort to the use of the best information available.

GST maintains that the Department's use of third country sales, even when the home market has been determined to be viable, is a reasonable exercise of the Department's discretion under the antidumping law.

DOC Position

We agree with GST that, in this case, the use of third country sales for purposes of our final determination is appropriate. Although the home market was viable for circuit cards and modules under the normal rule set forth in 19 CFR 353.48(a) (5 percent of third country sales), that rule, by its terms, is to be applied in "normal" circumstances. In this case, we determined that the volume of reported home market sales of identical and similar merchandise appeared insufficient to serve as an adequate basis for FMV. Accordingly, we requested that GST report sales to third countries of identical and similar merchandise. We determined that by using third country sales, we could base many more of our comparisons on identical and similar matches than we could by using home market sales. Therefore, we have used third country sales as a more adequate basis for FMV in our final determination.

Comment 6

Petitioner argues that for its final determination analysis the Department should use the U.S. sales to end-users that were not considered for purposes of the preliminary determination.

DOC Position

We agree. We have included the end-user sales for purposes of our final determination. These sales were excluded previously because, although timely filed, information necessary for our analysis was submitted too late in the proceeding to be considered for purposes of our preliminary determination.

Comment 7

Petitioner argues that sales of some GST's control units in the home market that are most similar to control units sold in the United States have not been used for comparison purposes. Petitioner contends that this is because the control unit sold in the home market are sold with circuit cards already "stuffed" inside. Conversely, those sold in the United States are essentially "empty," and their circuit cards are "stuffed" into the control units after the sale to the first unrelated customer. Petitioner contends that simply because marketing practices are different in the two markets, GST should not be permitted to avoid like product comparisons.

GST and EIS submit that control units should be compared in the condition in which they are actually sold to the first unrelated customer.

DOC Position

We have based our comparisons on the configuration of the merchandise as imported into the United States. We note also that adoption of petitioner's position would require us to make difference in merchandise adjustments which in many instances would be greatly in excess of 100 percent.

Comment 8

GST and EIS state that warranty expenses claimed in both the U.S. and home markets should be allowed as direct selling expenses.

DOC Position

We agree. We have verified that the warranty expenses claimed by GST and EIS as direct selling expenses should be treated as such for our final determination.

Comment 9

EIS contends that its claimed installation costs should be deducted form the ESP as selling expenses which are incurred regardless of whether or not value is added by the aggregation of non-GST subassemblies. EIS claims that there is no appreciable value added from the aggregation process itself, because the subassemblies remain unchanged. Furthermore, EIS states that installation occurs after the sale and, therefore, cannot be considered as value added as set forth in 19 U.S.C. 1677a(e)(3). The only value added is due to the non-GST subassemblies, which are aggregated and assembled as part of the installation process, and to profit attributable to such subassemblies. EIS also argues that its claimed adjustment for G&A expenses should not be included in any further manufacturing costs which the Department might deduct from the ESP as value added for purposes of our final determination.

Petitioner argues that, because the price of the installed system sold by EIS to the first unrelated customer includes assembly that occurs after importation, the Department must make an adjustment for all such assembly costs and expenses incurred by EIS. Furthermore, if the Department were to exclude manufacturing or assembly incurred after the sale, related importers could perform much of the manufacturing or assembly after importation without being required to make any adjustment by simply setting a formal date of sale before such further manufacturing or assembly occurs.

DOC Position

As explained in the "United States Price" section of this notice, we are treating part of the installation expenses (installation labor, corporate overhead, corporate G&A and installation overhead) as value added from assembly. Because non-subject merchandise is added to the subject subassemblies, the portion of installation expenses attributable to the addition of the non-subject merchandise cannot reasonably be treated as a circumstance of sale adjustment. It is, rather, part of the value added in conjunction with the non-subject merchandise. Whether this value is added before or after the sale is irrelevant because, for this product, EIS's customers expect the installed system to have the characteristics added by the non-subject merchandise. Therefore, we are deducting that part of the installation expenses attributable to the addition or assembly of the non-GST subassemblies, as well as a proportional amount of the profit or loss related to these installation expenses, as value added.

Comment 10

GST is partially owned by Siemens, A.G. of West Germany. GST, in turn, owns a small interest in EIS in the United States. EIS makes some sales to Siemens Information Systems ("SIS"), a wholly owned subsidiary of Siemens, A.G.

Petitioner contends that EIS's sales to SIS should not have been reported because of the relationship between the several companies involved. Petitioner argues, rather, that GST should have reported sales made by SIS to its first unrelated customer in the United States. According to petitioner, the Department should not rely on GST's data for these sales and instead must calculate the margin for those sales on the basis of the best information available, which would be the highest margin alleged in the petition for each relevant subassembly.

GST argues that it does not sell to SIS in the U.S. market, and that it and SIS are not "related parties."

DOC Position

We disagree with petitioner. We verified that all of GST's sales of the subject merchandise in the U.S. market were made to EIS. Because we determined that GST and EIS are "related parties," we used ESP as the basis for U.S. price and requested information on all of EIS's sales to its customers in the U.S. market. We have determined that SIS has no ownership interest in GST, and that EIS and GST hold no ownership interest in SIS. Petitioner's claim that GST and SIS are related apparently arises from the fact that Siemens, A.G. owns GST stock. SIS, however, is a customer of EIS, not GST. At most, Siemens, A.G.'s ownership in GST may be said to give it a very small minority interest in EIS. The Department does not consider an indirect minority interest to be a sufficient basis for considering the parties to be "related."

Petitioner appears to be arguing that SIS qualifies as an "exporter" within the meaning of the antidumping law, and therefore, that sales to the company may not be used in the Department's calculations. See 19 U.S.C. 1677(13). SIS, however, does not qualify as an "exporter" under the standard set forth in the statute. The statute provides that a U.S. person may be called an "exporter" for purposes of ESP if, *inter alia*, that person is someone by whom or for whose account the merchandise is imported into the United States. 19 U.S.C. 1677(13). SIS is neither the importer nor the person for whose account the merchandise is imported. EIS is the importer, and the Department has determined that EIS is the "exporter" for ESP purposes. Thus, because the sales from EIS to SIS are not "related party" sales, the Department has included those sales in its calculations.

Comment 11

Petitioner claims that GST's revised data include a "new" calculation of fixed overhead that is not tied to verified data. Petitioner claims the calculation cannot be correct because it assumes that the ratio of variable to fixed overhead is exactly the same for all models, and that this cannot be correct because variable overhead costs are, by definition, variable and would never be a constant percentage of total overhead on a model by model basis.

GST claims that the adjustment made to fixed overhead for correction of difference in merchandise data yields a variable overhead amount that varies by model.

DOC Position

We disagree with petitioner. The Department determined that GST's segregation of variable and fixed overhead was based on verified data. The terminology "variable factory overhead" related to the nature of the expenses as they are incurred, not to the method used to absorb expenses for product costing purposes. GST's methodology accounted for a varying amount of factory overhead, model by model, depending on the length of time the model was on the production line. The adjustment made to factory overhead to remove the fixed overhead

for the difference in merchandise calculations yields a different "absolute" amount of variable overhead which varies by model and which reflects the time spent in production.

Comment 12

Petitioner claims that GST has not reported all of its research and development expenditures. Petitioner further asserts that a "reasonable" share of historical product-specific R&D should have been accumulated and allocated to the product sold during the POI. GST claims that its reported CV figures accurately account for R&D expenses.

DOC Position

We disagree with petitioner. The Department agrees that capturing historic, product-specific R&D is appropriate when design or major modification of a product require significant outlays and when such development costs would be substantial. For technologies in which R&D costs do not form a significant portion of initial project outlays and in which modifications are ongoing, the Department would not look to historic R&D to capture previously recognized expenditures. GST allocated general product line R&D costs incurred during the POI to the manufacturing costs of products under investigation. Additionally, current year amortization of capitalized, project-specific expenditures was included in general and administrative costs for purposes of calculating CV.

Comment 13

Petitioner claims that GST underreported interest expense in its response and that unrelated income and exchange gains should be disallowed.

GST asserts that the reported financing cost reflects the true, company-wide cost of financing related to key-phone products, and that income used to offset the cost, including interest on marketable securities and exchange gains, was properly included.

DOC Position

The Department disallowed income that was not derived exclusively from telephone manufacturing operations as an interest income offset. Thus, exchange gains and losses, and interest earned on long-term investments (which did not result from the manufacture of telephones) were disallowed.

For purposes of calculating interest expense, the Department uses total interest expense for operations of the consolidated corporation. Because the Department's methodology for calculation of CV includes the home-market credit expense, a deduction is made from the interest expense calculated for CV to avoid double counting this amount.

Comment 14

GST claims that the Department should use home market profit for all CV calculations.

DOC Position

For purposes of CV calculations, the Department used profits on home market sales of the same general class or kind of merchandise by the producer under investigation. The profit amount provided in GST's response was appropriately adjusted to reflect the percentage of profit on the basis of cost of sales rather than sales revenue, because this percentage is applied to the cost of manufacturing.

Comment 15

EIS suggests that the Department use the installation labor factor provided at verification rather than figures included in the submitted sales tapes.

DOC Position

We agree. EIS's revised installation labor factor was verified and used for the final determination.

Comment 16

Petitioner asserts that interest incurred by EIS during the POI that was not included as financing costs should be included in G&A for the final determination.

EIS claims that interest expense incurred during the POI related primarily to acquisitions and mergers, and that only 13 percent of those expenses related to the products under investigation. EIS also claims that if interest were included in G&A expenses, double counting would result, because imputed interest expense for inventory carrying costs and accounts receivable were reported to the Department.

DOC Position

The Department recognizes the fungible nature of an entity's borrowings, and therefore, used EIS's corporate-wide interest expense for the POI.

For purposes of calculating interest expense to be included in G&A, the Department uses total interest expense for operations of the corporation. Because the Department's methodology includes U.S. market credit expense and inventory carrying cost, a deduction was made from the interest expense calculated for further manufacturing to avoid double counting the portion related to imputed credit and inventory carrying costs.

Comment 17

Petitioner claims the EIS's general and administrative expense should be added to GST's CV calculation because they are related parties and because EIS's operations include development and manufacture of the subassemblies as well as selling and installation.

DOC Position

For purposes of the final determination, the Department treated a portion of EIS's installation and G&A expenses as "value added", and reduced U.S. price for these amounts to derive the value of the products as imported.

The Department did not include the costs incurred in the United States in CV, because CV is based on the cost of the product in its condition as imported.

Continuation of Suspension of Liquidation

We are directing the U.S. Customs Service to continue to suspend liquidation, under section 733(d) of the Act, of all entries of SBTS from Korea, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amounts by which the FMV of the subject merchandise from Korea exceeds the U.S. price as shown below. This suspension of liquidation will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Manufacturer/Producer/Exporter	Margin percentage
Goldstar Telecommunication Co., Ltd.	15.85
Samsung Electronics Co., Ltd.	13.40
All others	14.30

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. In addition, pursuant to section 735(c)(1) of the Act, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative

protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

If the ITC determines that material injury, or threat of material injury, does not exist with respect to any of the products under investigation, the proceeding will be terminated and all security posted as a result of the suspension of liquidation will be refunded or cancelled as to those products. However, if the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on SBTS from Korea, entered, or withdrawn from warehouse, for consumption, on or after the effective date of the suspension of liquidation, equal to the amount by which the FMV exceeds the U.S. price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Dated: December 18, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Adminstration.

[FR Doc. 89-29928 Filed 12-26-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-583-807]

Final Determination of Sales at Less Than Fair Value: Certain Residential Door Locks and Parts Thereof From Taiwan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that certain residential door locks and parts thereof from Taiwan (hereinafter residential door locks) are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to continue to suspend liquidation of all entries of residential door locks from Taiwan, as described in the "Continuation of Suspension of Liquidation" section of this notice. The ITC will determine within 45 days of the publication of this notice whether these imports materially injure, or threaten material injury to, a U.S. industry.

EFFECTIVE DATE: December 27, 1989.

FOR FURTHER INFORMATION CONTACT: Kate Johnson or James Terpstra, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-8830 or 377-4103, respectively.

SUPPLEMENTAL INFORMATION:

Final Determination

We determine that residential door locks from Taiwan are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act). The estimated margins are shown in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

On October 2, 1989, the Department issued an affirmative preliminary determination (54 FR 41318, October 6, 1989). Since that time the following events have occurred. Verification of the questionnaire responses of Taiwan Fu Hsing Industrial Co., Ltd. (Fu Hsing), Tong Lung Metal Industry Co., Ltd. (Tong Lung), and Posse Lock Manufacturing Co., Ltd. (Posse) was conducted in Taiwan from October 23, 1989, through November 8, 1989. Interested parties submitted comments for the record in their case briefs dated November 29, 1989, and in their rebuttal briefs dated December 4, 1989. A public hearing was held on December 6, 1989. At the hearing, the Deputy Assistant Secretary for Investigations, Import Administration, gave respondents and petitioner an opportunity to present additional written views regarding the alleged sale of a particular door lock in the home market. These written views were submitted by respondents on December 8, 1989, and by petitioner on December 12, 1989. Additionally, on December 9, 1989, petitioner requested that the Department initiate a formal inquiry as to whether two of the respondents had complied with the certification requirements of section 776(a) of the Act and § 353.31(i)(1) of the Department's regulations (19 CFR 353.31(i)(1) (1989)). Petitioner stated that the request for an inquiry was not directed at respondents' counsel, but rather was directed at respondents Tong Lung and Posse. Given that the Department has already conducted verification, and that this allegation was received only nine days prior to the final determination, it is too late to consider this allegation for purposes of the final determination. Therefore, given the nature of this allegation, we have referred it to the U.S. Department of Justice and the U.S. Customs Service for further review.

Period of Investigation

The period of investigation (POI) is November 1, 1988, through April 30, 1989.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the *Harmonized Tariff Schedule* (HTS) as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after this date will be classified solely according to the appropriate HTS item numbers. The HTS item numbers are provided for convenience and U.S. Customs Service purposes. The written description remains dispositive as to the scope of the product coverage.

The products covered by this investigation include the following three categories of residential door locks: (1) Tubular or cylindrical knob-operated locksets with spring latches or dead latches, whether face-plated or drive-in type, including entry-handled sets; (2) dead locks, whether face-plated or drive-in type; and (3) lever-operated locksets, whether face-plated or drive-in type. All three categories are imported from Taiwan and sold in any of the following forms: fully assembled, partially assembled, unassembled, or parts relating thereto.

Residential door locks are differentiated from other door locks (*i.e.*, those for commercial or other uses) by the size of the face-plate or housing assembly, as follows: (1) Face-plated spring lock/latch, dead latch or dead bolt units have (a) a face-plated size of 1 inch or less (plus a tolerance of + 1/16 inch) in width, regardless of length, or (b) an outside diameter of the latch or dead bolt housing assembly of 7/8 inch or less (plus a tolerance of + 1/16 inch) in outside diameter; and (2) drive-in type spring lock/latch, dead latch or dead bolt units have a housing assembly (including the sleeve retaining device) of 1 inch or less (plus a tolerance of + 1/16 inch) in outside diameter. These door locks are typically used in the construction of new one- and two-family dwellings, apartment buildings, condominiums, and mobile and prefabricated homes and in the replacement or retrofitting of existing locks in these dwellings. The subject merchandise is currently classifiable under HTS item 8301.40.6030. Parts of the subject merchandise are classifiable

under HTS item 8301.60.0000. The HTS item for parts was inadvertently omitted from the preliminary determination. The scope of this investigation does not cover door locks suitable for use with garage, overhead, or sliding doors.

Such or Similar Comparisons

For all respondent companies, pursuant to section 771(16) of the Act, we established three categories of "such or similar" merchandise consisting of: (a) Tubular and cylindrical locksets; (b) dead locks and dead bolts; and (c) sectional-handled locksets and interconnected locksets.

Product comparisons were made on the basis of the following criteria which are ranked in the order of importance. For tubular and cylindrical locksets we used the following criteria: (1) Type of lock, whether tubular or cylindrical; (2) function of lock, whether entry, privacy or passage; (3) knob-operated or lever-operated locks; (4) knob type; (5) lock finish; and (6) standard latch or drive-in latch. For dead locks and dead bolts we considered: (1) Number of cylinders, whether single or double; (2) lock finish; and (3) standard latch or drive-in latch. For sectional handled locksets and interconnected locksets we considered: (1) Type of lockset, whether sectional handled or interconnected; (2) type of lock, whether tubular or cylindrical; (3) knob-operated or lever-operated lock; (4) knob or handle type; and (5) lockset finish.

Where there were no sales of identical merchandise in the home or third country markets with which to compare merchandise sold in the United States, sales of the most similar merchandise were compared on the basis of the characteristics described above. We made adjustments for differences in the physical characteristics of the merchandise in accordance with section 773(a)(4)(C) of the Act.

In order to determine whether there were sufficient sales of certain residential door locks in the home market to serve as the basis for calculating foreign market value, we compared the volume of home market sales to the volume of third country sales within each such or similar category, in accordance with section 773(a)(1) of the Act. In accordance with § 353.48 of the Department's regulations, where the volume of home market sales was at least five percent of the aggregate volume of third country sales, we used home market sales as the basis for foreign market value. Where the volume of home market sales was less than five percent of the aggregate volume of third country sales, we determined that home market sales did not constitute a viable basis for calculating foreign market value. In these instances, we used third country sales as the basis for foreign market value.

For Tong Lung, we determined that there were sufficient home market sales to unrelated customers to constitute a viable basis for calculating foreign market value for the such or similar category of tubular and cylindrical locksets. For the such or similar categories of dead bolts and dead locks, and sectional-handled and interconnected locksets, we determined that there were insufficient home market sales to constitute a viable basis for calculating foreign market value. We therefore used third country sales of those categories. We determined that for dead bolts and dead locks, sales to Canada and Australia were the most appropriate basis for calculating foreign market value because the merchandise sold in these countries were the most comparable to that sold in the United States and was sold in sufficient quantities. For sectional-handled and interconnected locksets, we determined that sales to Canada were the most appropriate basis for calculating foreign market value because the merchandise sold in Canada was the most comparable to that sold in the United States and was sold in sufficient quantities.

For Fu Hsing, we determined that there were sufficient home market sales to unrelated customers to constitute a viable basis for calculating foreign market value of the such or similar categories to tubular and cylindrical locksets and sectional-handled and interconnected locksets. For the such or similar category of dead bolts and dead locks we determined that there were insufficient home market sales to constitute a viable basis for calculating foreign market value. We therefore used third country sales of that category. We determined that for dead bolts and dead locks, sales to Canada and Australia were the most appropriate basis for calculating foreign market value because the merchandise sold in these countries was the most comparable to that sold in the United States and was sold in sufficient quantities.

For Posse, we determined that there were sufficient home market sales to unrelated customers to constitute a viable basis for calculating foreign market value for two such or similar categories: tubular and cylindrical locksets, and dead bolts and dead locks. For the such or similar category of sectional-handled and interconnected locksets, we determined that there were insufficient home market sales to constitute a viable basis for calculating foreign market value. We determined that sales to Australia were the most appropriate basis for calculating foreign market value because the merchandise sold to Australia was the most comparable to that sold in the United States and was sold in sufficient quantities.

Fair Value Comparisons

To determine whether sales of residential door locks from Taiwan to the United States were made at less than fair value, we compared the United States price to the foreign market value, as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

In the preliminary determination, we used best information available in accordance with section 776(c) of the Act for all product comparisons that were not made in accordance with the product matching criteria contained in Appendix V of the questionnaire. Pursuant to specific requests from the Department, respondents submitted revised product comparisons on October 2, 1989. Although these product comparisons were submitted too late to be considered for purposes of the preliminary determination, they were examined during verification. Respondents Tong Lung and Posse correctly applied the product matching criteria to all of their similar product comparisions, and accordingly, these comparisons were used for purposes of the final determination. For respondent Fu Hsing, there continue to be several instances where product comparisons were not made in accordance with Appendix V. Throughout the course of the investigation, respondents were given numerous opportunities to comply with the questionnaire instruction. Because Fu Hsing repeatedly failed to comply with the questionnaire instructions, we used best information available for those product comparisons that were not made in accordance with Appendix V. As best information available, we used the highest margin contained in the petition for the such or simimilar category of the mismatched products. See also Comment 2 in the "Interested Party Comments" section of this notice.

Furthermore, Fu Hsing reported exporter's sales price transactions (ESP) during the POI. At verification, the company was unable to provide satisfactory documentary support for the reported total quantity and value of ESP transactions. Because these totals did not verify, we have determined that the

reported ESP information is not a reliable basis for the fair value comparisons. Consequently, we used best information available in accordance with section 776(c) of the Act for all ESP transactions. As best information available, we used the average of the highest margins contained in the petition for each such or similar category. See also Comment 19 in the "Interested Party Comments" section of this notice.

To calculate the weighted-average margin listed in the "Suspension of Liquidation" section of this notice for Fu Hsing, we weighted by quantity the margins calculated using Fu Hsing's correctly reported sales information with the margins contained in the petition for the incorrectly reported product comparisons and for ESP transactions.

United States Price

Except as noted above for Fu Hsing, we based the United States price on purchase price, in accordance with section 772(b) of the Act, because all sales were made directly to unrelated parties prior to importation into the United States.

A. Fu Hsing

For Fu Hsing, where U.S. sales were reported with correct product comparisons, we calculated purchase price based on packed f.o.b. and f.o.r. Taiwan port, c.i.f., and c.&.f. prices to unrelated customers in the United States. We made deductions, where appropriate, for discounts, brokerage and handling, foreign inland freight, containerization expenses, ocean freight, marine insurance and harbor maintenance fees, in accordance with section 772(d)(2) of the Act. Fu Hsing reported in its narrative response that harbor maintenance fees were 0.5 percent of gross unit price. Due to time constraints and the number of other adjustments to review, we did not examine this adjustment at verification. However, because the amount reported on the computer tape did not correspond to the narrative response, we recalculated this fee based on the narrative.

We added rebated duties pursuant to section 772(d)(1)(B) of the Act. When foreign market value was based on home market sales, pursuant to section 772(d)(1)(C) of the Act, we added the amount of value-added taxes which would have been collected if the merchandise had not been exported.

We noted that Fu Hsing reported parts in its U.S. computer tape sales list. However, since parts reported were an insignificant portion of the U.S. database, we have not included these parts for purposes of calculating a dumping margin.

B. Tong Lung

For Tong Lung, we calculated purchase price based on packed f.o.b. and f.o.r. Taiwan port, c.i.f., and c.& f. prices to unrelated customers in the United States. We made deductions, where appropriate, for discounts, rebates, brokerage and handling, foreign inland freight, containerization expenses, ocean freight, marine insurance and harbor maintenance fees, in accordance with section 772(d)(2) of the Act. Tong Lung reported in its narrative response that harbor maintenance fees were 0.5 percent of gross unit price. As in the case of Fu Hsing, due to time constraints and the number of other adjustments to review, we did not examine this adjustment at verification. However, because the amount reported on the computer tape did not correspond to the narrative response, we recalculated this fee based on the narrative. Tong Lung reported an adjustment to U.S. price for a "surcharge". However, because no information describing this surcharge was submitted for the record prior to verification, we disallowed the claimed adjustment. See also Comment 12 in the "Interested Party Comments" section of this notice.

We added rebated duties pursuant to section 772(d)(1)(B) of the Act. When foreign market value was based on home market sales, pursuant to section 772(d)(1)(C) of the Act, we added the amount of value-added taxes which would have been collected if the merchandise had not been exported.

C. Posse

For Posse, we calculated purchase price based on packed f.o.b. Taiwan port prices to unrelated customers in the United States. We made deductions, where appropriate, for brokerage and handling, foreign inland freight, harbor maintenance fees, and containerization expenses. Posse reported in its narrative response that harbor maintenance fees were 0.5 percent of gross unit price. At verification, company officials stated that they calculated the amount on the tape based on the actual NT$ amount they paid, converted using the exchange rate in effect on the shipment date. Because this calculation involved exchange rates other than those in effect on the date of sale, we have recalculated this fee based on the narrative.

We added rebated duties pursuant to section 772(d)(1)(B) of the Act. When foreign market value was based on home market sales, pursuant to section 772(d)(1)(C) of the Act, we also added the amount of value-added taxes which would have been collected if the merchandise had not been exported.

Foreign Market Value

In accordance with section 773(a) of the Act, we calculated foreign market value based on home market or third country sales, as appropriate.

A. Fu Hsing

For Fu Hsing, for the such or similar categories of tubular and cylindrical locksets, and sectional-handled and interconnected locksets, we used sales in the home market as the basis for foreign market value. We calculated foreign market value based on the packed, delivered prices to unrelated customers in the home market. We made deductions, where appropriate, for cash discounts, quantity discounts, other discounts, rebates, and inland freight. We deducted home market packing costs and added U.S. packing costs.

We made circumstances of sale adjustments for differences in warranties, credit terms, which included bank charges and transit interest, and a special rebate from China Steel Corporation, pursuant to § 353.56 of the Department's regulations. In the preliminary determination, we treated this special rebate in the same manner we treated duty drawback, as an addition to U.S. price. However, after further consideration of the way this rebate is paid, and review of our treatment of similar claimed adjustments in prior investigations, we have determined that this rebate is more appropriately treated as a circumstance of sale adjustment. *See Light Walled Rectangular Tubing from Taiwan, Final Determination of Sales at Less Than Fair Value,* 54 FR 5532, February 3, 1989 and *Certain Welded Carbon Steel Standard Pipe and Tube from India, Final Determination of Sales at Less Than Fair Value,*, 52 FR 9089, March 17, 1987.

We made an upward adjustment to tax-exclusive home market prices for the value-added tax computed for the United States price.

Where appropriate, we made further adjustments to the home market price to account for differences in the phyiscal characteristics of the merchandise, including differences in consumer packaging, in accordance with § 353.57 of the Department's regulations.

For the such or similar category of dead bolts and dead locks, we used sales to third countries as the basis for foreign market value. We calculated

foreign market value based on the packed, f.o.b. prices to unrelated customers in the third countries. We made deductions, where appropriate, for discounts, brokerage and handling, foreign inland freight, ocean freight, marine insurance, harbor maintenance fees and containerization expenses. Fu Hsing reported in its narrative response that harbor maintenance fees were 0.5 percent of gross unit price. As discussed in the United States Price section of this notice, due to time constraints the amount reported on the computer tape did not correspond to the narrative response, we recalculated this fee based on the narrative. We deducted third country packing costs and added U.S. packing costs.

We made circumstances of sale adjustments, where appropriate, for differences in warranties, credit terms, which included bank charges and transit interest, commissions, and a special rebate from the China Steel Corporation. See above discussion of this adjustment.

We added rebated duties pursuant to section 772(d)(1)(B) of the Act.

Where appropriate, we made further adjustments to the third country price to account for differences in the physical characteristics of the merchandise (difmers), including differences in consumer packaging, in accordance with § 353.57 of the Department's regulations.

B. Tong Lung

For the such or similar category of tubular and cylindrical locksets, we used sales in the home market as the basis for foreign market value. We calculated foreign market value based on the packed, delivered prices to unrelated customers in the home market. We made deductions, where appropriate, for inland freight. We deducted home market packing costs and added U.S. packing costs. We made an adjustment for home market indirect selling expenses, which included salesmen's salaries and transportation expenses, to offset the amount of commission paid on U.S. sales, in accordance with § 353.56(b)(1) of the Department's regulations.

We made circumstance of sale adjustments for differences in credit terms, including bank charges and transit interest, and a special rebate from the China Steel Corporation. *See* above discussion of this adjustment for Fu Hsing.

We made an upward adjustment to tax-exclusive home market prices for the value-added tax computed for the United States price.

Where appropriate, we made further adjustments to the home market price to account for differences in the physical characteristics of the merchandise, including differences in consumer packaging, in accordance with § 353.57 of the Department's regulations.

For the such or similar categories of dead bolts and dead locks, and sectional-handled and interconnected locksets, we used sales to third countries as the basis for foreign market value. We calculated foreign market value based on the packed, f.o.b. prices to unrelated customers in the third countries. We made deductions, where appropriate, for discounts, brokerage and handling, foreign inland freight, harbor maintenance fees and containerization expenses. Tong Lung reported in its narrative response that harbor maintenance fees were 0.5 percent of gross unit price. As discussed in the United States Price section of this notice, due to time constraints and the number of other adjustment to review, we did not examine this adjustment at verification. However, because the amount reported on the computer tape did not correspond to the narrative response, we recalculated this fee based on the marrative. We deducted third country packing costs and added U.S. packing costs.

We made circumstance of sale adjustments, where appropriate, for differences in credit terms, including bank charges and transit interest, commissions, and a special rebate from the China Steel Corporation. See above discussion of this adjustment for Fu Hsing.

We added rebated duties pursuant to section 772(d)(1)(B) of the Act.

Tong Lung reported an adjustment to third country price for a "surcharge." However, because no information describing this charge was submitted for the record prior to verification, we disallowed the claimed adjustment. See also Comment 12 in the "Interested Party Comments" section of this notice.

Where appropriate, we made further adjustments to the third country price to account for differences in the physical characteristics of the merchandise, including differences in consumer packaging, in accordance with § 353.57 of the Department's regulations.

C. Posse

For the such or similar categories of tubular and cylindrical locksets, and dead bolts and dead locks, we used sales in the home market as the basis for foreign market value. We calculated foreign market value based on the packed, delivered prices to unrelated customers in the home market. We made deductions, where appropriate, for inland freight. Posse included packing costs and consumer packaging costs in the adjustment for physical differences in merchandise. By accepting Posse's adjustment for physical differences in merchandise, which already accounted for differences in packing costs and consumer packaging costs, we have in effect subtracted home market packing costs and added U.S. packing costs. See also Comment 14 in the "Interested Party Comments" section of this notice.

We made circumstance of sale adjustments for differences in credit terms, including bank charges and transit interest, and a special rebate from the China Steel Corporation. See above discussion of this adjustment for Fu Hsing.

We made an upward adjustment to tax-exclusive home market prices for the value-added tax computed for the United States price.

Where appropriate, we made further adjustments to the home market price to account for differences in the physical characteristics of the merchandise, including differences in consumer packaging, in accordance with § 353.57 of the Department's regulations.

For the such or similar category sectional-handled and interconnected locksets, we used sales to the third country as the basis for foreign market value. We calculated foreign market value based on the packed, f.o.b. Taiwan port prices to unrelated customers in the third country. We made deductions, where appropriate, for foreign inland freight and containerization expenses. Posse included packing costs and consumer packaging costs in the adjustment for physical differences in merchandise. By accepting Posse's adjustment for physical differences in merchandise, which already accounted for differences in packing costs and consumer packaging costs, we have in effect subtracted third country packing costs and added U.S. packing costs. See also Comment 14 in the "Interested Party Comments" section of this notice.

We made circumstance of sale adjustments, where appropriate, for differences in credit terms, which included bank charges and transit interest, and a special rebate from the China Steel Corporation. See above discussion of this adjustment for Fu Hsing.

We added rebated duties to the third country price pursuant to section 772(d)(1)(B) of the Act.

Where appropriate, we made further adjustments to the third country price to account for differences in the physical characteristics of the merchandise, including differences in consumer

packaging, in accordance with § 353.57 of the Department's regulations.

Currency Conversion

We used the official exchange rates in effect on the dates of U.S. sales, in accordance with section 773(a)(1) of the Act. All currency conversions were made at the rates certified by the Federal Reserve Bank.

Verification

Except where noted, we verified all information used in making our final determinations in accordance with section 776(b) of the Act. We used standard verification procedures including examination of relevant accounting records and original source documents of the respondents. Our verification results are outlined in the public versions of the verification reports which are on file in the Central Records Unit (room B-099) of the Main Commerce Building.

Interested Party Comments

Comments Relating to All Respondents

Comment 1

Petitioner contends that "function" (*i.e.*, entrance, privacy, or passage) should be the primary criterion for matching U.S. and foreign market products because there is a significant difference in the cost of producing locks with different functions. Petitioner states that the majority of locks sold in the United States are tubular while the majority of locks sold in the home market are cylindrical, and strict adherence to the Department's current criteria thus would require that a large number of U.S. sales transactions be compared with a limited number of home market transactions. Petitioner argues that the resulting comparisons would be unreliable and meaningless.

Respondents argue that there is no significant cost differential in producing locks of different functions. They state that the difference between the cost of producing a passage lock and the cost of producing a privacy lock is quite small. Respondents also argue that the Department cannot change its product matching criteria at this point in the investigation because it would require entirely new product matches for all three respondents. This would be difficult since respondents only reported difference in merchandise adjustment for the matched products.

DOC Position

Petitioner and respondents were afforded the opportunity to present their views on the product matching criteria in the early stages of the investigation. By means of submissions to the Department and meetings with Department officials, petitioner and respondents made their comments known concerning product matches. The Department gave careful consideration to their views and to all other information on the record in establishing the product matching criteria. The product matching criteria contained in Appendix V of the questionnaire are a reasonable and objective basis for establishing the comparability of the products subject to this investigation. See also "DOC Position", Comment 2. No compelling reason exists for altering these criteria, particularly at this stage in the investigation.

Comment 2

Fu Hsing argues that the product matching criteria in Appendix V do not account for the fundamental differences between knob-operated locks and leversets. Fu Hsing argues that a lever is a fundamentally different article from a knob, in terms of method of production, raw material, finishing and appearance. Fu Hsing compared a U.S. knob-operated lock with a home market knob-operated lock, where the Department's matching criteria required comparison of a U.S. knob-operated lock to a home market leverset. Fu Hsing argues that the fact that the Department's methodology yields consistently larger difmers for product comparisons involving leversets demonstrates that the Department's methodology is flawed. Fu Hsing further argues that the Department's methodology yields difmers that are outside the 20 percent range generally considered unacceptable. Furthermore, the quantities of leversets sold in the home market are considerably smaller than the quantities of tubular locksets sold in the U.S. market.

Fu Hsing contends that its reported product matches enabled it to account for differences in knob style which are not covered in Appendix V of the Department's questionnaire. Fu Hsing states that it selected products based on the actual physical differences among the various knob styles and that the Department's methodology fails to account for these differences. Counsel for Fu Hsing, who is also counsel for the other two respondents, claims that since each respondent submitted its own product concordance computer tape and this information was verified the Department should use this information for purposes of the final determination.

Petitioner argues that the Department should reject Fu Hsing's proposed model matches because they are based on new information not presented to the Department in a timely fashion. Specifically, petitioner argues that an explanation of the substantial differences in materials, finishing and production methods that distinguish leversets from knob-operated door locks was not presented to the Department until verification. Therefore, petitioner argues that this new information must be disregarded for purposes of the final determination.

Moreover, petitioner states that if knob-operated locks are not comparable to leversets, as Fu Hsing suggests, then Tong Lung's and Posse's comparisons between leversets and knob-operated locks should similarly be rejected. Petitioner argues that since Tong Lung and Posse sold leversets only in the United States, there would be no home market or third country leversets with which the U.S. products could be compared. Consequently, the Department would have to use best information available to calculate margins on leversets.

DOC Position

The model match criteria in Appendix V establish the following hierarchy for product comparability: (1) Comparison of tubular locks to tubular locks and cylindrical locks to cylindrical locks, (2) comparison of entrance locks to entrance locks, passage locks to passage locks and privacy locks to privacy locks, and (3) comparison of knob-operated locks to knob-operated locks and lever-operated locks to lever-operated locks. Because all leversets are, in fact, tubular locks, Fu Hsing's proposed model matches would effectively elevate the third criterion above the second criterion. This is clearly not in accordance with the instructions in Appendix V. No compelling reason has been presented to alter the instructions in Appendix V at this point in the investigation.

Respondent's contention that the Department's methodology leads to comparisons with unacceptably large difmers is inaccurate; the Department's methodology does not yield unacceptably high difmers. Furthermore, respondent's arguments concerning the relative quantities of leversets and tubular sets sold in each market is irrelevant. The quantity of sales of a given product is not a consideration used in selecting similar merchandise.

Moreover, respondent's argument that the Department's methodology is flawed lacks merit. Similarity in cost of production (*i.e.*, small difmers) does not automatically imply product similarity. The characteristics which most pointedly show product similarity are in

the operating mechanism. The operation of tubular and cylindrical locks are different and unaffected by whether the handle which operates them is a knob or a lever. See also "DOC Position", Comment 1.

Comment 3

Best Lock, a domestic manufacturer of door locks, argues that the Department should change the scope of the investigation with regard to the distinction between residential and commercial door locks. Best Lock recommends that the Department adopt the distinction between residential and commercial door locks used by the "American National Standards Institute" (ANSI). Under the ANSI standard, grade 3 locks are considered residential and grade 2 locks are considered commercial. The ANSI grades are based on strength tests, load tests, torque tests, and force tests. Absent such a change in the scope, Best Lock requests that the door lock components it imports from Taiwan be explicitly excluded from the scope of the investigation. Best Lock claims that these components are used in the production of commercial grade locks.

DOC Position

As with the product matching criteria, the Department carefully considered the views of petitioner and respondents, as well as other information on the record, in determining the scope of the investigation. No compelling reason exists for altering the scope, particularly at this point in the investigation. Furthermore, Best Lock's arguments were not submitted until November 28, 1989, too late to be considered for purposes of our final determination, and therefore can only be considered in the context of a formal scope clarification request.

Comment 4

Petitioner argues that all three respondents made incorrect product comparisons and that the Department should therefore use best information available for the product comparisons not made in accordance with the instructions in Appendix V of the questionnaire.

Tong Lung claims that its model matches are correct. In each instance where the Department selected model matches different from those proposed by Tong Lung, the Department's match was a medium-duty cylindrical lockset. These locksets are commercial locksets which are outside the scope of this investigation.

Furthermore, each of the three respondents claims that since it has fully answered the department's questionnaire, and given that each response has been verified, it would be unlawful for the Department to use best information available for any element of the final determination, including product matches.

DOC Position

Except for certain of Fu Hsing's product comparisons involving leversets, all of the product matches made by the respondents were in accordance with the matching criteria in Appendix V of the questionnaire. See also the "Fair Value Comparisons" section of this notice for a discussion of the product matches that were not made in accordance with Appendix V.

Comment 5

Petitioner argues that the export sales totals reported by all three respondents are unverified because the Department was unable to trace these totals to the respondents' financial statements. Since the aggregate totals were not traceable to financial records, there is no way to establish whether all export sales were properly reported to the Department. Therefore, the Department should use best information available for the final determination.

Respondents claim that export sales totals reported for the POI cannot be tied *en masse* into the accounting records. They state that the totals reported to the Department are based on the contract date or date of sale. However, under Taiwan's value-added tax law, respondents claim that sales do not appear in the company's books until the goods are delivered. Respondents argue that, because there is a substantial time lag between the contract date and the date the sale is entered into the company's accounting records for export sales, it was impossible to trace total export contracts for a given period to the company's accounting books. Respondents further argue that export sales totals were verified using procedures deemed adequate in past antidumping investigations.

DOC Position

The Department normally requires respondents to reconcile the reported total quantity and value of sales to audited financial statements. In this case, respondents claimed to be unable to do this. After review of respondents' accounting records and the relevant portion of Taiwan's tax regulations, it appeared that such a reconciliation would be extremely difficult. The Department employed a variety of verification procedures to evaluate the completeness of the reported total sales quantities and values. The results of these procedures supported the completeness of the responses. Consequently, we have used this information for purposes of the final determination. See also the public versions of the verification reports which are on file in the Central Records Unit (Room B-099) of the Main Commerce Building.

Comment 6

Petitioner asserts that the Department should deny an adjustment for home market credit expense for all three respondents because they were unable to provide any documentary support for their calculations. Petitioner states that the calculations were based solely on assumptions about when company salesmen collect payments from their customers. Petitioner also notes that payment dates for Tong Lung appear to be incorrect and that Fu Hsing incorrectly used a simple average interest rate.

Tong Lung states that the only discrepancy found at verification was adequately explained and there were no other discrepancies noted. Posse states that the claimed interest rates were conservative. Fu Hsing states that its claimed interest rate was within the range of rates that it actually experienced during the POI.

DOC Position

Respondents reported credit costs based upon an estimated number of days of credit outstanding. At verification, respondents provided no documentary support for this estimated number of days. However, we did verify the reported shipment and payment dates for each respondent. Additionally, based on our review of bank documents presented at verification, the reported interest rates appear to be a conservative estimate of the actual interest costs experienced by respondents during the POI. Therefore, we have used the verified shipment and payment dates and the reported interest rates as BIA to estimate the home market credit expense for purposes of the final determination.

Comments Relating to Specific Companies

Tong Lung

Comment 7

Petitioner argues that the viability of Tong Lung's home market is questionable because the company misreported sales of "EA" series locks. Petitioner contends that by including

"EA" series locks, which are not subject to the investigation, in its Section A response, Tong Lung increased the relative size of the home market, thereby causing a distortion of the home market viability test.

Petitioner also questions Tong Lung's statements regarding the sales of "EA" series locks. Petitioner states that it obtained information indicating that Tong Lung sells "E" series locks in the home market that appear to be residential door locks, but does not sell any "EA" series locks. Moreover, petitioner states that the Tong Lung home market price list contained in the petition has prices for "E" series locks and none for "EA" series locks. Petitioner contends that this information further calls into question Tong Lung's statements regarding home market sales of "EA" series locks.

Tong Lung contends that its home market remains viable even if "EA" locks are excluded from the viability calculation. Tong Lung also states that it does not sell non-residential locks other than the "EA" series.

DOC Position

With regard to home market viability, we agree with petitioner that "EA" products were incorrectly included in the Section A home market sales totals. However, excluding the "EA" locks from the aggregate sales data does not change the viability of the home market. With regard to the sale of "EA" series locks, we verified that all home market sales were correctly reported in the Section B and C sales listing.

Comment 8

Petitioner states that the results of Tong Lung's home market viability test are unreliable because the Department did not verify third country sales totals.

Tong Lung states that the Department did, in fact, verify Tong Lung's third country sales as demonstrated in verification exhibits TC–1 and TC–2.

DOC Position

We agree with respondent. As the Tong Lung verification report indicates, aggregate third country sales totals were verified.

Comment 9

Petitioner contends that Tong Lung failed to demonstrate that it made no sales through its two related selling agents, Consolidated Hardware and Cheng Yao, during the period of investigation.

Tong Lung argues that petitioner gives no reason to believe that there were Consolidated Hardware sales during the POI and that the fact a sale was not made would not show in any accounting records. Tong Lung further argues that during the POI it sold directly to former customers of Consolidated Hardware. Tong Lung also states the Posse verification report contains a Tong Lung letter indicating that Tong Lung had ceased selling through Cheng Yao prior to the POI.

DOC Position

We agree with respondent. No sales during the POI through Consolidated Hardware and Cheng Yao were reported and none were found during verification. There is no information on the record to indicate any such sales were made during the POI.

Comment 10

Petitioner argues that the costs reported by Tong Lung for difmers are unreliable because Tong Lung's reported labor costs were considerably different than those of Fu Hsing.

Tong Lung contends that there is no reason to believe two different manufacturers would have the same production costs. Tong Lung further states that a company which relies strongly on outside subcontractors, as it does, will have lower labor costs than one that uses its own workers to produce components.

DOC Position

We agree with respondent. At verification, the Department examined Tong Lung's summary of cost of production worksheets, including the direct labor cost allocation worksheet, and the Direct Labor Subsidiary Ledger. These documents contained information about the total cost of labor for a particular lock, the total quantity of production, and the total labor figure. These documents indicate that the reported labor cost figure was obtained by dividing the total cost of labor for a particular lock by the total quantity of production for this lock. The reported methodology, and the results of verification, suggest that the reported labor costs are reliable.

Comment 11

Petitioner argues that the Department should deny an adjustment for Tong Lung's indirect selling expenses for purposes of the final determination. Petitioner further states that the Department incorrectly reduced Tong Lung's home market prices by an amount representing "indirect selling expenses" in the preliminary determination.

Tong Lung argues that, under Department of Commerce regulations, the indirect selling expenses in the home market will be offset against U.S. commissions, to the amount of the commission paid.

DOC Position

We agree with respondent. Pursuant to § 353.56(b)(1) of the Department's regulations, the Department will normally make a reasonable allowance for indirect selling expenses in one of the markets under consideration if commissions are paid in the other market under consideration.

Comment 12

Petitioner contends that the adjustment for surcharge claimed by Tong Lung should be disallowed in the final determination because Tong Lung was unable to provide any documentation regarding this adjustment at verification.

Tong Lung states that the surcharge adjustment was verified and therefore should be granted.

DOC Position

Because no narrative description of this surcharge was submitted for the record prior to verification, we have disallowed it for purposes of the final determination.

Posse

Comment 13

Petitioner states that Posse misreported export sales because it only reported sales based on sales confirmations. Petitioner contends that by relying on sales confirmations to report sales, Posse may have excluded a large number of sales.

Posse argues that the date of sale is the date when all the material terms of the contract are first established; until the sales confirmation is issued, the material terms of the contract are subject to change. The sales confirmation represents Posse's acceptance of the contract and is, therefore, the appropriate date of sale.

DOC Position

We agree with respondent. At verification, we examined Posse's method of reporting export sales, and observed that Posse's export sales are recorded into the accounting system, and tracked through the accounting system, by Posse's sales confirmation number. We verified that the terms of sale were finalized at the time the sales confirmation was issued and found no discrepancies with respect to Posse's reporting of export sales.

Comment 14

Petitioner argues that the Department should make separate packing adjustments since packing costs were found to be included in Posse's difference in merchandise adjustment calculations.

DOC Position

We did not make a separate adjustment for differences in packing costs or consumer packing costs for purposes of the final determination because these costs are included in Posse's difmer calculations; a separate adjustment would result in double-counting. See the "Foreign Market Value" section of this notice.

Comment 15

Petitioner argues that the costs reported by Posse for the adjustment for physical differences in merchandise are unreliable because Posse did not include any overtime costs for the first four months of 1989 in its calculation of direct labor costs, even though such costs were included in the last two months of 1989.

Posse argues that no basic exists for imputing a cost for overtime or for believing that any such imputation would have anything more than a negligible effect on the fair value comparisons.

DOC Position

We agree with petitioner that labor costs for Posse were underreported by the amount of overtime not allocated in the first four months of 1989. However, the verification exhibits indicate that overtime is a small portion of overall labor costs. Furthermore, this underreported cost relates to both export and home market sales. Consequently, any underreporting of labor costs that occurred would have a negligible effect on the fair value comparisons. Therefore, we are accepting Posse's labor costs for purposes of the final determination.

Comment 16

Petitioner contends that the Department should disallow the adjustment for inland freight on home market sales for Posse, since officials at Posse were unable to reconcile the difference between actual freight charges and those charges reported to the Department.

Posse contends that petitioner is confused by the language in the verification report. Posse did not base the numbers on the computer tape sales list on particular freight bills, but rather on the carrier's tariff sheet. Posse further argues that it is appropriate for a respondent to base its inland freight adjustment on indirect data when it does not enter inland freight on its books on a sale-by-sale basis.

DOC Position

The verification report indicates that Posse's narrative description of the method for calculating inland freight did not correspond to the actual method used. The narrative description states that that this charge is based on the carriers' actual freight bill per sale. The actual method used to calculate this adjustment was based on the carriers' price list. Because the actual method used corresponded to the amount reported on the computer tape sales list, and because the carriers' price list closely corresponded to the actual freight charge on the sales examined, we have allowed this adjustment for purposes of the final determination.

Comment 17

Posse argues that the Department should allow a circumstance of sale adjustment for indirect selling expenses in the home market because of the unusual relationship between Posse and Cheng Yao. Although Posse owns a percentage of the shares of Cheng Yao, the actual control of Cheng Yao was exercised by a third-party competitor, Tong Lung. The indirect selling expenses incurred by Cheng Yao were a means by which Tong Lung could control Posse's home market channels of trade and divert profits to Tong Lung.

Posse further states that during the period of investigation, while it was selling through Cheng Yao, it also had its own complete sales department; the Cheng Yao sales department was in addition to Posse's own sales department. Thus, the Cheng Yao sales department was an additional layer of cost interposed between Posse and the arm's-length customers in the home market. When Posse ceased selling through Cheng Yao, it was able to eliminate this cost and use its own selling personnel to handle all home market sales. While Posse and Cheng Yao were "related parties," Posse asserts that the relationship was more adversarial than brotherly.

Petitioner argues that the Department should deny an adjustment for the indirect selling expenses of Cheng Yao because such an adjustment would violate established Department procedures. Petitioner states that payments to related parties are considered to be part of the general expenses of the company, not costs directly related to particular sales, as required by § 353.56(a) of the Department's regulations. In this case, petitioner notes that an adjustment is sought for all of the expenses of the related party, not just for specific payments.

DOC Position

We agree with petitioner. The Department makes allowances for differences in circumstances of sale pursuant to section 353.56(a)(1) of the Department's regulations, which stipulates that such allowances be limited to circumstances which bear a direct relationship to the sales compared. Expenses that would have been incurred regardless of the sales under consideration, are not generally considered to be directly related to those sales. The expenses of Cheng Yao would have been incurred regardless of any home market sales. Thus, these indirect selling expenses are not directly related to the sales being compared. Furthermore, the categories of expenses claimed as a circumstance of sale by Posse (*e.g.*, printing, newspapers, repairs and maintenance, and rent) are those associated with running a sales office, which are typically treated as indirect selling expenses. In fact, respondent admits that Cheng Yao is only a sales office. Respondent's arguments regarding the unusual relationship between Posse and Cheng Yao notwithstanding, there is no basis for making a circumstance of sale adjustment for Cheng Yao's indirect selling expenses.

Comment 18

Petitioner contends that Tong Lung exercised "absolute control" over Posse by means of Cheng Yao, the home market distributor of Posse. Petitioner argues that through Cheng Yao, Tong Lung dictated Posse's home market prices, and therefore Posse's home market sales should be treated as sales of Tong Lung.

DOC Position

In its comments, petitioner uses language from the respondents' case brief to describe the relationship between Posse and Tong Lung as one of "master and slave." However, respondents' counsel's characterization of this relationship does not correspond to the factual information on the record.

By urging the Department to view Posse's sales made through Cheng Yao as sales of Tong Lung, petitioner effectively requests tht the Department "collapse" Posse and Tong Lung into a single commercial entity, subject to a single, weighted-average margin. Although not expressly required by the Act, the Department has a long-standing

practice of calculating a separate dumping margin for each manufacturer or exporter investigated. Past Department determinations of whether to "collapse" firms for purposes of margin calculations have focused on whether the firms in question operate as separate and distinct entities. See, *e.g., Final Determination of Sales at Less Than Fair Value: Hot Rolled Carbon Steel Plate and Sheet from Brazil,* 49 FR 3102 (January 25, 1984); *Final Determination of Sales at Less Than Fair Value: Brass Sheet and Strip from France,* 52 FR 812, 814 (January 9, 1987); *Final Determination of Sales at Less Than Fair Value: Certain Granite Products from Spain,* 53 FR 24355, 24337 (June 28, 1987); *Final Determination of Sales at Less Than Fair Value: Certain Granite Products from Italy,* 53 FR 27187, 27189 (July 19, 1988); *Final Determination of Sales at Less Than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany,* 54 FR 18992, 19089 (May 3, 1989).

Central to a Department decision on whether to collapse companies for purposes of applying a single margin is the degree to which each firm in question operates in conjunction with the other relevant firms. Viewing this investigation in the context of the determinations discussed above, it becomes apparent that Posse and Tong Lung operated as separate and distinct entities. A common thread running through all the determinations above is the common ownership, or parent/subsidiary relationship, of the firms in question. In this case, Posse and Tong Lung are not commonly owned, nor do they stand as parent and subsidiary to each other. Instead, Posse and Tong Lung acted together only at a lower level, through their exclusive distributor in the home market, Cheng Yao. Though a blood relationship does exist between Posse and Tong Lung, each is independently owned, and both firms directly compete in both the home and U.S. markets.

Second, none of the factors present in *Granite from Italy* and *Granite from Spain* which led the Department to collapse firms in those cases are present here. There is no evidence on the record to indicate that Posse and Tong Lung operated closely together, were billed jointly, had their day-to-day operations directed by joint owners, or conducted transactions between themselves. While both firms do have similar production facilities, this alone is not enough to lead us to believe that Posse and Tong Lung should be considered as related parties. This fact, and the fact that the firms are neither commonly owned nor in a parent/subsidiary relationship, would hinder shifting of manufacturing priorities from one firm to the other. In any case, these production facilities are separately owned and operated. Though Tong Lung does appear to have controlled Cheng Yao, which set Posse's prices in the home market, Posse and Tong Lung each separately negotiated prices with its U.S. customers. In these areas, the facts in this investigation seem more similar to those in *Hot Rolled Carbon Steel Plate and Sheet from Brazil,* where the Department declined to collapse the firms in question.

Thus, Posse and Tong Lung do not have the close, intertwined relationship which would lead the Department to collapse them for purposes of this investigation.

Fu Hsing

Comment 19

Petitioner asserts that the Department was unable to verify the reported total quantity of Fu Hsing's exporter's sales price (ESP) transactions, and that there were several errors and inconsistencies in Fu Hsing's reporting of ESP transactions. These include: (1) Questions of Fu Shing USA taking title to goods that were reported as purchase price transactions; (2) the discrepancy between the gross unit prices on invoices examined by the Department and the gross unit prices reported by Fu Hsing on its computer tape; (3) the calculation of credit expenses; (4) the conflicting methods for calculating inventory carrying costs of Fu Hsing and Fu Shing USA; (5) the reduction of Fu Shing USA's indirect selling expenses; and (6) the calculation of commissions.

Fu Hsing claims that these ESP totals were in fact verified because the verifiers reviewed sequential invoice files for ESP transactions and found that every sale was properly reported. Fu Hsing states that this method has been used by the Department in the past. Fu Hsing further states that the Department's verifiers compared the reported total sales values to financial records and found almost no discrepancies.

DOC Position

We agree with petitioner. As detailed in the verification report, Fu Hsing's total quantity of ESP transactions could not be verified. Therefore, we have used best information available for ESP transactions pursuant to section 776(c) of the Act. See also "Fair Value Comparisons" section of this notice.

Comment 20

Petitioner states that best information available should be used for Fu Hsing's difmers since the Department was unable to verify that the transactions between Fu Hsing and related companies were at arm's length.

Fu Hsing maintains that there is no evidence on the record to suggest that transactions between related parties were not at arm's-length prices. Therefore, the Department should use the information reported by Fu Hsing.

DOC Position

At verification, Fu Hsing did provide a limited number of invoices from both related and unrelated suppliers in order to demonstrate the arm's-length nature of its related-supplier transactions. Accordingly, we have treated these as arm's-length transactions and accepted Fu Hsing's reported material costs for purposes of the final determination.

Comment 21

Petitioner argues that the costs reported by Fu Hsing for the adjustment for physical differences in merchandise are unreliable because they are not based on actual costs. Petitioner states that Fu Hsing used a "hybrid of actual material purchases and standard material usages" instead of actual material costs.

Fu Hsing argues that the method it used to calculate the reported material cost is reasonable because it is primarily based on actual costs. Fu Hsing further argues that these costs were fully verified and should be used in the final determination.

DOC Position

We agree with respondent. As the verification report indicates, Fu Hsing reported material costs for the difmer based on the product of "average actual material costs" incurred during the POI and the "standard material usage", a factor used by Fu Hsing in its cost accounting system. Thus, it appears that the reported material costs are not actual costs, but rather are based on actual costs. The Department normally requires respondents to report actual, not standard, costs. However, because the standard material usages are part of the company's regular cost accounting system and the actual material purchases were verified, we have used the reported material costs as best information available for purposes of the final determination.

Comment 22

Petitioner states that Fu Hsing's labor costs differ substantially from those of

Tong Lung, which produces virtually identical locks.

Respondent contends that there is no reason that different companies should have the same labor costs and that differences in products would lead to different labor costs.

DOC Position

We agree with respondent. The verified information on the record concerning the entire labor cost for Fu Hsing provides no evidence that the costs reported by Fu Hsing for the adjustment for physical differences in merchandise are unreliable.

Comment 23

Petitioner claims that the Department should deny an adjustment for home market quantity discounts because Fu Hsing provided contradictory descriptions of its quantity discount policy. Furthermore, petitioner states that the company incorrectly calculated the amount of the discount by using the gross unit price instead of the discounted unit price of the free lock as the value of the discount.

Respondent claims that the reported quantity discounts were fully verified and should be used in the final determination.

DOC Position

We agree with respondent. At verification, the Department examined the method employed by Fu Hsing to calculate quantity discounts. The discounts on the computer tape sales list corresponded with the verification exhibits and no discrepancies were found. Therefore, we have allowed the quantity discount adjustment for purposes of the final determination.

Comment 24

Petitioner argues that the Department should disallow the rebate adjustment for Fu Hsing because it provided various contradictory statements about the availability of rebates and was unable to provide any documentation regarding its rebate policy.

Fu Hsing argues that the reported rebates were fully verified and should be used in the final determination.

DOC Position

We agree with respondent. At verification, the Department examined the method employed by Fu Hsing to calculate rebates. The rebate on the computer tape sales list corresponded with the verification exhibits and no discrepancies were found. Therefore, we have allowed the rebate adjustment for purposes of the final determination.

Continuation of Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the U.S. Customs Service to continue to suspend liquidation of all entries of residential door locks, as defined in the "Scope of Investigation" section of this notice, that are entered or withdrawn from warehouse for consumption on or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of residential door locks exceeds the United States price as shown below. This suspension of liquidation will remain in effect until further notice. The margins are as follows:

Manufacturer/Producer/Exporter	Weighted-average margin percentage
Fu Hsing	17.59
Tong Lung	1.27
Posse	17.75
All others	8.24

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. In addition, pursuant to section 735(c)(1) of the Act, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

If the ITC determines that material injury, or threat of material injury, does not exist with respect to any of the products under investigation, the proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled as to those products. However, if the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on residential door locks from Taiwan entered, or withdrawn from warehouse, for consumption, on or after the effective date of the suspension of liquidation, equal to the amount by which the foreign market value exceeds the U.S. price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

December 18, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89-29929 Filed 12-26-89; 8:45 am]

BILLING CODE 3510-DS-M

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with subsections 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in room 2841, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC.

Docket Number: 89-257. *Applicant:* The Regents of the University of California at San Diego, Department of Neurosciences M008, School of Medicine, La Jolla, CA 92093-0608. *Instrument:* Electron Microscope, Model JEM-2000FX. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* The instrument will be used to conduct experiments in the following research projects:

(1) Ultrastructural organization of functional components at nodes of ranvier.

(2) Axoplasmic transport of three proteins.

(3) Ultrastructural correlates of Alzheimer's disease.

(4) Fundamental processes of macromolecular crystallization.

(5) Three-dimensional visualization of the ultrastructure and sites of termination of specific afferent synapses and their identified postsynaptic targets.

(6) Neuroplasticity of the septo-hippocampal circuit.

(7) Quantification of synapses using immunocytochemistry and electron microscopy.

(8) Studies on primary cultures of myocardial cells and myocardium recovering from experimental ischemia.

(9) Ultrastructural investigations of human tumor in normal tissue growing in three-dimensional in vitro gel-supported histoculture.

(10) Ultrastructural studies of physiologically identified synapses in the electrosensory system of gymnotiform fish.

(11) Localization of transmitter-specific receptor sites in the retina.

Application Received by Commissioner of Customs: October 23, 1989.

Docket Number: 89–258. *Applicant:* Department of Veterans Affairs Medical Center, 4801 Linwood Blvd., Kansas City, MO 64128. *Instrument:* Electron Microscope, Model JEM–1200EX/DP/DP. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* The instrument will be used to study the ultrastructure of white blood cells, cells derived from blood vessels, tumor cells and kidney tissues. Most specimens studied will be of biological origin, some from experimental animals, some from normal humans and some from patients with pathological disorders. *Application Received by Commissioner of Customs:* October 18, 1989.

Docket Number: 89–259. *Applicant:* Department of the Interior, U.S. Geological Survey, Box 25046, MS 901, Denver, CO 80225. *Instrument:* Microrefractometer Unit. *Manufacturer:* Trelle, West Germany. *Intended Use:* Studies of shock metamorphic effects on quartz and other minerals in the Certaceous-tertiary boundary claystones. *Application Received by Commissioner of Customs:* October 26, 1989.

Docket Number: 89–260. *Applicant:* Auburn University, Department of Chemistry, Auburn University, AL 36849–5312. *Instrument:* Stopped Flow Kinetics Apparatus, Model SFA–11. *Manufacturer:* Hi-Tech Scientific, United Kingdom. *Intended Use:* The instrument will be used for educational purposes in the Physical Chemistry (CH–508) laboratory. *Application Received by Commissioner of Customs:* October 26, 1989.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 89–29931 Filed 12–26–89; 8:45 am]

BILLING CODE 3510–DS–M

[C–201–017]

Bricks From Mexico; Final Results of Changed Circumstances Countervailing Duty Administrative Review and Revocation of Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Final Results of Changed Circumstances Countervailing Duty Administrative Review and Revocation of Countervailing Duty Order.

SUMMARY: On November 9, 1989, the Department of Commerce published the preliminary results of its changed circumstances administrative review and intent to revoke the countervailing duty order on bricks from Mexico. We have now completed that review and determine to revoke the countervailing duty order effective August 24, 1986.

EFFECTIVE DATE: December 27, 1989.

FOR FURTHER INFORMATION CONTACT: Randall Edwards or Paul McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On November 9, 1989, the Department of Commerce ("the Department") published in the **Federal Register** (54 FR 47102) the preliminary results of its changed circumstances administrative review and intent to revoke the countervailing duty order on bricks from Mexico (49 FR 19654; May 8, 1984). The Department has now completed that review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by this review are shipments of bricks from Mexico, including unglazed solid bricks and unglazed hollow bricks. Through 1988, such merchandise was classifiable under item numbers 532.1120 and 532.1140 of the Tariff Schedules of the United States Annotated. This merchandise is currently classifiable under item number 6904.10.00 of the Harmonized Tariff Schedule (HTS). The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results and intent to revoke. We received no comments.

Final Results of Review and Revocation

As a result of our changed circumstances administrative review, we are revoking the countervailing duty order on bricks from Mexico. The effective date of the revocation is August 24, 1986.

Therefore, the Department will instruct the Customs Service to terminate the suspension of liquidation requirement and refund any cash deposits of estimated countervailing duties made on any shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after August 24, 1986.

Further, as a consequence of this revocation, the administrative reviews of calendar years 1987 and 1988, initiated on June 29, 1988 (53 FR 24470) and June 21, 1989 (54 FR 26069), respectively, are terminated. Entries of this merchandise exported on or after January 1, 1986 and entered, or withdrawn from warehouse, for consumption on or before August 23, 1986 are still subject to countervailing duties, and the administrative review initiated on June 19, 1987 (52 FR 23330) (preliminary results of the review published January 4, 1989 (54 FR 166)) will proceed.

This changed circumstances administrative review, revocation and notice are in accordance with sections 751(b) and (c) of the Tariff Act (19 U.S.C. 1675(b) and (c)) and 19 CFR 355.22 and 355.25.

Dated: December 19, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89–29954 Filed 12–26–89; 8:45 am]

BILLING CODE 3510–DS–M

[C–201–012]

Carbon Black From Mexico; Final Results of Changed Circumstances Countervailing Duty Administration Review and Revocation of Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Final Results of Changed Circumstances Countervailing Duty Administrative Review and Revocation of Countervailing Duty Order.

SUMMARY: On November 9, 1989, the Department of Commerce published the preliminary results of its changed circumstances administrative review and intent to revoke the countervailing

duty order on carbon black from Mexico. We have now completed that review and determine to revoke the countervailing duty order effective August 24, 1986.

EFFECTIVE DATE: December 27, 1989.

FOR FURTHER INFORMATION CONTACT: David Layton or Paul McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On November 9, 1989, the Department of Commerce ("the Department") published in the **Federal Register** (54 FR 47103) the preliminary results of its changed circumstances administrative review and intent to revoke the countervailing duty order on carbon black from Mexico (48 FR 29564; June 27, 1983). The Department has now completed that review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by this review are shipments of Mexican carbon black. Through 1988, such merchandise was classifiable under item number 473.0400 of the Tariff Schedules of the United States Annotated. This merchandise is currently classifiable under HTS item number 2803.00.0010. The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results and intent to revoke. We received no comments.

Final Results of Review and Revocation

As a result of our changed circumstances administrative review, we are revoking the countervailing duty order on carbon black from Mexico. The effective date of the revocation is August 14, 1986.

Therefore, the Department will instruct the Customs Service to terminate the suspension of liquidation requirement and refund any cash deposits of estimated countervailing duties made on any shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after August 24, 1986.

Entries of this merchandise exported on or after October 1, 1983 and entered, or withdrawn from warehouse, for consumption on or before August 23, 1986 are still subject to countervailing duties, and the administrative reviews initiated on July 17, 1986 (51 FR 25923) (preliminary results of review published April 27, 1988 (53 FR 15087)) and July 17, 1987 (52 FR 27036) will proceed.

This changed circumstances administrative review, revocation and notice are in accordance with sections 751 (b) and (c) of the Tariff Act (19 U.S.C. 1675 (b) and (c)) and 19 CFR 335.22 and 355.25.

Dated: December 14, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89–29955 Filed 12–26–89; 8:45 am]

BILLING CODE 3510–DS–M

INTERNATIONAL TRADE ADMINISTRATION

[C-201-405]

Certain Textile Mill Products From Mexico; Initiation and Preliminary, Results of Changed Circumstances Countervailing Duty Order (in Part)

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Initiation and Preliminary Results of Changed Circumstances Countervailing Duty Administrative Review and Intent to Revoke Countervailing Duty Order (in Part)..

SUMMARY: The Department of Commerce has information sufficient to warrant initiation of a changed circumstances administrative review of the countervailing duty order on duty-free imports of certain textile mill products from Mexico. Because the U.S. textile industry is not interested in having the United States Trade Representative (USTR) refer this case to the International Trade Commission (ITC) to conduct a section 332 investigation and, consequently, is not interested in maintaining the countervailing duty order on duty-free textile mill products, we intend to revoke the order with regard to duty-free textile mill products from Mexico. We invite interested parties to comment on these preliminary results and intent to revoke (in part).

EFFECTIVE DATE: August 24, 1986.

FOR FURTHER INFORMATION CONTACT: Jean C. Kemp or Paul McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone (202) 377–2786.

SUPPLEMENTARY INFORMATION: On March 18, 1985, the Department of Commerce ("the Department") published in the Federal Register (50 FR 10824) a notice of final affirmative countervailing duty determination and countervailing duty order on certain textile mill products from Mexico. At the time the countervailing duty order was issued, Mexico was not entitled to an injury test under U.S. and interntional law. Countervailing duties were imposed upon this merchandise, some of which was duty free, without a determination that these entries were injuring the relevant domestic industry.

On August 24, 1986, Mexico acceded to the General Agreement on Tariffs and Trade ("GATT"). Consistent with our earlier positions in Certain Fasteners from India; Final Results of Administrative Review and Partial Revocation of Countervailing Duty Order (47 FR 44129; October 6, 1982) and Carbon Steel Wire Rod from Trinidad and Tobago; Preliminary Results of Administrative Review and Tentative Determination to Revoke Countervailing Duty Order (50 FR 19561; May 9, 1985), the Department has concluded that it lacks the authority under Article VI of the GATT and section 303(a)(2) of the Tariff Act of 1930, as amended ("the Tariff Act"), to levy countervailing duties on duty-free imports from Mexico entered on or after August 24, 1986 absent a determination regarding injury to the domestic industry.

In order to fulfill our international obligations, we have developed procedures whereby the U.S. International Trade Commission ("ITC") will, at the request of the United States Trade Representative ("USTR"), conduct an investigation pursuant to section 332 of the Tariff Act to assess whether (1) an industry in the United States would be materially injured, or would be threatened with material injury, or (2) the establishment of an industry in the United States would be materially retarded, if the Department were to revoke the outstanding countervailing duty order on duty-free imports of certain textile mill products from Mexico.

On August 1, 1989, we sent letters to all domestic interested parties on the Department's service list informing them of these procedures. In order to determine whether there was any interest in USTR requesting an investigation pursuant to section 332 on duty-free imports of certain textile mill products from Mexico, we requested that interested parties submit a statement of interest within 30 days of

the date of receipt of our letter. We stated that if we received a statement of interest, we woud urge USTR to request that the ITC conduct an investigation pursuant to section 332. We further stated that, in the absence of a statement of interest, we would initiate procedures to revoke the countervailing duty order with regard to duty-free imports of certain textile mill products from Mexico. We received no response.

Scope of Review

The United States, under the auspices of the Customs Cooperation Council, has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule (HTS) as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after this date is not classified solely according to the appropriate HTS item number(s).

Imports covered by this review are duty-free textile mill products from Mexico. This duty-free merchandise was classifiable during 1986 under the following item numbers of the Tariff Schedules of the United States Annotated ("TSUSA"): 319.0300, 319.0700, 339.1000, 355.8100, 356.2510, 358.0690, 358.1400, 360.7900, 360.8400, 364.0500, 364.1800 and 364.2500. This merchandise was classifiable under the same TSUSA item numbers during 1987 and 1988, with the exception of merchandise classifiable under 364.2500 which became classifiable under 364.2505 and 364.2510. Duty-free textile mill products from Mexico subject to the countervailing duty order are currently classifiable under the following item numbers of the Harmonized Tariff Schedule: 3703.10.60, 3918.10.31, 3921.12.11, 3921.13.11, 3921.90.11, 3926.90.56, 3926.90.57, 4010.91.11, 4010.91.15, 4010.99.11, 4010.99.15, 5110.00.00, 5113.00.00, 5208.31.20, 5208.32.10, 5208.41.20, 5208.42.10, 5208.51.20, 5208.52.10, 5209.31.30, 5209.41.30, 5209.51.30, 5308.30.00, 5311.00.60, 5703.90.00, 5805.00.10, 5809.00.00, 5903.10.20, 5903.20.20, 5903.90.20, 5906.91.20, 5906.99.20, 5910.00.10, 5911.40.00, 6302.99.10, 6304.99.10, 6304.99.40, 6307.90.90, 9505.10.25, 9505.10.50, and 9505.90.60.

Initiation, Preliminary Results of Review and Intent to Revoke (in Part)

We have determined that changed circumstances exist sufficient to warrant initiation of a changed circumstances review. These changed circumstances include: (1) the Government of Mexico's accession to the GATT; (2) our international obligations requiring us not to levy countervailing duties on duty-free imports from GATT-member countries in the absence of an affirmative injury determination; and (3) the domestic industry's lack of interest in having USTR refer this case to the ITC to conduct a section 332 investigation and, consequently, its lack of interest in maintaining the countervailing duty order on duty-free imports of certain textile mill products from Mexico. Under these circumstances, we conclude that expedited action is warranted and are combining the notices of initiation and preliminary results of our changed circumstances administrative review.

Thus, we preliminarily determine that there is a reasonable basis to believe that the requirements for revocation based on changed circumstances are met. Accordingly, we intend to revoke the countervailing duty order on duty-free textile mill products from Mexico effective August 24, 1986. The current requirements for the cash deposit of estimated countervailing duties will remain in effect until publication of the final results of this review.

Interested parties may submit written comments on these preliminary results and intent to revoke within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within five days of the date of publication. Any hearing, if requested, will be held 44 days after the date of publication, or the first workday following. Rebuttal briefs and rebuttals to written comments, limited to issues in those comments, must be filed not later than 37 days after the date of publication. The Department will publish the final results of review and its decision on revocation, including its analysis of issues raised in any such written comments or at a hearing.

This initiation of review, administrative review, intent to revoke and notice are in accordance with sections 751 (b) and (c) of the Tariff Act (19 U.S.C. 1675 (b) and (c) and 19 CFR 355.22 (h)(1) and (h)(4) and 19 CFR 355.25 (d)(1), (d)(2), and (d)(3).

Dated December 19, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89-29956 Filed 12-26-89; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

United States-Canada Free-Trade Agreement, Amendments to the Rules of Procedure for Article 1904 Binational Panel Reviews

AGENCY: United States-Canada Free-Trade Agreement Binational Secretariat, United States Section, International Trade Administration, Commerce.

ACTION: Notice of amendments to the rules of procedure for Article 1904 binational panel reviews.

SUMMARY: Under Article 1904 of the United States-Canada Free-Trade Agreement ("Agreement") signed on January 2, 1988, the Government of the United States and the Government of Canada negotiated rules of procedure for Article 1904 binational panels and Article 1904 extraordinary challenge committees. These rules were published in 53 FR 53212 on December 30, 1988. This notice amends those rules.

EFFECTIVE DATE: These Rules Amendments take effect on January 1, 1990, for pending panel reviews, as well as for panel reviews requested on or after that date.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, Binational Secretariat, Suite 4012, 14th and Constitution Avenue NW., Washington, DC 20230, (202) 377-5438.

SUPPLEMENTARY INFORMATION:

Background

Chapter 19 of the U.S.-Canada Free-Trade Agreement ("Agreement") establishes a mechanism for replacing domestic judicial review of determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. Upon request, these panels, acting in place of national courts, expeditiously review final determinations to determine whether they are consistent with the antidumping or countervailing duty law of the country that made the determination. Title IV of the United States-Canada Free-Trade Agreement Implementation Act of 1988, Public Law No. 100-449, 102 Stat. 1851 (1988) amended U.S. law to implement Chapter 19 of the Agreement.

The Rules of Procedure for Article 1904 Binational Panel Reviews are intended to give effect to the provisions of chapter 19 of the Agreement with respect to panel reviews conducted pursuant to Article 1904 of the Agreement. These Rules, which set forth

the procedures for requesting and conducting panel reviews, became effective January 1, 1988 (53 FR 53212, Dec. 30, 1988). Like the Rules, the Amendments contained in this notice are the result of negotiations between the United States and Canada to carry out Article 1904 of the Agreement.

These Amendments are designed to remove ambiguities found after the existing Rules were put into practice, ease administrative burdens, and make the binational panel process more efficient and less costly. The Amendments include model forms for participants in binational panel reviews to duplicate and complete as appropriate. These Amendments and the attached forms were approved by an exchange of letters at a meeting of the United States-Canada Free Trade Commission on November 30, 1989.

A comprehensive review of the Article 1904 Panel Rules will be undertaken in mid-1990. Interested persons may make comments in writing concerning the rules, as amended, before June 30, 1990, to James R. Holbein, United States Secretary, Binational Secretariat, Suite 4012, 14th and Constitution Avenue NW., Washington, DC 20230, (202) 377–5438.

Preamble

The Parties,

Having regard to Chapter Nineteen of the Free Trade Agreement between the United States of America and Canada;

Acting pursuant to Article 1904.14 of the Agreement;

Amend, in accordance with the Schedule, the Article 1904 Panel Rules which came into force on January 1, 1989, effective January 1, 1990, for pending panel reviews, as well as for panel reviews requested on or after that date.

Dated: December 20, 1989.

Jackie Alston,

Acting United States Secretary, FTA Binational Secretariat.

Amendments to the Article 1904 Panel Rules

1. Rule 10 is revised to read as follows:

10. Each Secretary shall maintain a file for each panel review comprised of either the original or a copy of all documents filed, whether or not filed in accordance with these Rules, in the panel review. The file number assigned to a first Request for Panel Review shall be the Secretariat file number for all documents filed or issued in that panel review. All documents filed shall be stamped by the Secretariat to show the date and time of receipt.

2. Rule 12 is revised to read as follows:

12. Where under these Rules a responsible Secretary is required to cause a notice or other document to be published in the Canada Gazette and the **Federal Register**, the responsible Secretary and the other Secretary shall each cause the document to be published in the publication of the country in which that section of the Secretariat is located.

3. Rule 14 is amended by revising paragraph (1) and adding paragraph (4) to read as follows:

14. (1) Every panelist, assistant to a panelist, court reporter and translator shall, before taking up his duties in a panel review, submit to the responsible Secretary a Disclosure Undertaking, in the form referred to in Schedule A or a Protective Order Application, in the form referred to in Schedule B, as the case may be.

* * * * *

(4) The responsible Secretary shall file with the investigating authority one original and six copies of any Disclosure Undertaking or Protective Order Application referred to in subrule (1).

4. Rule 22 is amended by revising and numbering the existing paragraph as (1) and adding paragraph (2) to read as follows:

22. (1) Subject to subrules 14(3), 41(5), and 48(1), and rules 43, 52, and 55, no document is filed with the Secretariat until one original and eight copies of the document are received by the responsible Secretariat during its normal business hours and within the time period fixed for filing.

(2) Receipt, date and time stamping, or placement in the file of any document by the responsible Secretariat does not waive any time period fixed for filing and does not mean that the document has been properly filed in accordance with these Rules.

5. Rule 23 is amended by revising paragraph (a) to read as follows:

23. * * *

(a) Notices of Intent to Commence Judicial Review shall be served on each Party;

* * * * *

6. Rule 24 is amended by revising paragaph (3) to read as follows:

24. * * *

(3) Where a document is served by an expedited delivery courier or mail service, the date of service set out in the affidavit of service or certificate of service shall be the day on which the document is consigned to the courier service or is mailed.

* * * * *

7. Rule 33 is amended by removing paragraph (1)(b)(ii) and revising paragraph (3) to read as follows:

33. (1) * * *

(b) Where the final determination was made in Canada, serve a Notice of Intent to Commence Judicial Review on both Secretaries and all persons listed on the service list.

* * * * *

(3) Every Notice of Intent to Commence Judicial Review referred to in subrule (1) shall include the following information (model form provided in Schedule C(1)):

(a) The information set out in subrules 58(1)(c) to (f);

(b) The title of the final determination for which judicial review is sought, the investigating authority that issued the final determination, the file number assigned by the investigating authority and the appropriate citation if the final determination was published in the Canada Gazette or the **Federal Register**; and

(c) The date on which the notice of the final determination was received by the other Party if the final determination was not published in the Canada Gazette or the **Federal Register.**

8. Rule 34 is amended by revising paragraph (2) to read as follows:

34. (1) * * *

(2) A request for Panel Review shall contain the following information (model form provided in Schedule C(2)):

(a) The information set out in rule 58(1);

(b) The title of the final determination for which panel review is requested, the investigating authority that issued the final determination, the file number assigned by the investigating authority and the appropriate citation if the final determination was published in the Canada Gazette or the **Federal Register**;

(c) The date on which the notice of the final determination was received by the other Party if the final determination was not published in the Canada Gazette or the **Federal Register**;

(d) Where a Notice of Intent to Commence Judicial Review has been served and the sole reason that the Request for Panel Review is made is to require review of the final determination by a panel, a statement to that effect; and

(e) The service list, as defined in Rule 3.

9. Rule 36 is revised to read as follows:

36. (1) Subject to subrules (3) and 37(1), where a panel is established to review a final determination made under paragraph 41(1)(a) of the Special Import Measures Act that applies with

respect to particular goods of the United States and a first Request for Panel Review of a final determination made under paragraph 43(1) of that Act with respect to those goods is filed, on the motion of (a) a participant in the former panel review, (b) an interested person listed in the service list of the latter panel review that certifies that it intends to become a participant in the latter panel review, or (c) the investigating authority in the latter panel review, the final determinations shall be reviewed jointly by one panel if none of the persons listed above objects.

(2) Subject to subrules (3) and 37(2), where a panel is established to review a final determination made under section 705(a) or 735(a) of the Tariff Act of 1930, as amended, that applies with respect to particular goods of Canada and a first Request for Panel Review of a final determination made under section 705(b) or 735(b) of that Act with respect to those goods is filed, on the motion of (a) a participant in the former panel review, (b) an interested person listed in the service list of the latter panel review that certifies that it intends to become a participant in the latter panel review, or (c) the investigating authority in the latter panel review, the final determinations shall be reviewed jointly by one panel if none of the persons listed above objects.

(3) A motion for joint panel review may be filed at any time before, but no later than, 10 days after the first Request for Panel Review of the final determination made under paragraph 43(1) of the Special Import Measures Act or section 705(b) or 735(b) of the Tariff Act of 1930, as amended, is filed. Any objection to the motion for joint panel review must be filed within 10 days thereafter.

10. Rule 39 is amended by revising paragraph (2) to read as follows:

39. * * *

(2) Every Complaint referred to in subrule (1) shall contain the following information (model form provided in Schedule C(3)):

(a) The information set out in rule 58(1);

(b) The precise nature of the Complaint, including the applicable standard of review and the allegations of error of fact or law, including the jurisdiction of the investigating authority; and

(c) Where the final determination was made in Canada, a statement as to whether the complainant

(i) Intends to use English or French in pleadings and oral proceedings before the panel, and

(ii) Requests simultaneous translation of any oral proceedings.

11. Rule 40 is revised to read as follows:

40. Within 45 days after the filing of a first Request for Panel Review of a final determination, the investigating authority and any other person that is entitled to and proposes to participate in the panel review and that has not filed a Complaint in the panel review shall file with the responsible Secretariat a Notice of Appearance containing the following information (model form provided in Schedule C(4)):

(a) The information set out in rule 58(1);

(b) In the case of a Notice of Appearance filed by an investigating authority, admissions, if any, with respect to the allegations set out in the Complaints;

(c) A statement as to whether appearance is made in support of

(i) The investigating authority,

(ii) A complainant, or

(iii) Both the investigating authority and a complainant; and

(d) Where the final determination was made in Canada, a statement as to whether the person filing the Notice of Appearance

(i) Intends to use English or French in pleadings and oral proceedings before the panel, and

(ii) Requests simultaneous translation of any oral proceedings.

12. Rule 41 is amended by revising paragraps (3), (5)(a), and (6) to read as follows:

41. * * *

(3) Within 10 days after the expiration of the time period fixed for filing the Index referred to in subrule (1), each complainant shall, and any other participant may, file with the responsible Secretariat, together with proof of service on the investigating authority and on the other participants, a Designation of Record, designating those items in the Index that the complainant or participant considers relevant to the panel review and requests be filed by the investigating authority.

* * * * *

(5) * * *

(a) Nine copies of the final determination, including reasons for the final determination, if any;

* * *

(6) Where a document containing proprietary information is filed under subrule (5)(b) or rule 43, it shall be filed under seal in accordance with rule 46.

* * * * *

13. Rule 42 is removed and reserved.

14. Rule 48 is amended by revising paragraph (1)(b) to read as follows:

48. * * *

(1) * * *

(b) One original and six copies with the investigating authority.

* * * * *

15. Rule 49 is removed and reserved.

16. In Rule 50, paragraph (2) is removed and reserved.

17. Rule 56 is revised to read as follows:

56. In a panel review of a final determination made in the United States, where, pursuant to rule 55, disclosure of a document is granted to a person.

(a) The panel shall limit disclosure to persons who must have access in order to permit effective representation in the panel review and effective functioning of the panel, and name such persons in the panel order; and

(b) The investigating authority shall issue to that person a Protective Order with respect to that document in accordance with the order of the panel.

18. Rule 58 is amended by revising paragraph (1) to read as follows:

58. (1) Ever pleading filed in a panel review shall contain the following information:

(a) The title of and the Secretariat file number for the panel review, if assigned;

(b) A brief descriptive title of the pleading;

(c) The name of the Party, investigating authority or interested person filing the document;

(d) The name of counsel for the person referred to in paragraph (c);

(e) The service address, as defined in Rule 3; and

(f) The telephone number of the counsel referred to in paragraph (d) or, where the interested person is not represented by counsel, the telephone number of the interested person.

* * * * *

19. Rule 60 is amended by revising paragraphs (1) and (3) to read as follows:

60. (1) Every complainant and every participant that filed a Notice of Appearance in support of a complainant or in support of both a complainant and the investigating authority shall file a brief no later than 60 days after the expiration of the time period fixed for filing the administrative record referred to in subrule 41(5).

* * * * *

(3) A reply brief may be filed by a complainant or by a participant that filed a Notice of Appearance in support of a complainant or in support of both a complainant and the investigating authority, no later than 15 days after the expiration of the time period fixed for the filing of the brief of the investigating

authority and shall be limited to rebuttal of matters raised in the briefs filed pursuant to subrules (1) or (2).

* * * * *

20. Rule 61 is amended by revising paragraph (2) to read as follows:

61. * * *

(2) Where no brief is filed by any complainant or by any participant in support of any of the complainants within the time periods established pursuant to these rules and where no motion pursuant to rule 20 is pending, the panel may, on its own motion or pursuant to the motion of any participant, issue an order to show cause why the panel review should not be dismissed and if good cause is not shown, the panel shall issue an order dismissing the panel review.

* * * * *

21. Rule 63 is amended by revising paragraphs (1) and (2) to read as follows:

63. (1) A motion shall be made by Notice of Motion in writing (model form provided in Schedule c(5)) unless the circumstances make it unnecessary or impracticable.

(2) Every notice of Motion and affidavit in support thereof, if any, shall be accompanied by a proposed order of the panel (model form provided in Schedule c(6)), and shall be filed with the responsible Secretariat together with proof or service on all participants.

* * * * *

22. The heading immediately preceding Rule 72 is revised to read as follows:

Orders, Decisions, and Termination

* * * * *

23. Rule 73 is amended by revising and numbering the existing paragraphs and adding paragraph (2) to read as follows:

73. (1) Where a Notice of Motion requesting dismissal of a panel review is filed by a participant, the panel may issue an order dismissing the panel review.

(2) Where a Notice of Motion requesting termination of a panel review filed by a participant is consented to by all the participants and an affidavit to that effect is filed, or where all participants file Notices of Motion requesting termination, the panel review is terminated and, if a panel has been appointed, the panelists are discharged.

24. Rule 77 is amended by revising paragraph (5) to read as follows:

77. * * *

(5) A panel may deny a motion referred to in subrule (1) without providing an opportunity to file a response to the motion.

* * * * *

25. Rule 80 is amended by revising and numbering the existing paragraph and adding paragraph (2) to read as follows:

80. (1) Where, pursuant to rule 73, a panel issues an order dismissing the panel review or where the panel review is automatically terminated, the responsible Secretary shall cause to be published in the Canada Gazette and the **Federal Register** a Notice of Completion of Panel Review, effective

(a) Where all the participants consent to the termination, on the day after the day on which the affidavit is filed;

(b) Where an order has been issued and where no request for an extraordinary challenge committee is filed within 30 days after the order is issued, on the 31st day; and

(c) Where an order has been issued and where a request for an extraordinary challenge committee is filed within 30 days after the order is issued, on the day referred to in rule 59 of the Extraordinary Challenge Committee Rules.

(2) Where the panel review is dismissed pursuant to subrule 61(2), the responsible Secretary shall cause to be published in the Canada Gazette and the **Federal Register** a Notice of Completion of Panel Review, effective on the 11th day after expiration of the time period fixed for the filing of briefs referred to in subrule 60(1).

26. Schedule C is added to provide model forms to assist in participating in Article 1904 Binational Panel Review pursuant to the United States-Canada Free-Trade Agreement.

Schedule C—Model forms are provided to be retyped, as necessary, to provide all information requested in each form.

Schedule C (1)

ARTICLE 1904 Binational Panel Review Pursuant to the United States-Canada Free-Trade Agreement

In the matter of:

_____

_____

(Title of final determination)

Notice of Intent To Commence Judicial Review

Pursuant to Article 1904 of the United States-Canada Free-Trade Agreement, notice is hereby served that

_____

(interested person filing notice)

intends to commence judicial review in the

_____

(name of the court)

of the final determination referenced below. The following information is provided pursuant to Rule 33 of the *Article 1904 Panel Rules:*

1. _____

(The name of the interested person filing this notice)

2. _____

(The name of the counsel for the interested person, if any)

3. _____

_____

_____

(The service address, as defined by Rule 3 of the *Article 1904 Panel Rules*, including facsimile number, if any)

4. _____

(The telephone number of the counsel for the interested person or the telephone number of the interested person, if not represented by counsel)

5. _____

(The title of the final determination for which notice of intent to commence judicial review is served)

6. _____

(The investigating authority that issued the final determination)

7. _____

(The file number of the investigating authority)

8. (a) _____

(The citation and date of publication of the final determination in the **Federal Register** or *Canada Gazette*); or

(b) _____

(If the final determination was not published, the date notice of the final determination was received by the other Party)

_____

Date

_____

Signature of Counsel (or interested person, if not represented by counsel)

Schedule C (2)

Article 1904 Binational Panel Review pursuant to the United States-Canada Free-Trade Agreement

In the matter of:

_____

_____

(Title of panel review)

Secretariat file no.

_____

Request for Panel Review

Pursuant to Article 1904 of the United States-Canada Free-Trade Agreement, panel review is hereby requested of the final determination referenced below. The following information is provided pursuant to Rule 34 of the *Article 1904 Panel Rules*:

1. _____

(The name of the Party or the interested person filing this request for panel review)

2. _____

(The name of the counsel for the Party or the interested person, if any)

3. _____

_____

_____

(The service address, as defined by Rule 3 of the *Article 1904 Panel Rules*, including facsimile number, if any)

4. _____

(The telephone number of the counsel for the Party or the interested person or the telephone number of the interested person, if not represented by counsel)

5. _____

(The title of the final determination for which panel review is requested)

6. _____

(The investigating authority that issued the final determination)

7. _____

(The file number of the investigating authority)

8. (a) _____

(The citation and date of publication of the final determination in the **Federal Register** or *Canada Gazette*); or

(b) _____

(If the final determination was not published, the date notice of the final determination was received by the other Party)

9. Yes _____ No _____ Non-Applicable_____

(Where a Notice of Intent to Commence Judicial Review has been served, is the sole reason for requesting review of the final determination to require review by a panel?)

10. The Service List, as defined by Rule 3, is attached.

_____

Date

_____

Signature of Counsel
(or interested person, if not represented by counsel)

Schedule C (3)

Article 1904 Binational Panel Review Pursuant to the United States-Canada Free-Trade Agreement

In the matter of:

_____

_____

(Title of panel review)
Secretariat file no.

_____

Complaint

1. _____

(The name of the interested person filing the complaint)

2. _____

(The name of the counsel for the interested person, if any)

3. _____

_____

_____

(The service address, as defined by Rule 3 of the *Article 1904 Panel Rules*, including facsimile number, if any)

4. _____

(The telephone number of the counsel for the interested person or telephone number of the interested person, if not represented by counsel)

5. The precise nature of the complaint
(Insert language as described in Rule 39)

6. The applicable standard of review
(Insert language as described in Rule 39)

7. Allegations of error of fact or law, including the jurisdiction of the investigating authority
(Insert language as described in Rule 39)

8. For panel reviews of determinations made in canada:

(a) Complainant intends to use the specified language in pleadings and oral proceedings (Specify one). _____ English _____ French

(b) Complainant requests simultaneous translation of oral proceedings (Specify one). _____ Yes _____ No

_____

Date

_____

Signature of Counsel
(or interested person, if not represented by counsel)

Schedule C(4)

Article 1904 Binational Panel Review pursuant to the United States-Canada Free-Trade Agreement

In the matter of:

_____

_____

(Title of Panel Review)
Secretariat file no.

_____

Notice of Appearance

1. _____

(The name of the investigating authority or the intersted person filing this notice of appearance)

2. _____

(The name of the counsel for the investigating authority or the interested person, if any)

3. _____

_____

_____

(The service address, as defined by Rule 3 of the *Article 1904 Panel Rules*, including facsimile number, if any)

4. _____

(The telephone number of the counsel for the investigating authority or the interested person or the telephone number of the interested person, if not represented by counsel)

5. This notice of appearance is made in support of:

_____The investigating authority;

_____A complainant; or

_____Both the investigating authority and a complainant.

6. For panel reviews of determinations made in Canada:

a) I intend to use the specified language in pleadings and oral proceedings (Specify one).

_____English _____French

b) I request simultaneous translation of oral proceedings (Specify one).

_____Yes _____No

_____

Date

_____

Signature of Counsel
(or interested person, if not represented by counsel)

Schedule C (5)

Article 1904 Binational Panel Review pursuant to the United States-Canada Free-Trade Agreement

In the matter of:

_____

_____

(Title of panel review) _____
Secretariat file no.

_____

Notice of Motion

_____

(Descriptive title indicating the purpose of the motion)

1. _____

(The name of the investigating authority or the interested person filing this notice of motion)

2. _____

(The name of the counsel for the investigating authority or the interested person, if any)

3. _____

_____

_____

_____

(The service address, as defined by Rule 3 of the *Article 1904 Panel Rules*, including facsimile number, if any)

4. _____

(The telephone number of the counsel for the investigating authority or the interested person or the telephone number of the interested person, if not represented by counsel)

5. Statement of the relief requested
(Insert language as described in Rule 63)

6. Statement of the grounds to be argued, including references and arguments in support of the motion
(Insert language as described in Rule 63)

7. Statement whether other participants consent to the motion
(Insert language as described in Rule 63)

8. Draft order in support of motion attached
(Attach draft order as described in Rule 63 and Schedule C (6)))

_____

Date

_____

Signature of Counsel
(Or interested person, if not represented by counsel)

Schedule C (6)

Article 1904 Binational Panel Review pursuant to the United States-Canada Free-Trade Agreement

_____

In the matter of:

_____

_____

(Title of Panel Review)
Secretariat file no.

_____

Order

Upon consideration of _____ motion for _____, and upon all other papers and proceedings herein, it is hereby ORDERED that the motion is _____

_____

Date

Panelist name _____ _____

Date

Panelist name _____ _____

Date

Panelist name _____ _____

Date

Panelist name _____ _____

Date

Panelist name

[FR Doc. 89-29957 Filed 12-26-89; 8:45 am]

BILLING CODE 3510-GT-M

National Oceanic and Atmospheric Administration

Gulf of Mexico Fishery Management Council; Public Hearings on Reef Fish Fisheries Management Plan Amendment 2

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

ACTION: Notice of public hearings and request for comments.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene public hearings on draft Amendment 2 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico which will restrict the harvest of jewfish. Individuals and organizations may comment in writing to the Council at the address given below if they are unable to attend the hearings.

DATES: Written comments will be accepted until January 19, 1990. The public hearings will begin at 7 p.m., and adjourn at 10 p.m. See **"SUPPLEMENTARY INFORMATION"** for the dates and locations of the hearings.

ADDRESSES: Written comments should be sent to the Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, FL 33609-2486.

FOR FURTHER INFORMATION CONTACT: Douglas R. Gregory, 813-228-2815.

SUPPLEMENTARY INFORMATION: The hearings are scheduled as follows:

1. Wednesday, January 3, 1990—American Legion Hall, 5610 Junior College Road, Key West, Florida.

2. Wednesday, January 3, 1990—Freeport Community House, 1300 West Second Street, Freeport, Texas.

3. Thursday, January 4, 1990—Lee County Courthouse, Lee Room, 2115 Second Street, Ft. Myers, Florida.

4. Monday, January 8, 1990—Marine Education Center Auditorium, 115 Beach Boulevard, Biloxi, Mississippi.

5. Tuesday, January 9, 1990—Howard Johnson Hotel, 6401 Veterans Boulevard, Metairie, Louisiana.

Dated: December 19, 1989.

Richard H. Schaefer,

Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-29920 Filed 12-26-89; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals: Issuance of Modification: Sea Life Park, Inc.

Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), public display Permit No. 629 issued to Sea Life Park, Inc., is modified in the following manner:

Section A.2 is added:

"2. An unspecified number of false killer whales *Pseudorca crassidens* may be chased, temporarily retained, tagged/marked and then released in the course of collecting the authorized animals."

Section B.2 is deleted and replaced by:

"2. The Holder shall notify the Pacific Islands Coordinator, Southwest Region, Pacific Area Office, Protected Species Branch, 2570 Dole Street, Honolulu, Hawaii 96822 (808/955-8831) at least two weeks in advance of the proposed collection to allow arrangement of observer logistics and notification of enforcement personnel; or at least 24 hours prior to importation so that a NOAA Fisheries representative may meet the shipment should he determine that to be desirable. Collection notification must include anticipated dates/location of collection activities; description/names of vessels or aircraft to be used; name, affiliation, and function of individuals responsible for tagging/marking; and experience and qualifications of all individuals who will be operating under the permit. The collection should not commence until the Pacific Area Office acknowledges the notification and all aspects are clarified to the satisfaction of the Pacific Islands Coordinator."

Section B.6, B.7 and B.8 are added:

"6. You are required to submit a post-collection report indicating the numbers and, to the extent possible, ages and sexes of animals chased, held, tagged/marked and released in the course of collecting the authorized animals."

"7. The tag/mark technique shall be either freeze branding, fin notching, roto tagging or other comparable method acceptable to the Regional Director, Southwest Region. Fin notching or roto tags should be marked/attached in individually identifiable patterns on the dorsal fin of each animal captured and released. The tag/mark pattern for each such animal shall be documented photographically prior to and after marking/tagging."

"8. The Holder is required to submit a report within 24 hours of the death in the event an animal dies or is injured as a result of the authorized activities; and to suspend collection activities and submit a report within 24 hours if a second animal is killed or injured as a result of the authorized activities. A necropsy of the dead animal(s) shall be coordinated with NOAA Fisheries, and the results included in an investigation of the mortality. Permission to reinitiate collection activities will be contingent upon the circumstances of the incident and the results of NOAA Fisheries' evaluation. Authorization to continue collection will be at the discretion of the Assistant Administrator for Fisheries."

Documents pertaining to the application, Permit, and modification are available for review in the following offices:

Director, Office of Protected Resources, Permit Division, National Marine Fisheries Service, 1335 East West Hwy., Suite 7324, Silver Spring, Maryland 20910;

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731-7415; and

Pacific Island Coordinator, Protected Species Branch, Pacific Area Office, National Marine Fisheries Service, 2570 Dole Street, Honolulu, Hawaii 96822.

Dated: December 19, 1989.

Nancy Foster, Ph.D.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 89-29944 Filed 12-26-89; 8:45 am]

BILLING CODE 3510-22-M

Five-year Status Review of Sea Turtles.

AGENCY: National Marine Fisheries Service (NMFS), NOAA

ACTION: Notice and Request for Comment.

SUMMARY: The U.S. Fish and Wildlife Servie (FWS), Department of the Interior, and the NMFS, Department of Commerce, are jointly conducting status reviews of sea turtles species included on the List of Endangered and Threatened Wildlife (50 CFR part 17). The purpose of these reviews is to determine whether any species or populations should be removed from the list or changed in status. To ensure that the reviews are comprehensive, the FWS and NMFS (the Services) are soliciting information and data. Depending upon the results of the reviews, the Services may propose changes to the List.

DATE: Comments, information and data must be received by February 26, 1990.

ADDRESSES: Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Phil Williams, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service (301–427–2322); Charles A. Oravetz, Southeast Regional Office, National Marine Fisheries Service (813–893–3366); or Jack Woody, Region 2, Fish and Wildlife Service (505–766–8062).

SUPPLEMENTARY INFORMATION:

Background

The Endangered Species Act of 1973 (ESA) is administered jointly by the Departments of the Interior and Commerce. The Department of Commerce in general is responsible for listed marine species and the Department of the Interior for terrestrial and aquatic species. The two Departments share jurisdiction of sea turtles with Interior having responsibility for sea turtles in the terrestrial environment and Commerce having responsibility for sea turtles in the marine environment.

Under section (4)(a) fo the ESA, a species is determined to be endangered of threatened for any of the following factors: (1) Present or threatened destruction, modification, or curtailment of its habitat or range; (2) Overutilization for commercial, recreational, scientific, or educational purposes; (3) Disease or predation; (4) Inadequacy of existing regulatory mechanisms; or (5) Other natural or manmade factors affecting its continued existence. Determinations concerning decisions on listings are made solely on the best scientific and commercial data available after conducting a status review of the species and after taking into account those efforts, if any, being made by any State or foreign Nation, or subdivision thereof, to protect such species (section 4(b) of the ESA).

Purpose of Review

Section 4(c)(2) of the ESA requires the Services to conduct, at least once every five years, a review of the species on the List of Endangered and Threatened Wildlife and to determine on the basis of such review whether any species should be (1) removed from the list; (2) changed in status from an endangered species to a threatened species; or (3) change in status from a threatened species to an endangered species. Each determination must be made in accordance with sections 4(a) and 4(b) of the ESA.

The Services are jointly conducting status reviews for listed sea turtle species. The species that are subject to this review are listed in Table 1. If the reviews indicate that one of the above actions is warranted, the Services will propose rules to take the appropriate action(s).

Biological Information Solicited

To ensure that the reviews are complete and are based on the best available scientific and commercial data concerning the species, the Services are soliciting such data, information and comments concerning the biological status of these species from any interested party. The Services request such data, information and comments be accompanied by the following: (1) The scientific and common names of the species involved; (2) Supporting documentation, such as maps, bibliographic references, or reprints of pertinent publications; (3) The Party's name, address and any association, institution or business that the party represents.

Dated: December 18, 1989.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs.

TABLE 1.—LIST OF ENDANGERED AND THREATENED SEA TURTLES

Common name	Scientific name	Historic range	Population	Status	Date listed
Green sea turtle	Chelonia mydas	Circumglobal in tropical and temperate seas and oceans.	Wherever found except populations given below.	T	July 28, 1978.
Green sea turtle	Chelonia mydas	Circumglobal in tropical and temperate seas and oceans.	Breeding colony populations in FL and on the Pacific Coast of Mexico.	E	July 28, 1978.
Hawksbill sea turtle	Eretmochelys imbricata	Tropical seas	Entire	E	June 2, 1970.
Kemp's Ridley sea turtle	Lepidochelys kempli	Tropical, and temperate seas	Entire	E	December 2, 1970.
Leatherback sea turtle	Dermochelys coriacea	Tropical, temperate, and subpolar seas.	Entire	E	June 2, 1970.
Loggerhead sea turtle	Caretta caretta	Circumglobal in tropical and temperate seas and oceans.	Entire	T	July 28, 1978.
Olive Ridley sea turtle	Lepidochelys olivacea	Circumglobal in tropical and temperate seas and oceans.	Wherever found except for populations given below.	T	July 28, 1978.
Olive Ridley sea turtle	Lepidochelys olivacea	Circumglobal in tropical and temperate seas and oceans.	Breeding colony populations on the Pacific Coast of Mexico.	E	July 28, 1978.

[FR Doc. 89–29999 Filed 12–26–89; 8:45 am]
BILLING CODE 3510–22–M

North Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

As indicated below, the North Pacific Fishery Management Council and other Council advisory groups will meet during January 1990 at the National Marine Fisheries Service (NMFS), Alaska Fisheries Science Center, in Seattle, WA, at the NMFS Montlake Laboratory, in Seattle, WA, and at the Hilton Hotel in Anchorage, AK. The North Pacific Council's Fishery Planning Committee also will hold a public meeting on January 15, 1990, at 10:30 am, at the Hilton Hotel. The Committee will continue working on the inshore/offshore allocation issue, and will discuss limited access for the groundfish and crab fisheries off Alaska.

Other committee and workgroup meetings may be scheduled on short notice during the week of January 14–19. Except as noted below, the meetings are open to the public.

The Council's Gulf of Alaska and Bering Sea/Aleutian Islands (GOA and BSA) Groundfish Fishery Management Plan (FMP) Teams will begin meeting on January 3 at 1:30 p.m., at the Alaska Fisheries Science Center, 7600 Sand Point Way NE., Room 2079, Building 4, Seattle, WA. The Teams will meet in an informal work session to prepare amendments to the Groundfish FMPs,

and to redefine overfishing pursuant to recently-published guidelines.

The Council's Plan Amendment Advisory Group will begin meeting on January 4 at 9 a.m., also at the NMFS Alaska Fisheries Science Center, to review proposed amendments to the GOA and BSA Groundfish FMPs. The Group will prepare recommendations for consideration by the North Pacific Council at the Council's January 16–19, 1990, meeting in Anchorage.

The Council's Advisory Panel will begin meeting on Sunday, January 14, 1990, and the Council's Scientific and Statistical Committee will begin meeting on January 15, at the Hilton Hotel. Panel and Committee agendas will be similar to that of the Council's, noted below.

The North Pacific Council will begin meeting on January 16 8:00 am at the Hilton Hotel. Its agenda will include final consideration of limited access alternatives for the longline and pot sabelfish fisheries off Alaska, review of the limited access planning schedule for groundfish and crab fisheries, inshore/offshore allocations, and fishery research priorities. In addition, the Council will select proposed amendments to the Groundfish FMPs for analysis before forwarding for public review in April, discuss bycatch planning for 1990–1991, and meet jointly with the International Pacific Halibut Commission to discuss halibut management issues of mutual interest. The Council also will meet in closed session (not open to the public), to discuss personnel matters, ongoing litigation, and international affairs.

On January 26 the Council's newly-formed Pacific Northwest Crab Industry Advisory Group will meet at the NMGS Montlake Laboratory, 2725 East Montlake, Boulevard, Seattle, WA. The Group will begin meeting at 10 a.m., to elect officers, review the State of Alaska's 1990 shellfish proposals, and prepare recommendtions to forward to the Alaska Board of Fisheries.

For more information contact Steve Davis, Deputy Director, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271–2809.

Dated: December 20, 1989.

David S. Crestin,

Deputy Director Office of Fisheries Conservation and Management National Marine Fisheries Service.

[FR Doc. 89–30000 Filed 12–26–89; 8:45 am]

BILLING CODE 3510–22–M

Patent and Trademark Office

[Docket No. 91283–9283]

Request for Information Regarding Process Patent Amendments Made by the Omnibus Trade and Competitiveness Act of 1988

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Request for information from domestic industries regarding possible adverse effects of the process patent amendments made by the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–417).

DATE: Comments must be received on or before February 9, 1990.

FOR FURTHER INFORMATION CONTACT: Documents and questions should be submitted to H. Dieter Hoinkes, Office of Legislation and International Affairs, Box 4, Patent and Trademark Office, Washington, DC 20231. Telephone at (703) 557–3065.

SUPPLEMENTARY INFORMATION: The Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–417) was enacted on August 23, 1988. Among other things, the Act amended title 35, United States Code, to extend the protection of a process patented in the United States also to products made by that process. As a consequence, whoever without authority imports into the United States, or sells or uses in this country, a product made by a patented process shall be liable as an infringer, if the importation, sale or use occurs during the term of the process patent. (Sections 9002 and 9003 of Pub. L. 100–417). The effective date of that amendment is February 23, 1989.

Section 9007 of the Act requires the Secretary of Commerce to report to the Congress, at the end of each one-year period from the effective date of the above amendments, on the effect of these amendments on those domestic industries that submitted complaints during such period, alleging that their legitimate sources of supply have been adversely affected. Such reports must be sumitted for five successive years.

The first report from the Secretary of Commerce to the Congress will be submitted on February 23, 1990, covering the preceding one-year period. Accordingly, it is requested that domestic industries wishing their complaints reflected in the Secretary's report ensure that any submission on this subject is received by the Department of Commerce not later than February 9, 1990.

Dated: December 19, 1989.

Jeffrey M. Samuels,

Acting Commissioner of Patents and Trademarks.

[FR Doc. 89–29935 Filed 12–26–89; 8:45 am]

BILLING CODE 3510–16–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Limits and Guaranteed Access Levels for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Trinidad and Tobago

December 15, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits and GAL's for the new agreement year.

EFFECTIVE DATE: January 1, 1990 and April 1, 1990.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, 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 Trinidad and Tobago reached agreement, effected by a Memorandum of Understanding (MOU) dated November 27, 1989, to amend their current bilateral agreement to extend through December 31, 1990. Also, the agreement was amended to include designated consultation levels for cotton and man-made fiber textile products in Categories 331/631, 349/649, 350/650 and 351/651 for the 1990 period.

Further, the governments agreed to establish Guaranteed Access Levels (GALs) for Categories 331/631, 349/649, 350/650 and 351/651 for the prorated period beginning on July 1, 1990 and extending through December 31, 1990.

Beginning on April 1, 1990, for goods to be re-exported from Trinidad and Tobago to the United States during the period July 1, 1990 through December 31,

1990, U.S. Customs will start signing the first section of form ITA–37OP for shipments of U.S. formed and cut parts in Categories 331/631, 349/649, 350/650 and 351/651 that are destined for Trinidad and Tobago and subject to the Guaranteed Access Levels established for these categories. These products, which are assembled in Trinidad and Tobago from parts cut in the United States from fabric formed in the United States, are governed by HTS number 9802.00.8010 or by Chapter 62 Statistical Note 3 of the Harmonized Tariff Schedule.

Interested parties should be aware that shipments of cut parts in Categories 331/631, 349/649, 350/650 and 351/651 must be accompanied by a form ITA–37OP, signed by a U.S. Customs officer, prior to export from the United States for assembly in Trinidad and Tobago in order to qualify for entry under the Guaranteed Access Program.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988).

Requirements for participation in the Special Access Program are available in **Federal Register** notices 52 FR 28588, published on July 31, 1987; 53 FR 21208, published on June 11, 1986; 52 FR 26057, published on July 10, 1987; and 54 FR 50425, published on December 6, 1989.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement and the Memorandum of Understanding, but are designed to assist only in the implementation of certain of their provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 15, 1989.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to the Bilateral Cotton and Man-Made Fiber Textile Agreement, effected by exchange of notes dated October 23, 1986, and the Memorandum of Understanding dated November 27, 1989 between the Governments of the United States and Trinidad and Tobago; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1990, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Trinidad and Tobago and exported during the twelve-month period which begins on January 1, 1990 and extends through December 31, 1990, in excess of the following designated levels:

Category	Twelve-Month Restraint Level
331/631	140,000 dozen pairs.
336/636	65,000 dozen.
338/339	105,000 dozen.
340/640	50,000 dozen of which not more than 25,000 dozen shall be in shirts made from yarn dyed fabric of two or more colors in the warp and/or filling in Categories. 340-Y/640-Y.[1]
347/348/647/7648	100,000 dozen.
349/649	105,000 dozen.
350/650	70,000 dozen.
351/651	70,000 dozen.
352/652	100,000 dozen.

[1] In Categories 340-Y/640-Y only HTS numbers 6205.20.2015, 6205.20.2020, 62.05.20.2046, 6205.20.2050 and 6205.20.2060 in Category 340-Y and 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060 in Category 640-Y.

Imports charged to these category limits, except Categories 331/631, 349/649, 350/650 and 351/651, for the period January 1, 1989 through December 31, 1989 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

In accordance with the provisions of the Special Access Program, as set forth in 51 FR 21208 (June 11, 1986), 52 FR 26057 (July 10, 1987) and 54 FR 50425 (December 6, 1989), you are directed to establish guaranteed access levels for peoperly certified cotton and man-made fiber textile products in the following categories which are assembled in Trinidad and Tobago from fabric formed and cut in the United States and exported to the United States from Trinidad and Tobago during the twelve-month period which begins on January 1, 1990 and extends through December 31, 1990:

Category	Guaranteed Access Level (dozen)
336/636	300,000
338/339	225,000
340/640	100,000
347/348/647/648	300,000
352/652	300,000

Any shipment for entry under the Special Access Program which is not accompanied by a valid and correct certification and Export Declarations (Form ITA–37OP) in accordance with the provisions of the certification requirements established in the directive of July 28, 1987 shall be denied entry unless the Government of Trinidad and Tobago authorizes the entry and any charges to the appropriate designated consultation levels. Any shipment which is declared for entry under the Special Access Program but found not to qualify shall be denied entry into the United States.

Beginning on April 1, 1990, U.S. Customs is directed to start signing the first section of form ITA–37OP for shipments of U.S. formed and cut parts in Categories 331/631, 349/649, 350/650 and 351/651 that are destined for Trinidad and Tobago and re-exported to the United States during the period July 1, 1990 through December 31, 1990 under the Guaranteed Access Levels which will be established for these categories.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo.

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89–29927 Filed 12–26–89; 8:45 am]

BILLING CODE 3510–DR–M

Requirement of Original Visas for Certain Shipments From the People's Republic of China

December 18, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Martin Walsh, Commodity Industry Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–3400.

Background: CITA has learned that despite embargoes in effect on certain categories from the People's Republic of China, shipments are being made and visas are being issued over embargoed limits. Although these visas are valid only for 1990 exports, they have been issued for 1989 exports, in contravention of the provision of the bilateral agreement.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to notify the public that merchandise exported from the People's Republic of China subject to quota and visa requirements, which arrives in the United States without a visa or with a visa issued for a year other than the year in which the shipment was exported, will require an

original visa issued for the actual year of export. In keeping with general U.S. Government policy, visa waivers will not be issued for these shipments.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-29940 Filed 12-26-89; 8:45 am]

BILLING CODE 3510-PM-M

DEPARTMENT OF DEFENSE

Department of the Army

Record of Decision, Disposition of Process Wastes From Johnston Atoll; Chemical Agent Disposal System (JACADS)

AGENCY: Department of the Army, DOD.

ACTION: Availability of Record of Decision (ROD).

SUMMARY: This announces the availability of the Record of Decision regarding the disposition of the process wastes generated by the Johnston Atoll Chemical Agent Disposal System (JACADS). The Department of the Army has prepared this ROD pursuant to regulations of the Council on Environmental Quality (40 CFR Part 1505) and the implementing Army Regulations (AR 200-2). This ROD is based on the Army's Draft Supplemental Environmetnal Impact Statement (DSEIS) for JACADS, all comments thereto, the Final SEIS (FSEIS) and all public and regulatory comments received on the Final SEIS. With this ROD, the Army has selected methods of disposal for the three categories of wastes generated by JACADS: liquid process wastes, solid wastes with value and solid wastes with no value.

SUPPLEMENTARY INFORMATION: In 1983, the Army issued an Environmental Impact Statement (EIS) for the JACADS project. The 1983 Final EIS identified the process (incineration) and location of Johnston Island for the JACADS facility. JACADS will destroy chemical muntions containing nerve agents VX, GB, and the mustard blister agent HD beginning in 1990. The ultimate disposition of the wastes generated by JACADS was not provided in the 1983 EIS, pending further study. In December 1988, the Army issued a Final Supplemental EIS (FSEIS) that addressed the alternatives for final disposition of the JACADS process wastes.

The FSEIS addressed disposal alternatives for three major classes of process wastes generated by JACADS: liquid process wastes including the 6.5 million gallons of brine from the pollution abatement system; solid wastes with value including approximately 6,650 tons of scrap metal; and solid wastes with no value including ash and other incinerator residues. The FSEIS considered each category of waste separately and tiered three or four disposal alternatives to each waste. Disposal alternatives considered and evaluated in the FSEIS were:

—Liquid process wastes;
—Ocean disposal (Army's preferred alternative)
—Dry the liquid, drum, ship to U.S. landfill
—Dry the liquid, drum, store on Johnston Island
—Solid waste with value:
—Sale of scrap metal (Army's preferred alternative)
—Ship to U.S. landfill
—Ocean disposal of scrap metal
—Solid waste with no value
—Shipment of waste to U.S. landfill (Army's preferred alternative)
—Storage of waste on Johnston Island
—On-island use of encapsulated waste
—Ocean disposal of encapsulated waste

Disposal alternatives selected by the Army are as follows:

—Liquid process wastes: Although ocean disposal of the brine was the Army's preferred alternative, with the passage of the Ocean Dumping Ban Act of 1988, which amended the Marine Protection, Research and Sanctuaries Act, the preferred alternative cannot be implemented. Therefore, the Army selected the second alternative—dry the brine, containerize and ship the wastes to a hazardous waste landfill located in the continental United States.
—Solid waste with value: The Army has selected the preferred alternative provided in the Final Supplemental EIS—sale of the scrap metal.
—Solid waste with no value: The Army has also selected the preferred alternative of shipping the non-saleable waste to a hazardous waste landfill located in the continental United States.

With the adoption of these disposal alternatives, the Army can dispose of all process wastes generated by JACADS with minimal environmental harm.

ADDITIONAL INFORMATION: Interested individuals may obtain copies of the ROD by contacting the Program Manager for Chemical Demilitarization, Attn: SAIL-PMI (Ms. Marilyn Tischbin), Aberdeen Proving Ground, Maryland 21010-5401.

Lewis D. Walker,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health) OASA(I,L&E).

[FR Doc. 89-29970 Filed 12-26-89; 8:45 am]

BILLING CODE 3710-08-M

Military Traffic Management Command Directorate of Personal Property Through Government Bill of Lading Program for Household Goods and Unaccompanied Baggage

AGENCY: Military Traffic Management Command.

ACTION: Invitation to comment on change to DOD 4500.34R, Appendix A, Appendix H and Appendix P regarding the exception sheet which is used to record exceptions on conditions of items beging released from nontemporary storage.

SUMMARY: The regulation presently provides that both parties to the exception sheet, the carrier's and storage contractor's representative, sign the exception sheet. Recommended change would require these parties to also date the exception sheet. This will assist the claims offices in determining the validity of the exception sheet.

Therefore, it is proposed to add the following italicized wording as stated below:

(1) Appendix A, Para 54.m:

"m. * * * Both parties will sign *and date* the exception sheet, each retaining a legible copy for their respective files. * * *".

(2) Appendix H, Section C-5, Para g:

"g. * * * Both the carrier's and the storage contractor's respresentative will sign *and date* the exception sheet, each retaining a legible copy for their file * * *".

(3) Appendix P, Part 5, Para 5.5.1.8:

"5.5.1.8 * * * Both parties will sign *and date* the exception sheet, each retaining a legible copy for their respective files * * *".

Date: Submit written comments by 22 Feb 90 to: Headquarters, Military Traffic Management Command, 5611 Columbia Pike, ATTN: MTPP-QO, Falls Church, VA 22041-5050

Kenneth L. Denton,

Alternate Army Liaison Officer With the Federal Register.

[FR Doc. 89-30001 Filed 12-26-89; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

(CFDA No.: 84.128A)

Program of Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Individuals with Severe Handicaps; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1990

Purpose of Program: This program provides support through grants or cooperative agreements to State and other public and nonprofit agencies and organizations to expand or otherwise improve rehabilitation services for individuals with severe handicaps.

Awards under this competition are for one-time start-up costs for projects designed to initiate a system of regional (multi-State) comprehensive head injury rehabilitation and prevention centers.

Deadline for Transmittal of Applications: March 12, 1990.

Applications Available: January 12, 1990.

Estimated Available Funds: $15,000,000.

Estimated Range of Awards: $3,375,000 to $4,125,000.

Estimated Average Size of Awards: $3,750,000.

Estimated Number of Awards: 4.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months. A grant under this competition will include funding for the entire project period. However, disbursement of grant funds will be made throughout the project period on the basis of grantee need and subject to accomplishment of project objectives.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, and 85; and (b) The regulations for this program in 34 CFR parts 369 and 373.

Priority: The Secretary is particularly interested in applications that meet the following invitational priority:

Model centers that demonstrate improved systems of prevention, acute care, and rehabilitation directed at reducing the human and economic consequences of traumatic head or brain injury, with special emphasis on vocational rehabilitation, retraining, and placement. The activities of the centers may emphasize: (1) Prevention; (2) outreach; (3) identification and elimination of barriers to effective rehabilitation services; (4) systemization of care (improving the organization of the spectrum of services required by people with traumatic head or brain injury); (5) follow-up by families, schools, and rehabilitation providers; and (6) close consultation with and participation of individuals with traumatic head or brain injury and their families in the design and conduct of the centers. The Secretary is especially interested in applications from States or regions in the country where the incidence of traumatic head or brain injury is high relative to the national average.

Under 34 CFR 75.105(c)(1), an application that meets this invitational priority does not receive competitive or absolute preference over other applications. However, by statute, all applications must be for projects designed to establish regional comprehensive head injury rehabilitation and prevention centers.

For Applications or Information Contact: Sherrita Gary, Office of Developmental Programs, U.S. Department of Education, 400 Maryland Avenue, SW., room 3332 (Switzer Building), Washington, DC 20202–2650. Telephone: (202) 732–1351.

Program Authority: 29 U.S.C. 777a(a)(1).

Dated: December 14, 1989.

Robert R. Davila,

Assistant Secretary, Office of Special Education and Rehabilitation Services.

[FR Doc. 89–29945 Filed 12–26–89; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE Docket No. 89–66–NG]

Vector Energy (U.S.A.) Inc.; Order Granting Blanket Authorization To Export Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of an order granting a blanket authorization to export natural gas.

SUMMARY: The Office of Fossil Energy (FE) of the Department of energy (DOE) gives notice that it has issued an order granting Vector Energy (U.S.A.) Inc. (Vector) blanket authorization to export up to a total of 100 Bcf of natural gas to Canada during a two-year period beginning on the date of first delivery.

A copy of the order is available for inspection and copying at the Office of Fuels Programs Docket Room 3F–056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, December 20, 1989.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 89–30004 Filed 12–26–89; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. CP90–366–000, et al.]

K N Energy, Inc., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. K N Energy, Inc.

[Docket No. CP90–366–000]

December 15, 1989.

Take notice that on December 12, 1989, K N Energy, Inc. (K N), P.O. Box 15265, Lakewood, Colorado 80215, filed in Docket No. CP90–366–000 a request pursuant to §§ 157.205(b) and 284.223(c) of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service for Coleman Powermate, Inc. (Coleman) under K N's blanket certificate issued in Docket No. CP89–1043–000 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.

K N requests authorization to transport a maximum daily quantity of 72 Mcf for Coleman with estimated annual and average daily quantities of 26,280 Mcf and 72 Mcf, respectively.

K N states that transportation service for Coleman commenced November 2, 1989, under the 120-day automatic authorization provision of § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST90–915–000.

Comment date: January 29, 1990, in accordance with Standard Paragraph G at the end of this notice.

2. Transcontinental Gas Pipe Line Corp.

[Docket No. CP88–328–004]

December 15, 1989.

Take notice that on December 5, 1989,[1] Transcontinental Gas Pipe Line

[1] The petition to amend was tendered for filing on December 1, 1989; however, the fee required by § 381.207 of the Commission's Rules (18 CFR 381.207) was not paid until December 5, 1989. Section 381.103 of the Commission's Rules provides that the filing date is the date on which the fee is paid.

Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP88–328–004 a petition to amend the order issuing a certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act in Docket No. CP88–328–000, to permit the holders of firm transportation capacity rights on Transco's system to assign such rights to third parties, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Transco proposes to implement an interim transportation capacity assignment program on its system pursuant to the provisions of a new section 14 of Transco's Rate Schedule FT. Transco proposes that holders of firm transportation rights have the right to assign on any day all or a portion of their rights to tender gas for transportation under Rate Schedule FT to third parties subject to the following conditions: (a) FT shippers agree to comply with the terms and conditions of Transco's certificate authorization in this proceeding; (b) the reassignment of capacity is limited to existing delivery points of the FT shipper reassigning capacity and does not include any upstream delivery points; (c) FT shippers should agree to be responsible to Transco for compliance with all terms and conditions of the FT service agreement, for paying all costs, for balancing receipts and deliveries of gas, for paying all rates, charges, penalties and fees; (d) designated title requirements; and (e) scheduling of shipments.

Transco's proposal would permit multiple reassignment of capacity, and capacity would be permitted to be repackaged on both a firm and interruptible basis. Under Transco's proposal, all shippers would be required to allocate capacity on a non-discriminatory, first-come, first-serve basis, except that downstream interstate pipelines would be permitted to grant a priority to their historical sales customers in reassigning firm capacity reserved on the Transco system by the downstream interstate pipeline.

Transco proposes that the maximum rate that could be charged for any assigned FT transportation services could not exceed the as-billed rate charged by Transco for such transportation, including commodity surcharges.

Transco requests that the Commission authorize the instant transportation capacity assignment program effective April 1, 1990, extending only until such time as the long-term capacity assignment issue is resolved in Docket No. CP88–328–002 and implemented on the Transco system.

Comment date: January 15, 1990, in accordance with the first subparagaph of Standard Paragraph F at the end of this notice.

3. Natural Gas Pipeline Company of America

[Docket No. CP90–384–000]

December 15, 1989.

Take notice that on December 14, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP90–384–000 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 PSI, Inc. (PSI), 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 September 25, 1989, under its Rate Schedule ITS, it proposes to transport up to 200,000 MMBtu per day equivalent of natural gas for PSI. 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 located in New Mexico, Texas, offshore Texas, Oklahoma, Louisiana, offshore Louisiana, Illinois, Arkansas, Colorado, Kansas, Iowa and Nebraska, and would deliver the gas to delivery points located in Kansas, Texas, offshore Texas, Illinois, Oklahoma, Colorado, New Mexico, offshore Louisiana, Nebraska, Iowa and Arkansas.

Natural advises that service under § 284.223(a) commenced October 26, 1989, as reported in Docket No. ST90–575 (filed November 22, 1989). Natural further advises that it would transport 50,000 MMBtu on an average day and 18,250,000 MMBtu annually.

Comment date: January 29, 1990, in accordance with Standard Paragraph G at the end of this notice.

4. Great Lakes Gas Transmission Co.

[Docket No. CP90–355–000]

December 15, 1989.

Take notice that on December 8, 1989, Great Lakes Gas Transmission Company (Great Lakes), 2100 Buhl Building, Detroit, Michigan 48226, filed in Docket No. CP90–355–000 an application pursuant to section 7 (b) and (c) of the Natural Gas Act for permission and approval to amend existing certificates and abandon sales service, in order to terminate the existing service agreement under which Great Lakes currently sells gas to ANR Pipeline Company (ANR Pipeline), abandon such service, and provide transportation service for ANR Pipeline for natural gas that ANR Pipeline would purchase directly from TransCanada PipeLines Limited (TransCanada), in a quantity equivalent to that which Great Lakes currently sells to ANR Pipeline, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is averred that under a Service Agreement dated November 2, 1981, (Service Agreement) between Great Lakes and ANR Pipeline, Great Lakes sells up to 19,064 Mcf of natural gas per day (ANR Volumes) to ANR Pipeline, which Great Lakes purchases from TransCanada, under a Gas Purchase Contract dated October 9, 1970, as amended (Gas Purchase Contract). It is alleged that Great Lakes and ANR Pipeline believe that by ANR Pipeline negotiating its pricing arrangements directly with TransCanada, ANR Pipeline is better able to express its concerns relative to its market to TransCanada. Great Lakes contends that during that last four years, it has allowed its resale customers, including ANR Pipeline, to directly negotiate pricing arrangements with TransCanada. Great Lakes avers that its role has become that of a conduit between its resale customers and TransCanada.

It is indicated, that concurrent with this application, Great Lakes and ANR Pipeline would be filing with the Department of Energy, a joint petition to obtain authorization for ANR Pipeline to succeed to Great Lakes interests in existing import authorizations for the ANR Volumes so that ANR Pipeline may purchase directly from TransCanada those volumes that ANR Pipeline is presently authorized to purchase from Great Lakes.

Great Lakes states that to implement the "unbundling" arrangement, Great Lakes, TransCanada, and ANR Pipeline have entered into a Precedent Agreement dated November 21, 1989, which ANR Pipeline would execute with Great Lakes and TransCanada, respectively, upon receipt of all regulatory approval required to implement the arrangement. Great Lakes alleges that at the present time, the Service Agreement provides that additional volumes may be sold to ANR Pipeline (under Rate Schedule AOS–2) by agreement of the parties. Great Lakes contends that the Transportation

Service Agreement provides for transportation of overrun volumes upon mutual agreement of the parties. It is stated that the rate that would be in the Transportation Service Agreement, when executed, would be the transportation component of resale rated for Great Lakes' central zone under its existing Rate Schedules CQ and AOS contained in Great Lakes's FERC Gas Tariff, Volumes No. 1, under which Great Lakes currently sells gas to ANR Pipeline. Great Lakes contends that the Transportation Service Agreement provides for a term expiring November 1, 2000. Great Lakes further contends that the Direct Sales Contract has similar pricing provisions to those currently in effect in the Gas Purchase Contract for the ANR Volumes.

Comment date: January 5, 1990 in accordance with Standard Paragraph F at the end of the notice.

5. Northern Natural Gas Co., Division of Enron Corp.

[Docket No. CP90–367–000]

December 15, 1989.

Take notice that on December 12, 1989, Northern Natural Gas Co., Division of Enron Corp., (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP90–367–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to operate four existing town border stations as jurisdictional sales facilities, under Northern's blanket certificate issued in Docket No. CP82–401–000 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 proposes to operate the sales facilities as delivery points to accommodate natural gas deliveries to Northern States Power Company (NSP). Northern states that the deliveries are needed for NSP to serve Anoka County, Minnesota, Faribault, Minnesota, Becker, Minnesota and Marine on St. Croix, Minnesota.

It is stated that the delivery point volumes will be within currently authorized firm entitlements for NSP. It is further stated that the delivery of such volumes to the new delivery points would have no impact on Northern's peak day and annual deliveries.

Comment date: January 29, 1990 in accordance with Standard Paragraph G at the end of the notice.

6. United Gas Pipe Line Company

[Docket No. CP90–373–000]

December 15, 1989.

Take notice that on December 12, 1989, United Gas Pipe Line Company (United), P.O. Box 1478 Houston, Texas 77251–1478, filed in Docket No. CP90–373–000 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 The Northwestern Mutual Life Insurance Company (Northwestern), a producer of natural gas, under its blanket authorization issued in Docket No. CP88–6–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United would perform the proposed interruptible transportation service for Northwestern, pursuant to an interruptible transportation service agreement dated October 18, 1989 (Contract No. TI–21–2381). The transportation agreement is effective for a primary term of five years from the date of first delivery thereunder or such date that the parties mutually agree to terminate the agreement. The agreement shall continue for successive one month terms unless terminated by thirty days written notice by either party. United proposes to transport 12,360 MMBtu of natural gas on a peak and average day; and on an annual basis 4,511,400 MMBtu of natural gas for Northwestern United proposes to receive the subject gas at an existing point located in section 41, T13S, R4E, Vermilion Parish, Louisiana. The point of delivery is located in section 2, T5N, R2E, Rapides Parish, Louisiana. United avers that no new facilities are required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self-implementing provision of § 284.223(a)(1) of the Commission's Regulations. United commenced such self-implementing service on November 7, 1989, as reported in Docket No. ST90–895–000.

Comment date: January 29, 1990, in accordance with Standard Paragraph G at the end of this notice.

7. United Gas Pipe Line Co.

[Docket No. CP90–375–000]

December 15, 1989.

Take notice that on December 12, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP90–375–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a firm transportation service for Sun Operating Limited Partnership (Sun), a producer, under the blanket certificate issued in Docket No. CP88–6–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

United states that pursuant to a transportation agreement dated October 9, 1989, as amended, under its Rate Schedule FTS, it proposes to transport up to 8,240 MMBtu per day equivalent of natural gas for Sun. United states that it would transport the gas from a receipt point in Smith County, Texas, and would deliver the gas to points located in Santa Rosa County, Florida, and Hinds County, Mississippi.

United advises that service under § 284.223(a) commenced October 9, 1989, as reported in Docket No. ST90–706–000 (filed November 29, 1989). United further advises that it would transport 8,240 MMBtu on an average day and 3,007,600 MMBtu annually.

Comment date: January 29, 1990, in accordance with Standard Paragraph G at the end of this notice.

8. United Gas Pipe Line Company

[Docket No. CP90–376–000]

December 15, 1989.

Take notice that on December 12, 1989, United Gas Pipe Line Company (United), P.O. Box 1478 Houston, Texas 77251–1478, filed in Docket No. CP90–376–000 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 Phibro Distributors Corporation (Phibro), a marketer of natural gas, under its blanket authorization issued in Docket No. CP88–6–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United would perform the proposed interruptible transportation service for Phibro, pursuant to an interruptible transportation service agreement dated June 2, 1989, as amended on July 10 and August 22, 1989 (Contract No. TI–21–2190). The transportation agreement is effective for a primary term of one month from the date of first delivery thereunder or such date that the parties mutually agree to terminate the agreement. The agreement shall continue for successive one month terms unless terminated by thirty days written notice by either party. United proposes to transport 309,000 MMBtu of natural

gas on a peak and average day; and on an annual basis 112,785,000 MMBtu of natural gas for Phibro. United proposes to receive the subject gas at existing points of interconnection located in the states of Louisiana, Offshore Louisiana, Mississippi and Texas. Points of delivery are located in the states of Florida, Lousiana, Mississippi and Texas. United avers that no new facilities are required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self-implementing provision of § 284.223(a)(1) of the Commission's Regulations. United commenced such self-implementing service on October 21, 1989, as reported in Docket No. ST90-552-000.

Comment date: January 29, 1990, in accordance with Standard Paragraph G at the end of this notice.

9. Tennessee Gas Pipeline Co.

[Docket No. CP90-379-000]

December 15, 1989.

Take notice that on December 13, 1988, Tennessee Gas Pipeline Company (Tennessee) P.O. Box 2511, Houston, Texas, 77252, filed in Docket No. CP90-379-000 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 Jaywell Energy Corporation (Jaywell) under its blanket authorization issued in Docket No. CP87-115-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Tennessee would perform the proposed interruptible transportation service for Jaywell, a marketer of natural gas, pursuant to a gas transportation agreement dated September 22, 1989 as amended September 29, 1989 and October 9, 1989 (TGP Contract No. T-3891). The term of the transportation agreement is from the date of execution and shall remain in full force and effect for a term of one month and month-to-month thereafter; provided, however that either Tennessee or Jaywell may terminate the agreement at any time upon at least 30 days prior written notice to the other party. Tennessee proposes to transport on a peak day up to 11,000 dekatherms; on an average day up to 11,000 dekatherms; and on an annual basis 4,015,000 dekatherms of natural gas for Jaywell. It is stated that Jaywell would pay Tennessee for all natural gas delivered pursuant to the transportation agreement in accordance with Tennessee's Rate Schedule IT-1. Tennessee states that it would transport natural gas for Jaywell from a receipt points located in offshore Louisiana. Tennessee contends that the ultimate point of delivery is located in Ohio. Tennessee alleges that no jurisdictional or non-jurisdictional facilities would be constructed to provide the proposed transportation 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. Tennessee commenced such self-implementing service on November 9, 1989, as reported in Docket No. ST90-934-000.

Comment date: January 29, 1990, in accordance with Standard Paragraph G at the end of this notice.

10. Northern Natural Gas Co., Division of Enron Corp.

[Docket No. CP90-262-000]

December 18, 1989.

Take notice that on November 17, 1989, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP90-262-000 an application pursuant to section 7(c) of the Natural Gas Act for issuance of a limited-term certificate authorizing the firm sales of natural gas to Cabot Gas Supply Corporation (Cabot), along with pregranted abandonment authorization, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern states that it would implement the firm sale to Cabot of up to 50,000 million Btu of natural gas per day pursuant to the terms of a gas sales agreement dated October 23, 1989. Northern indicates it would deliver the gas to Cabot at any of six specified points located in the state of Texas. It is also indicated that Cabot requires the gas to serve the winter peaking requirements of Energas Company, a local distribution company and existing customer of Cabot.

Northern states that no facilities need be constructed to implement the service. Northern proposes to charge a two-part rate for the service, including a demand charge of $6.302 per million Btu as applied to the maximum daily quantity and a commodity charge of $1.6196 per million Btu for each million Btu delivered. Northern also proposes to provide the service from December 1, 1989, through February 28, 1991, from December 1, 1990, through February 28, 1991. Northern requests pregranted abandonment authorization effective at the end of the contract term.

Comment date: January 8, 1990, in accordance with Standard Paragraph F at the end of this notice.

11. United Gas Pipe Line Co.

[Docket No. CP90-343-000]

December 18, 1989.

Take notice that on December 6, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP90-343-000, 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. CP88-6-000, a maximum of 312,090 MMBtu on behalf of AMOCO PRODUCTION COMPANY (AMOCO PRODUCTION), a producer, all as more fully set forth in the request on file with the Commission and open to public inspection.

United states that service commenced October 26, 1989, under § 284.223(a) of the Commission Regulations, as reported in Docket No. ST90-00490, and estimates the volumes transported to be 312,090 MMBtu per day on peak day and average day, and 113,912,850 MMBtu on an annual basis.

United also indicates that no new facilities are to be constructed.

Comment date: February 1, 1990, in accordance with Standard Paragraph G at the end of this notice.

12. United Gas Pipe Line Co.

[Docket No. CP90-345-000]

December 18, 1989.

Take notice that on December 6, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP90-345-000, 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. CP88-6-000, a maximum daily quantity of 25,750 MMBtu on behalf of MIDCON MARKETING CORP., a marketer, all as more fully set forth in the request on file with the Commission and open to public inspection.

United states that service commenced October 17, 1989, under § 284.223 (a) of the Commission Regulations, as reported in Docket No. ST90-00405, and estimates the volumes transported to be 25,750 MMBtu per day on peak day and average day, and 9,398,750 MMBtu on an annual basis.

United also indicates that no new facilities are to be constructed.

Comment date: February 1, 1990, in accordance with Standard Paragraph G at the end of this notice.

13. Colorado Interstate Gas Co.

[Docket No. CP90–349–000]

December 18, 1989.

Take notice that on December 7, 1989, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP90–349–000 an application pursuant to section 7(b) of the Natural Gas Act for authority to partially abandon its natural gas sales services to the Town of Keyes, Oklahoma (Keyes) and Nothern Gas of Wyoming (Northern), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

CIG states that the service agreements reflecting the current service levels for Keyes and Northern expired on September 30, 1989. CIG further states that the requested authority is prompted by the execution of new service agreements that reduces the General Daily Entitlement (GDE) and the Total Annual Entitlement (TAE) for these customers as follows:

Customer	Proposed decrease in GDE	Proposed decrease in TAE
Keys	145	26,000
Northern	250	93,000
Total	395	119,000

CIG advises that the new service agreements were executed on October 1, 1989 and are expected to be in affect through September 30, 1996. Finally, CIG asserts that the requested abandonment would not adversely affect its other customers.

Comment date: January 8, 1990 in accordance with Standard Paragraph F at the end of the notice.

14. Natural Gas Pipeline Company of America

[Docket No. CP90–353–000]

December 18, 1989.

Take notice that on December 8, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP90–353–000 a request pursuant to § 157.205 of the Commission's Regulations (18 CFR 157.205) for authorization to transport natural gas on behalf of Texas Gas Gathering Comapny (TGGC), a gatherer of natural gas, under Natural's blanket certificate issued in Docket No. CP86–582–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Natural proposes to transport, on an interruptible basis, up to 125,000 MMBtu equivalent of natural gas on a peak day (plus any additional volumes accepted pursuant to the overrun provisions of Natural's Rate Schedule ITS), 25,000 MMBtu equivalent on an average day and 9,125,000 on an annual basis for TGGC. It is stated that Natural would receive the gas at an interconnection with TGGC in Harrison County, Texas, and would deliver equivalent volumes at points on Natural's pipeline in Texas, Louisiana, Arkansas, Missouri 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 October 1, 1989, under the self-implementing authorization of § 284.223 of the Commission's Regulations, as reported in Docket No. ST90–971.

Comment date: February 1, 1990, in accordance with Standard Paragraph G at the end of this notice.

15. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP90–368–000]

December 18, 1989.

Take notice that on December 12, 1989, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No CP90–368–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to operate two exisitng town border stations as jurisdictional sales facilities, under Northern's blanket certificate issued in Docket No. CP82–401–000 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 proposes to operate the sales facilities as delivery points to accommodate natural gas deliveries to Western Gas Utilities, Inc. (Western). Northern states that the deliveries are needed for Western to serve the communities of Hamburg, and Green Isle, Minnesota.

It is stated that the delivery volumes will be within Western's currently authorized firm entitlements. It is further stated that the delivery of such volumes to the delivery points would have no impact on Northern's peak day and annual deliveries.

Comment date: February 1, 1990, in accordance with Standard Paragraph G at the end of this notice.

16. Northern Natural Gas Company Division of Enron Corp.

[Docket No. CP90–381–000]

December 18, 1989.

Take notice that on December 13, 1989, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP90–381–000 a request pursuant to § 157.205 and 284.223 (18 CFR 157.205 and 284.223) of the Commission's Regulations under the Natural Gas Act for authorization to provide transportation service for Enron Gas Marketing, Inc. (Enron) a gas marketer, under Northern's blanket transportation certificate issued in Docket No. CP86–435–000 on December 22, 1986, all as more fully set forth in the application which is on file with the Commisison and open to public inspection.

Northern proposes, pursuant to an agreement dated November 10, 1989, to transport natural gas for Enron from various receipt points in Oklahoma and Kansas, and deliver the gas, for the account of Enron, in Washington and Dakato Counties, Minnesota. Northern states that it proposes to transport up to 5,000 MMBtu of gas on a peak day and approximately 3,750 MMBtu and 1,825,000 MMBtu of gas on an average day and annually, respectively. Northern states that transportation service under § 284.223(a) commenced on November 10, 1989, as reported in Docket No. ST90–866–000 on December 1, 1989.

Comment date: February 1, 1990, in accordance with Standard Paragraph G at the end of this notice.

17. Inland Gas Company, Inc.

[Docket No. CP90–382–000]

December 18, 1989.

Take notice that on December 13, 1989, Inland Gas Company, Inc. (Inland), 336–338 Fourteenth Street, Ashland, Kentucky 41101, filed in Docket No. CP90–382–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on an interruptible basis on behalf of Cobra Oil and Gas Company, Inc. (Cobra) under its blanket certificate issued in Docket No. CP89–779–000 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.

Inland states that the maximum daily, average daily and annual quantities that it would transport for Cobra would be 200 MMBtu equivalent of natural gas, 100 MMBtu equivalent of natural gas and 265,000 MMBtu equivalent of natural gas, respectively.

Inland indicates that in a filing made with the Commission in Docket No. ST90-877 it reported that transportation service for Cobra had begun on November 22, 1989 under the 120-day automatic authorization provisions of § 284.223(a).

Comment date: February 1, 1990, in accordance with Standard Paragraph G at the end of this notice.

18. The Inland Gas Company, Inc.

[Docket No. CP90-383-000]

December 18, 1989.

Take notice that on December 13, 1989, The Inland Gas Company, Inc. (Inland), 336-338 Fourteenth Street, Ashland, Kentucky 41101, filed in Docket No. CP90-383-000, a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and the Natural Gas Policy Act (18 CFR 284.223) for authorization to provide a transportation service for Blackstar Exploration, Inc. (Blackstar) under Inland's blanket certificate issued in Docket No. CP89-779-000 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.

Inland proposes to transport, on an interruptible basis, up to 240 MMBtu of natural gas equivalent per day pursuant to a transportation agreement dated October 24, 1989, between Inland and Blackstar. Inland would receive natural gas at various existing receipt points in Kentucky and redeliver equivalent volumes of gas, less fuel and company used gas, at an existing delivery point in Kentucky.

Inland further states that the estimated average daily and annual quantities would be 200 MMBtu and 73,000 MMBtu, respectively. Service under § 284.223(a) commenced November 6, 1989, as reported in Docket No. ST90-876-000, it is stated.

Comment date: February 1, 1990, in accordance with Standard Paragraph G at the end of this notice.

19. Natural Gas Pipeline Company of America

[Docket No. CP90-386-000]

December 18, 1989.

Take notice that on December 14, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP90-386-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a firm transportation service for Continental Natural Gas, Inc. (Continental), 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 September 28, 1989, under its Rate Schedule FTS, it proposes to transport up to 6,000 MMBtu per day equivalent of natural gas for Continental. Natural states that it would transport the gas (plus any additional volumes accepted pursuant to the overrun provisions of Natural's Rate Schedule FTS) from receipt points located in Texas and Kansas, and would deliver the gas to delivery points located in New Mexico.

Natural advises that service under § 284.223(a) commenced October 15, 1989, as reported in Docket No. ST90-479 (filed November 14, 1989). Natural further advises that it would transport 3,000 MMBtu an an average day and 1,095,000 MMBtu annually.

Comment date: February 1, 1990, in accordance with Standard Paragraph G at the end of this notice.

20. Williams Natural Gas Co.

[Docket No. CP90-362-000]

December 19, 1989.

Take notice that on December 11, 1989, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP90-362-000 a request, as supplemented on December 18, 1989, 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 Amoco Energy Trading Company (Amoco), a producer, under Williams' blanket certificate issued in Docket No. CP86-631-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Williams states that pursuant to a transportation service agreement dated October 5, 1988, it proposes to transport up to 2,000,000 dt equivalent of natural gas per day of Amoco. Williams states that it would receive the gas at specified points in Texas, Kansas, Oklahoma, Missouri, Wyoming, and Colorado and redeliver the gas at specified points located in Kansas, Missouri, Oklahoma, and Texas. Williams estimates that the maximum day and average day volumes would be 2,000,000 dt equivalent of natural gas and that the annual volumes would be 730,000,000 dt equivalent of natural gas. It is stated that on December 1, 1988, Williams initiated a 120-day transportation service for Amoco under §284.223(a), as reported in Docket No. ST89-1660-000.

Williams further states that no facilities need constructed to implement the service. Williams indicates that the primary term of the contract expires on January 1, 1993, but that the transaction would continue on a year-to-year basis until terminated by either party on ninety days written notice. Williams proposes to charge rates and abide by the terms and conditions of its Rate Schedule ITS.

Comment date: February 2, 1990, in accordance with Standard Paragraph G at the end of this notice.

21. Transwestern Pipeline Co.

[Docket No. CP90-388-000]

December 19, 1989.

Take notice that on December 14, 1989, Transwestern Pipeline Company (Transwestern), Post Office Box 1188, Houston, Texas 77251-1188, filed a request for authorization at Docket No. CP90-388-000, pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act to provide interruptible transportation service for Texaco TGas Marketing, Inc. (Texaco Gas), a marketer of natural gas, under Transwestern's blanket certificate issued at Docket No. CP88-133-000, all as more fully set forth in the request on file with the Commission and open for public inspection.

Transwestern requests authority to transport up to 750,000 MMBtu of natural gas per day for Texaco Gas from various points of receipt on Transwestern's system to a delivery point in Mohave County, Texas. Transwestern states that the estimated daily and annual quantities would be 562,500 MMBtu and 273,750,000 MMBtu, respectively. Transwestern further states that transportation service under § 284.223(a) commenced on October 6, 1989, as reported at Docket No. ST90-264-000.

Transwestern also states that no new facilities will be constructed to provide the proposed transportation service.

Comment date: February 2, 1990, in accordance with Standard Paragraph G at the end of this notice.

22. Transwestern Pipeline Company

[Docket No. CP90-389-000]

December 19, 1989.

Take notice that on December 14, 1989, Transwestern Pipeline Company (Transwestern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. Cp90-389-000 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 Texaco Gas Marketing Inc. (Texaco), a marketer of natural gas, under Transwestern's blanket certificate issued in Docket No. CP88-133-000 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.

Transwestern proposes to transport, on an interruptible basis, up to 750,000 MMBtu per day for Texaco. Transwestern states that construction of facilities would not be required to provide the proposed service.

Transwestern further states that the maximum day, average day, and annual transportation volumes would be approximately 750,000 MMBtu, 562,000 MMBtu and 273,750,000 MMBtu respectively.

Transwestern advises that service under § 284.223(a) commenced November 1, 1989, as reported in Docket No. ST90-699.

Comment date: February 2, 1990, in accordance with Standard Paragraph G at the end of this notice.

23. Panhandle Eastern Pipe Line Co.

[Docket No. CP90-369-000]

December 19, 1989.

Take notice that on December 12, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77001 filed in Docket No. CP90-369-000, a request pursuant to sections 7(b) of the Commission's Regulations under the Natural Gas Act, as amended, for authorization to abandon a part of the sales service provided to Union Electric Company (Union Electric), an existing jurisdictional sales customer, all as more fully set forth in the request on file with the Commission and open to public inspection.

Panhandle states that the proposed abandonment will reduce the annualized total contract demand from 32,422,230 Mcf to 27,677,230 Mcf which was converted to firm transportation service effective December 1, 1989, pursuant to § 284.10 of the Commission's Regulations. The resulting firm transportation is being performed in accordance with the terms and conditions of Panhandle's Rate Schedule PT-Firm.

Panhandle also requests a December 1, 1989 effective date for the abandonment authorization which will coincide with the date of the conversion.

Pursuant to 18 CFR 284.10(d)(2) the exercise of the customer's option to convert constitutes consent to the proposed abandonment.

Comment date: January 9, 1990, in accordance with Standard Paragraph F at the end of this notice.

24. Natural Gas Pipeline Company of America

[Docket No. CP90-370-000]

December 19, 1989.

Take notice that on December 12, 1989, Natural Gas Pipeline Company of America (Natural), file in Docket No. CP90-370-000 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. CP86-582-000 on behalf of PSI Inc. (PSI), a marketer, all as more fully set forth in the request on file with the Commission and open to public inspection.

Natural indicates that service commenced October 7, 1989, as reported in Docket No. ST90-385-000 and estimates the volumes transported to be 3,000,000 MMBtu on a peak day, 25,000 MMBtu on an average day and 9,125,000 MMBtu annually. Natural also states that consistent with its Rate Schedule, PSI may request and Natural may agree to accept additional quantities as overun gas.

Natural avers that there will be no new facilities constructed to perform the service.

Comment date: February 2, 1990, 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 N.E., 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 aprotest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-29933 Filed 12-26-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. OR 89-2-000 et al.]

Oil Pipelines: Quality Bank; Order With Respect to Petition for Declaratory Order and Appeal of Oil Pipeline Board Order

In the matter of: Before Commissioners: Martin L. Allday, Chairman; Charles A. Trabandt, Elizabeth Anne Moler and Jerry J. Langdon.

	Docket Nos.
Trans Alaska Pipeline System.	OR89–2–000
Amerada Hess Pipeline Corporation.	IS89–7–000, 001
ARCO Pipe Line Company.	IS89–8–000, 001
BP Pipelines (Alaska), Inc.	IS89–9–000, 001
Exxon Pipeline Company.	IS89–10–000, 001
Mobil Alaska Pipeline Company.	IS89–11,–000, 001
Phillips Alaska Pipeline Corporation.	IS89–12–000, 001
Unocal Pipeline Company.	IS89–13–000, 001

Issued December 19, 1989.

This order deals with two matters before the Commission with respect to the Trans Alaska Pipeline System's (TAPS) quality banks. The first is the TAPS owners' [1] May 26, 1989 petition for declaratory order.[2] The second is the TAPS owners' appeal of the June 30, 1989 order of the Oil Pipeline Board, which suspended TAPS' quality bank rate increase for one-day and set for hearing the lawfulness of the filing.[3]

I. Public Notice and Interventions in Docket No. OR89–2–000

Public notice of the TAPS owners' petition for declaratory order was issued on June 8, 1989, with motions to intervene due on or before June 29, 1989. Timely motions to intervene were filed by the parties listed in the Appendix to this order. Pursuant to Rule 214 any timely filed motions to intervene are granted unless an answer in opposition is received within 15 days of the date such motion is filed. Any timely filed motions or notices not listed in the Appendix are also granted in accordance with the conditions of Rule 214. Phillips 66 Company's unopposed motion to intervene out-of-time is granted.

II. Quality Banks and TAPS

In general, quality banks are needed when different shippers put oil of uneven quality into a pipeline. This is so because commingling of different quality oils means that some shippers withdraw oil that is of better quality than the oil they put into the pipeline, while others withdaw oil that is inferior to the oil that they ship through the pipeline. A quality bank makes monetary adjustments that neutralize the effect that these quality differentials would otherwise have on the shippers.[4]

TAPS runs 800 miles from Prudhoe Bay on the North Slope of Alaska to the port of Valdez on the South Central Coast of Alaska. TAPS has three quality banks. The first makes monetary adjustments for the different quality of oil produced on the North Slope of Alaska and delivered to TAPS at its entrance at Pump Station No. 1 at Prudhoe Bay. The second is about 470 miles downstream near Fairbanks where MAPCO Petroleum Inc. (MAPCO) and Petro Star Inc. (Petro Star) take delivery of oil, refine most of it, and reinject the remainder into TAPS for delivery at Valdez. This quality bank makes monetary adjustments for the difference in quality between the lower quality reinjected oil and the oil in the TAPS common stream. The third quality bank makes monetary adjustments for the difference in value of oil in the common TAPS stream and the oil delivered to the particular recipient at Valdez.

On October 31, 1984, the Commission approved a contested settlement as just and reasonable and supported by the record in which it approved the TAPS quality banks and adopted a settlement methodology for measuring the quality bank monetary adjustments.[5] The settlement was supported by the TAPS owners and by MAPCO but was opposed by Tesoro Alaska Petroleum Company (Tesoro).[6]

The controversy centered on the quality bank that makes monetary adjustments with respect to MAPCO's reinjected oil.[7]

The Alaska Public Utilities Commission (APUC) also approved the aforementioned settlement. Hence, at present, the intrastate and interstate charges for the quality bank adjustments are computed using the same methodology.

III. The Current Situation

A. Before the APUC

The dispute about the appropriate quality bank methodology revived before the APUC when Tesoro protested the TAPS owners' December 1, 1988 filing on the ground that the proposed quality bank adjustment did not account for (1) the additional of natural gas liquids to the virgin crude oil,[8] (2) the injection into the stream of refined petroleum products,[9] and (3) the possible injection of non-petroleum substances.[10] On February 27, 1989, the APUC construed Tesoro's protest as a formal complaint and ordered an investigation into "whether the current quality bank methodology fairly and adequately compensates shippers for the differing quality of the oil they tender and the oil they receive." [11] In addition, while the APUC stated that "it seems that this proceeding should be heard concurrently by both [it and the FERC] rather than first before one and then before the other, * * * this is a matter for the parties to decide," and it "will immediately proceed with this Docket regardless of whether a complaint is now filed with the FERC."[12] The APUC noted its belief that any concurrent hearing "should be held in Alaska due to the intense local interest." [13]

B. Before the FERC

1. The Petition for Declaratory Order

On May 26, 1989, the TAPS owners filed with the Commission a petition for a declaratory order. They request the Commission to launch an investigation under section 13(2) of the Interstate Commerce Act [14] into the lawfulness of the quality bank provisions of their tariffs and to hold hearings jointly with the APUC. In addition, they request an order declaring that Section 13(4) of the Act requires uniform interstate and

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[1] The TAPS owners or carriers are: Amerada Hess Pipeline Corporation, ARCO Pipe Line Company, BP Pipelines (Alaska Inc., Exxon Pipeline Company, Mobil Alaska Pipeline Company, Phillips Alaska Pipeline Corporation, and Unocal Pipeline Company.

[2] Docket No. OR89–2–000.

[3] Amerada Hess Pipeline Corp., *et al.*, 47 FERC ¶ 62,336 (1989), Docket Nos. IS89–7–000 through IS89–13–000.

[4] In general, higher gravity crude oil is worth more than lower gravity crude oil because higher gravity crude oil produces refined products that are worth more than those produced by lower gravity crude oil. The gravity of the oil is measured in degrees API (American Petroleum Institute).

[5] Trans Alaska Pipeline System, 29 FERC ¶ 61,123 (1984).

[6] Tesoro receives oil at Valdez and refines that oil into products for sale in Alaska.

[7] MAPCO's reinjected oil is of a lower gravity and quality than the oil it joins in the TAPS common stream.

[8] Natural gas liquids have a high gravity but are of low value. Hence, it is alleged that those injecting the natural gas liquids are spiking the TAPS stream to increase their quality bank receipts when the stream's value has been diminished.

[9] Tesoro alleges that MAPCO's and Petro Star's reinjected oil is actually refined oil rather than crude oil.

[10] Tesoro referred to foreign substances, such as refinery waste water, sludge, or spent chemicals used in the refinery process.

[11] Order No. 1, *slip op.* at 18.

[12] *Id.* at 19, 20.

[13] *Id.* at 20 n. 17.

[14] 49 U.S.C. 13(2) (1976). All references to the Interstate Commerce Act unless otherwise stated are to the Act prior to its recondification. The recodification does not apply to the function and authority transferred to FERC. See section 4(c), Pub. 95–473, 92 Stat. 1337, 1470 (1978).

intrastate quality bank monetary adjustments [15] and that the presently used methodology continues to be just and reasonable.[16] The intervenors either support or do not oppose the holding of concurrent hearings. Union Oil of California d/b/a Unocal also requests the Commission to institute an investigation into the TAPS quality bank provisions. Tesoro, supported by Petro Star, but opposed by the TAPS owners and MAPCO, asks the Commission to dismiss the petition for declaratory order in light of the June 30, 1989 suspension order's setting quality bank issues for hearing. (see *Infra.*)

2. The Appeal of the June 30, 1989 Order

On June 30, 1989, the Oil Pipeline Board suspended for one-day and set for hearing the TAPS owners' proposed increase to its quality bank adjustment.[17] The Board took this action because of a protest filed by Conoco, Inc. and Oxy USA, Inc. (Conoco).[18] Conoco asserted that (1) the proposed increases were not properly calculated under the settlement methodology and (2) the TAPS carriers permit low quality but high gravity natural gas liquids to be injected into the TAPS stream.

On July 19, 1989, the TAPS owners appealed the Board's decision to the Commission. The TAPS owners state that they have no objection to an investigation of the methodology to be used to determine the quality adjustments. They do object, however, to the suspension as inappropriate because the filing was required by and in compliance with a method approved by the Commission. Moreover, they argue that any change in methodology should be made prospectively only.[19]

Both Petro Star and Conoco oppose the TAPS owners' appeal. They assert that the natural gas liquids matter justifies the suspension and point out that the APUC suspended the intrastate quality bank adjustment to coincide with the interstate suspension.[20] Petro Star adds that vacating the suspension here will destroy the opportunity for consistent federal and state solutions to the natural gas liquids problems. Conoco adds that factual disputes remain about whether the adjustments were properly calculated.

On August 2, 1989, the TAPS owners filed a motion in the suspension order dockets in which they request the Commission to order joint hearings with the APUC in the event hearings are deemed necessary. This motion is not opposed by the various intervenors. On October 6, 1989, the TAPS owners asked the Commission to expedite both proceedings, to consolidate them, and to grant their requests for joint hearings.

IV. Discussion

The Commission will begin with the TAPS owners' appeal of the Oil Pipeline Board's suspension order because resolution of the appeal is pertinent to the treatment of the petition for declaratory order. The Commission shall grant in part and deny in part the TAPS owners' appeal. First, the Commission will not overturn the Oil Pipeline Board's suspension of the filing or its imposition of a refund obligation as pertains to the issue of whether the quality bank adjustment was properly calculated. Whether the TAPS owners are in compliance with the settlement methodology should be addressed at the hearing. Second, because the TAPS owners have not proposed to change the existing methodology, any change in methodology should be effected prospectively.[21] Last, the Commission grants the TAPS owners' request that the hearing be held jointly with the APUC. The TAPS evidentiary hearings in the past have been held concurrently and the Commission believes that this is the most efficient way to proceed. Hence, the Commission will permit joint hearings for the concurrent taking of evidence.[22]

The Commission grants the TAPS owners' petition for declaratory order to the extent that it seeks an investigation into the lawfulness of their quality bank under section 13(2) of the Act. The APUC proceeding covers issues not included within the scope of the Oil Pipeline Board's suspension order. Hence, the TAPS owners' petition is not moot as argued by Tesoro. On this point, the Commission agrees with MAPCO, which stated:

> Tesoro asserts that if the Commission dismisses the TAPS Carriers' Petition for Declaratory Order, then the Commission will avoid duplicative investigations, implying that all the issues in Docket No. OR89-2-000 would be addressed in Docket Nos. IS89-7-000 through IS89-13-000. Simply stated, this is not true. The only recent issue that would still be investigated is the Quality Bank as it relates to [natural gas liquids]. The two GVEA Connection issues, making appropriate Quality Bank adjustments for the return oil and investigation of the thus far completely unsubstantiated allegation that foreign substances are being injected into TAPS, have not been raised in any requests for investigations filed with the Commission in Docket Nos. IS89-7-000 through IS89-13-000. Thus, if the Commission grants Tesoro's Motion to Dismiss, the two GVEA Connection TAPS Quality Bank issues would no longer be before the Commission.[23]

The Commission grants the TAPS owners' motion to consolidate the FERC proceedings and to hold concurrent evidentiary hearings with the APUC on the issues covered by the petition for declaratory order in addition to these covered by the suspension order.

The Commission denies the TAPS owners' petition for declaratory order without prejudice with respect to their requests that the Commission find that the Act requires uniform intrastate and interstate quality bank monetary adjustments and that the presently used methodology is just and reasonable. Both requests are premature.

V. The Concurrent Evidentiary Hearings

The Commission has consolidated the proceedings before it and has ordered joint hearings with the APUC for the taking of evidence. The Commission believes that the procedures adopted for past TAPS proceedings should apply to the instant proceedings except that the current proceedings may be held in Alaska and that, unlike before, the Alaska presiding officer shall make and announce rulings.[24] The Commission administrative law judge and the APUC presiding officer will fully control assembling the record and ruling on the admissibility of evidence for the record of that officer's commission. Participation in concurrent evidentiary proceedings will in no way preclude either commission from causing to be presented evidence with respect to matters in issue in the case before it.

The presiding officer designated by the APUC shall be the official to make all rulings with respect to scheduling witnesses and hearing dates and to

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[15] In brief, section 13(4) of the Act prohibits a carrier from discriminating against interstate shippers or burdening interstate commence via the use of low intrastate rates.

[16] The various responses and counter responses will not be discussed in greater detail in light of the Commission's action *infra.*

[17] Amerada Hess Pipeline Corp., *et al.*, 47 FERC ¶ 62,335 (1989). The increase is from 1.50 cents per tenth of a degree of API gravity to 2.57 cents.

[18] Conoco produces oil on the North Slope of Alaska at Milne Point. The Milne Point oil is of low gravity and hence Conoco makes payments to the quality bank.

[19] The TAPS owners also note that they are mere stakeholders for adjustments among shippers, that suspension will require the owners to hold the money in escrow rather than refund it (or take other action such as indemnity agreements), and that this will produce uncertainty with respect to any refunds actually distributed.

[20] Order No. 9, issued July 20, 1989.

[21] *Cf. e.g. Sea Robin Pipeline Co.* v. *FERC*, 795 F.2d 1982 (D.C. Cir. 1986).

[22] See *infra* for more details.

[23] Opposition by MAPCO to Motion to Dismiss at 4 (footnote omitted).

[24] *See* Trans Alaska Pipeline System, 2 FERC ¶ 61,061 at p. 61,139 (1978).

announce all other rulings where there is no disagreement on the ruling between the presiding officers of the respective commissions. However, this procedure is without prejudice to the right of a presiding officer of the FERC to announce a divergent ruling, whether respecting the admissibility of evidence or any other matter. In the event of divergent rulings, each commission's separate record will be clearly identified and defined, and the rulings of the presiding officers of each commission will be considered the ruling for his or her commission. If in any proceeding, the ruling of one presiding officer has the effect of admitting any voluminous exhibit or testimony which is excluded by the ruling of another presiding officer, the taking of such evidence will, whenever possible, be deferred until after the completion of all proceedings which can be conducted under concurrent rulings. When such testimony is taken, the transcript of such evidence will be made available to the other commission, if requested.

In conducting such concurrent hearings, it is hoped that the presiding officers designated by each commission would cooperate in order to minimize divergent rulings and to expedite completion of the hearing records. However, a presiding officer of one commission should refrain from communicating with a presiding officer of the other commission on matters of substance outside of the record in the proceedings. The separate decisions of the respective presiding officers of each commission will, of course, be reached independently on the separate record of that commission and without consultation on substantive matters with an official of the other commission.

The Commission orders:

(A) The TAPS owners' May 26, 1989 petition for declaratory order and appeal of the June 30, 1989 order of the Oil Pipeline Board are granted in part and denied in part as set forth in the body of this order.

(B) An investigation under section 13(2) of the Act is instituted in Docket No. OR89-2-000 into the lawfulness of the present methodology for computing quality bank adjustments.

(C) The proceedings in Docket Nos. OR89-2-000 and IS89-7-000 through IS89-13-000 are consolidated as discussed in the body of the order.

(D) The proceedings in Docket Nos. OR89-2-000 and IS89-7-000 through IS89-13-000 shall be held concurrently with hearings before the APUC as discussed in the body of the order.

(E) The Secretary shall cause prompt publication of this order in the **Federal Register.**

By the Commission.

Lois D. Cashell,

Secretary.

Appendix

MAPCO Alaska Petroleum, Inc.
Petro Star Inc.
Tesoro Alaska Petroleum Company
Amoco Production Company
State of Alaska
Exxon Company, U.S.A., a division of Exxon Corporation
Phillips 66 Company (late)
Conoco Inc. and OXY USA, Inc. (protest also)

[FR Doc. 89-29932 Filed 12-26-89; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-34007; FRL 3687-4]

Pesticide Reregistration Data Call-in Supplemental Question and Answer Document; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Pesticide Reregistration Notice.

SUMMARY: EPA is announcing the availability of a document to clarify the Data Call-In Notice issued on October 6, 1989 under the authority of section 3(c)(2)(B) of FIFRA for certain product labeling. This document also contains information on time extensions for registrants.

DATE: Deadline for requests is January 6, 1990.

ADDRESSES To receive a copy of the Question and Answer Document, send a self-addressed, stamped envelop to the following address Document Processing Desk (Label Q&A), Office of Pesticide Programs (H7504C), U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Donna Garner, Office of Pesticide Programs, U.S. Environmental Protection Agency, (1-703-557-7406)

SUPPLEMENTARY INFORMATION: This notice is a clarification of the Data Call-In (DCI) Notice issued under the authority of section 3(c)(2)(B) of FIFRA on October 6, 1989 for labeling for products containing chemicals on reregistration lists A and B (published in the **Federal Register** on 2/22/89 and 5/25/89, respectively). Since issuance of the DCI, a number of registrants have raised questions and concerns about the notice and the information required. In response, the Agency is making available a document in question and answer format to clarify the requirements. This document, entitled "Question and Answer Document to Supplement the Data Call-In (DCI) for Product Labels Issued for Lists A and B," is available at the location given under **ADDRESSES.** The document has also been sent to trade associations representing large numbers of pesticide registrants for distribution to their members.

In clarifying the DCI Notice, EPA is granting an automatic 30-day time extension, until February 6, 1990, for submission of the required labeling documentation if both of the following conditions are met:

1. The registrant is required under the DCI Notice to submit labels for 300 or more products; and

2. The registrant is a small business as defined in FIFRA sec. 4(i)(4)(C)(iii). (A small business registrant is one that has 150 or fewer employees and an average annual gross revenue from chemicals not exceeding $40 million during the 3-year period prior to reregistration.)

Date: December 15, 1989.

Edwin F. Tinsworth,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 89-29895 Filed 12-26-89; 8:45 am]

BILLING CODE 6560-50-D

[FRL-3700-3]

Superfund Response Action Contractor Indemnification

AGENCY: Environmental Protection Agency.

ACTION: Extension of comment period.

SUMMARY: On October 31, 1989, the Environmental Protection Agency (EPA) issued a proposed guidance document to implement section 119 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9619). Today, the Agency is extending the comment period on the proposed guidance document. Comments will now be accepted until February 2, 1990.

DATE: Comments must be submitted on or before February 2, 1990.

ADDRESSES: An original and two copies of comments must be sent to Tom Gillis, U.S. Environmental Protection Agency, OS-510, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Tom Gillis, 202-475-6771.

SUPPLEMENTARY INFORMATION: On October 31, 1989, EPA released a proposed policy and request for comment concerning indemnification of Superfund response action contractors [54 FR 46012, October 31, 1989]. Since that time, EPA has received several comments requesting an extension of the January 2, 1990, deadline for comments. In light of these requests and the complexity of the proposed policy, EPA is extending the deadline one month to ensure a reasonable opportunity for public comment. Therefore, comments will be accepted on or before February 2, 1990.

Mary A. Gade,

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

[FR Doc. 89-29978 Filed 12-26-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[DA 89-1647]

Advisory Committee on Advanced Television Service Implementation Subcommittee Meeting

December 21, 1989.

A meeting of the Implementation Subcommittee of the Advisory Committee on Advanced Television Service will be held on: January 23, 1990, 10:00 a.m., Commission Meeting Room (Room 856), 1919 M Street, NW., Washington, DC.

The agenda for the meeting will consist of:

1. Introduction
2. Minutes of Last Meeting
3. Report of Working Party 1 Policy and Regulation
4. Report of Working Party 2 Transition Scenarios
5. General Discussion
6. Other Business
7. Date and Location of Next Meeting
8. Adjournment

All interested persons are invited to attend. Those interested also may submit written statements at the meeting. Oral statements and discussion will be permitted under the direction of the Implementation Subcommittee Chairman.

Any question regarding this meeting should be directed to Dr. James J. Tietjen at (609) 734-2237 or David R. Siddall at (202) 632-7792.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-30006 Filed 12-26-89; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL RESERVE SYSTEM

Algemene Bank Nederland N.V., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 12, 1990.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Algemene Bank Nederland N.V.*, Amsterdam, The Netherlands; A.B.N.—Stichting, Amsterdam, The Netherlands; ABN/LaSalle North America, Inc., Chicago, Illinois; and LaSalle National Corporation, Chicago, Illinois; to engage *de novo* through their subsidiary, LaSalle National Trust, N.A., Chicago, Illinois, in trust company activities pursuant to § 225.25(b)(3) of the Board's Regulation Y.

2. *First Colonial Bankshares Corporation*, Chicago, Illinois; to engage *de novo* through its subsidiary, First Colonial Mortgage Corporation, Rosemont, Illinois, in servicing mortgage loans previously originated and sold to investors pursuant to § 225.25(b)(1)(iii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 20, 1989.

Jennifer J. Johnnson,

Associate Secretary of the Board.

[FR Doc. 89-29948 Filed 12-26-89; 8:45 am]

BILLING CODE 6210-01-M

Avantor Financial Corporation; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the

reasons a written presentation would not suffice in lieu of a hearing, indentifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 22, 1990.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 100 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Avantor Financial Corporation,* Norfolk, Virginia; to bacome a bank holding company by acquiring 100 percent of the voting shares of Sovran Financial Corporation, Norfolk, Virginia, and The Citizens and Southern Corporation, Atlanta, Georgia. Upon acquisition of these bank holding companies, Applicant will acquire the following banks: Sovran Bank, N.A., Richmond, Virginia; Sovran Bank/Maryland; Sovran Bank/DC National, Washington, DC; Sovran Bank/Delaware, Dover, Delaware; Sovran Bank/Central South, Nashville, Tennessee; Sovran Bank/Eastern, Oakridge, Tennessee; Sovran Bank/Greenville, Greenville, Tennessee; Sovran Bank/Hickman County, Centerville, Tennessee; Sovran Bank/Chattanooga, Chattanooga, Tennessee; Sovran Bank/Memphis, Memphis, Tennessee; Sovran Bank/Tri-Cities, Johnson City, Tennessee; Sovran Bank/Union City, Union City, Tennessee; and Sovran Bank/Kentucky, Hopkinsville, Kentucky; The Citizens and Southern National Bank, Savannah, Georgia; The Citizens and Southern National Bank of South Carolina, Charleston, South Carolina; The Citizens and Southern National Bank of Florida, Fort Lauderdale, Florida; Citizens and Southern Trust Company (Georgia), N.A., Atlanta, Georgia; Citizens and Southern Trust Company (Florida), N.A. Ft. Lauderdale, Florida; Citizens and Southern Trust Company (South Carolina), N.A., Columbia, South Carolina; The Ocean State Bank, Neptune Beach, Florida; and Marine Bank of Monroe County, Marathon, Florida.

In connection with this application, Sovran Financial Corporation has applied to acquire 16.6 percent of the voting shares of The Citizens and Southern Corporation, Atlanta, Georgia, and The Citizens and Southern Corporation has applied to acquire 16.6 percent of the voting shares of Sovran Financial Corporation. Applicant also has applied to acquire indirectly Cash Flow, Inc., and thereby engage in providing electronic funds transfer services pursuant to § 225.25(b)(7); Sovran Capital Management Corporation, and thereby engage in investment management and advisory services to institutional investors pursuant to § 225.25(b)(4); Sovran Credit Corporation, and thereby engage in consumer lending activities; making, acquiring, and servicing for its own account, or the account of others, loans secured primarily by second mortgages on real property, and acts as agent in the sale of credit life insurance and accident and health insurance in connection with such loans; makes direct consumer installment loans, purchases consumer installment sales finance contracts, and extends direct loans to dealers for the financing of inventory and working capital purposes pursuant to §§ 225.25(b)(1), (b)(4), and (b)(8)(i); Sovran Equity Mortgage Corporation, and thereby engage in making acquiring and servicing for its own account, or the account of others, loans secured primarily by second mortgages on real property, and acts as agent in the sale of credit life insurance and accident and health insurance in connection with such loans pursuant to §§ 225.25 (b)(1) and (b)(8)(i); Sovran Insurance Agency, Inc. and thereby engage in the sale of life, property and casualty insurance related to the extension of credit or mortgage loan servicing pursuant to § 225.25(b)(8)(iv); Sovran Insurance Inc. and thereby engage in general insurance agency and brokerage activities pursuant to § 225.25(b)(8)(iv); Sovran Investment Corporation and thereby engage in providing investment banking, securities brokerage, and investment and financial advice pursuant to §225.25 (b)(4), (b)(15), and (b)(16); Sovran Leasing Corporation and thereby engage in commencial financing, in making, acquiring, and servicing, for its own account or the account of others, loans and leases of real and personal property, and in arranging, financing, structuring and analyzing equipment leasing pursuant to §§ 225.25 (b)(1) and (b)(5); Sovran Life Insurance Company and thereby engage in underwriting, as reinsurer, credit life and credit disability insurance directly related to extensions of credit, including credit cards, by affiliated parties pursuant to § 225.25(b)(1); Sovran Mortgage Corporation and thereby engage in making, acquiring, or servicing, for its own account or the account of others, loans secured by mortgages on real property, and act as agent for the sale of credit life insurance, accident and health insurance, mortgage redemption and mortgage accident and health insurance directly related to such extensions of credit pursuant to §§ 225.25 (b)(1) and (b)(8)(i); Sovran Realty Services Corporation and thereby engage in originating, brokering, and selling commercial mortgage loans primarily for properties located in the middle region of Tennessee pursuant to § 225.25(b)(1); Suburban Service Corporation and thereby engage in the installation of the provision of support services to automated teller machines and the management of electronic funds transfers switches pursuant to § 225.25(b)(7); Tennessee Valley Life Insurance Company and thereby engage in reinsuring credit life, accident and health insurance directly related to extensions of credit by affiliated banks pursuant to § 225.25(b)(8)(i); VNB Capital Corporation and thereby engage in making or acquiring new loans or other extensions of credit, involving construction financing and mortgage lending on residential, multifamily and commercial real estate pursuant to § 225.25(b)(1); Citizens and Southern Mortgage Corporation and thereby engage in making, acquiring, or servicing, for its own account of others, loans or other extensions of credit secured primarily by first mortgages on real peoperty pursuant to § 225.25(b)(1); C&S Capital Corporation and thereby engage in commercial equipment leasing pursuant to § 225.25(b)(5); The Citizens and Southern Life Insurance Company and thereby engage in underwriting credit life insurance, accident and health insurance directly related to extensions of credit by affiliated parties pursuant to § 225.25(b)(8) (i) and (vii); Citizens and Southern Investment Advisors, Inc. and thereby engage in performing portfolio management services to affiliated and nonaffiliated parties and commodities trading advising pursuant to § 225.25(b)(4); C&S Financial Services, Inc. and thereby engage in equipment leasing activities pursuant to § 225.25(b)(5); Florida Interchange Group, Inc. and thereby engage in providing electronic funds transfer services pursuant to § 225.25(b)(7); and Georgia Interchange Network, Inc. and thereby engage in providing electronic funds transfer services pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 19, 1989.

Jennifer J. Johnson,

Associated Secretary of the Board.

[FR Doc. 89-29949 Filed 12-26-89; 8:45 am]

BILLING CODE 6210-01-M

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 January 10, 1990.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *John A. Kaneb,* Chelsea, Massachusetts; to acquire an additional 8.67 percent of the voting shares of Neworld Bancorp, Inc., Boston, Massachusetts, for a total of 19.88 percent, and thereby indirectly acquire Neworld Bank for Savings, Boston, Massachusetts.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Earl G. Kendrick, Jr.,* Alexandria, Virginia; to acquire 49 percent of the voting shares of Woodforest Bancshares, Inc., Houston, Texas, and thereby indirectly acquire Woodforest National Bank, Houston, Texas.

Board of Governors of the Federal Reserve System, December 20, 1989.

Jennifer J. Johnnson,

Associate Secretary of the Board.

[FR Doc. 89–29950 Filed 12–2–89; 8:45 am]

BILLING CODE 6210–01–M

SBC Financial Corporation, et. al.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) of (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) of (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 17, 1990.

A. Federal Reserve Bank of St. Louis (Randall C. Summer, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *SBC Financial Corporation,* Como, Mississippi; to acquire New South Capital Corporation, Batesville, Mississippi, and thereby indirectly acquire New South Bank for Savings, F.S.B., Batesville, Mississippi, and thereby operate a savings and loan association pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 20, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–29951 Filed 12–26–89; 8:45 am]

BILLING CODE 6210–01–M

FEDERAL TRADE COMMISSION

[Docket No. C–3264]

Nutritone, Inc., d/b/a Body By Design, et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a Massachusetts corporation from making any representations concerning the efficacy of electric muscle stimulation ("EMS") treatment programs and products, unless respondents possess reliable scientific evidence to substantiate the representations. Respondents are required to retain, for at least five years, records supporting any future advertising and also required to post a copy of the order on the premises.

DATE: Complaint and Order issued July 24, 1989.[1]

FOR FURTHER INFORMATION CONTACT: Sara Greenberg, Boston Regional Office, Federal Trade Commission, 10 Causeway St., Room 1184, Boston, Ma. 02222–1073. (617) 565–7240.

SUPPLEMENTARY INFORMATION: On Thursday, May 18, 1989, there was published in the **Federal Register,** 54 FR 21435, a proposed consent agreement with analysis In the Matter of Nutritone, Inc., d/b/a Body By Design, et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52)

Donald S. Clark,

Secretary.

[FR Doc. 89–29979 Filed 12–26–89; 8:45 am]

BILLING CODE 6750–01–M

[Docket No. 9170]

New England Motor Rate Bureau, Inc.; Prohibited Trade Practices and Affirmative Corrections Actions

AGENCY: Federal Trade Commission.

ACTION: Final Order.

SUMMARY: This Final Order requires, among other things, the respondent to halt its collective ratemaking activities

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC. 20580.

in certain states and to cancel, within six months, all tariffs it has filed in certain states.

DATES: Complaint issued October 24, 1983. Final Order issued August 18, 1989.[1]

FOR FURTHER INFORMATION CONTACT: Micheal E. Antalics, FTC/S–2308, Washington, DC 20580. (202) 326–2682.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Commissioners: Janet D. Steiger, Chairman, Terry Calvani, Mary L. Azcuenaga, Andrew J. Strenio, Jr., Margot E. Machol.

Final Order

This matter has been heard by the Commission upon the appeal of respondent New England Motor Rate Bureau, Inc. ("NEMRB") from the initial decision and upon briefs and oral argument in support of and in opposition to the appeal. For the reasons stated in the accompanying opinion, the Commission has determined to deny the respondent's appeal. Accordingly,

It is ordered. That the initial decision of the Administrative Law Judge be adopted as Findings of Fact and Conclusions of Law except to the extent inconsistent with the accompanying opinion. Other Findings of Fact and Conclusions of Law of the Commission are contained in the accompanying opinion.

I

It is further ordered. That NEMRB, its successors and assigns, and its officers, agents, representatives, directors and employees directly or through any corporation, subsidiary, division or other device shall forthwith cease and desist from:

1. Entering into, adhering to, or maintaining, directly or indirectly, any contract, agreement, understanding, plan, program, combination or conspiracy to fix, stabilize, raise, maintain or otherwise interfere or tamper with the rates charged by carriers that compete for the intrastate transportation of property or related services, goods or equipment within any of the states in which NEMRB operates.

2. Knowingly preparing, developing, disseminating, or filing a proposed or existing tariff provision that contains collective rates for the intrastate transportation of property or other related services, goods, or equipment.

3. Providing information to any carrier about rate changes ordered by any other carrier employing the publishing services of the respondent prior to the time at which such rate change becomes a matter of public record.

4. Inviting, coordinating, or providing a forum for (including by publication of an informational bulletin) any discussion or agreement between or among competing carriers concerning intrastate rates charged or proposed to be charged by carriers for the intrastate transportation of property or related services, goods or equipment.

5. Suggesting, urging, encouraging, persuading, or influencing in any way members to charge, file, or adhere to any existing or proposed tariff provision that affects rates, or otherwise to charge or refrain from charging any particular price for any services rendered or goods or equipment provided.

6. Agreeing with any carrier to institute automatic changes to rates on file for that carrier.

Provided, however, that except as to the states of New Hampshire and Massachusetts, nothing in this order shall prohibit NEMRB from jointly setting or adhering to rates charged for intrastate transportation of property in any state where such joint activity is engaged in pursuant to a policy, clearly articulated and affirmatively expressed by the state legislature, to displace competition with respect to those prices *and* where such joint activity is actively supervised by a state regulatory body.

II

It is further ordered That NEMRB shall, within six (6) months after service upon it of this order:

1. Take such action as may be necessary to effectuate cancellation and withdrawal of all tariffs and any supplements thereto on file with any state or commonwealth that it was involved in preparing, developing, or filing that establish rates for transportation of property or related services, goods or equipment by common carriers within such state or commonwealth.

2. Terminate all previously executed powers of attorney and rate and tariff service agreements, between it and any carrier utilizing its services, authorizing the publication and/or filing of intrastate collective rates within any state or commonwealth.

Provided, however, that except as to the states of New Hampshire and Massachusetts, nothing in this order shall require NEMRB to cancel and withdraw tariff filings, powers of attorney, or rate and tariff service agreements in any state where joint setting of rates charged for intrastate transportation of property is engaged in pursuant to a policy, clearly articulated and affirmatively expressed by the state legislature, to displace competition with respect to those prices *and* where such joint activity is actively supervised by a state regulatory body.

III

It is further ordered That NEMRB shall within thirty (30) days after service upon it of this Order, mail or delivery a copy of this Order, under covere of the letter attached hereto as "Appendix," to each current member, and for a period of three (3) years from the date of service of this Order, to each new member within ten (10) days after the member's acceptance by NEMRB.

IV

It is further ordered That NEMRB notify the Commission at least thirty (30) days prior to any proposed change in the respondent, such as a dissolution, assignment or sale resulting in the emergence of a successor corporation, or any other proposed change in the corporation which may affect compliance obligations arising out of the Order.

V

It is further ordered That NEMRB shall file a written report within six (6) months of the date of service of this Order, and annually on the anniversary date of the original report for each of the five years thereafter, and at such other times as the Commission may require by written notice to respondent, setting forth in detail the manner and form in which it has complied with this Order.

By the Commission, Commissioner Azcuenaga concurring in part and dissenting in part, and Commission Machol not participating.[2]

Donald S. Clark,

Secretary.

[FR Doc. 89–29980 Filed 12–26–89; 8:45 am]

BILLING CODE 6750–01–M

[1] Copies of the Complaint, Initial Decision, Opinion of the Commission, Statements, etc. are available from the Comission's Public Reference Branch, H–130, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

[2] Prior to leaving the Commission, former Chairman Oliver registered his vote in the affirmative for the Final Order and the Opinion of the Commission in this matter. Chairman Steiger therefore did not register a vote in this matter.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Office of the Assistant Secretary for Health; Privacy Act of 1974; Addition of Routine Use to an Existing System of Records

AGENCY: Public Health Service, HHS.

ACTION: Notice of addition of new routine use to an existing system of records.

SUMMARY: The Public Health Service (PHS) is publishing notice of our intent to add a new routine use for the disclosure of information from the following Privacy Act system of records: 09-15-0044, "Health Education Assistance Loan Program (HEAL), Loan Control Master File, HHS/HRSA/BHPr."

DATE: PHS invites public comments on the new routine use on or before January 26, 1990. This routine use will become effective without further notice 30 days after the date of publication unless we receive comments which would result in a contrary determination.

ADDRESS: Please address comments to the HRSA Privacy Act Coordinator, Department of Health and Human Services, Parklawn Building, room 14A-20, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443-3780. This is not a toll-free number.

FOR FURTHER INFORMATION CONTACT: Chief, HEAL Branch/Division of Student Assistance, BHPr/HRSA, room 8-48, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443-1173. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: HRSA maintains system of records 09-15-0044, "Health Education Assistance Loan Program (HEAL), Loan Control Master File, HHS/HRSA/BHPr", to (1) identify students participating in the HEAL Program; (2) determine eligibility of loan applicants and to compute insurance premiums for Federal insurance; (3) monitor the loan status of HEAL recipients, which includes the collection of overdue debts owed under the HEAL Program; and (4) compile and generate managerial and statistical reports.

HRSA is proposing to add a new routine use to permit disclosures of the complete loan file of individuals who have defaulted on their HEAL loans to qualified potential and actual purchasers of defaulted HEAL loan accounts. The purpose of the disclosure is to allow potential loan purchasers to assess the value of the HEAL defaulted loan portfolio to facilitate the sale of these loans as authorized under Public Law 100-607 enacted November 4, 1988, and to allow actual loan purchasers to collect the defaulted HEAL loans.

This routine use is compatible with the purpose for which the records were collected.

Dated: December 19, 1989.

Wilford J. Forbush,

Deputy Assistant Secretary for Health Operations and Director, Office of Management.

09-15-0044

SYSTEM NAME:

Health Education Assistance Loan Program (HEAL) Loan Control Master File, HHS/HRSA/BHPr.

A new routine use, number 15, is added as follows:

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

* * * * *

15. HRSA may disclose the complete loan file of defaulted HEAL recipients to potential purchasers of HEAL loans to enable them to value and price the loans, and to actual purchasers to enable them to collect the defaulted loans. The purpose of this disclosure will be to facilitate the sale and collection of defaulted HEAL loans. Potential purchasers are required to maintain Privacy Act safeguards with respect to the records.

* * * * *

[FR Doc. 89-29961 Filed 12-26-89; 8:45 am]

BILLING CODE 4160-15-M

National Institututes of Health

Privacy Act of 1974; New System of Records

AGENCY: Public Health Service, HHS.

ACTION: Notification of a new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act, the Public Health Service (PHS) is publishing a notice of a new system of records, "United States Renal Data System (USRDS), HHS/NIH/NIDDK." We are also proposing routine uses for this new system.

DATES: PHS invities interested parties to submit comments on the proposed routine uses on or before January 26, 1990. PHS has sent a report of a New System to the Congress and to the Office of Management and Budget (OMB) on December 13, 1989. The routine uses will be effective 30 days after the date of publication unless PHS receives comments which would result in a contrary determiniation.

ADDRESS: Please submit comments to: Privacy Act Officer, National Institutes of Health, Room 3B03, Building 31, 9000 Rockville Pike, Bethesda Maryland 20892 (301) 496-2832.

Comments received will be available for inspection at this same address from 8:30 a.m. to 4 p.m., Monday through Friday

FOR FURTHER INFORMATION CONTACT: Epidemiology Program Director, Division of Kidney, Urologic and Hematologic Diseases, National Institute of Diabetes and Digestive and Kidney Diseases, 5333 Westbard Avenue, Westwood Building, Room 621, Bethesda, Maryland 20892 (301) 496 7571.

(The numbers listed above are not toll free).

SUPPLEMENTARY INFORMATION: The National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK) proposes to establish a new system of records consisting of health and medical record data, fisscal information and other demographic characteristics of patients and health care providers. The majority of data provided to the system of records will come from the end stage renal disease program of the Health Care Financing Administration (HCFA). Additional data will come from other HCFA Medicare patient records, the National Death Index, and other sources of non-Medicare ESRD patient records such as the NIH Continuous Ambulatory Peritoneal Dialysis (CAPD) Registry, United Network for Organ Sharing (UNOS) transplant patients, Veteran's Administration, and the Indian Health Service, etc. This comprehensive renal disease system of records is inteded to (1) provide the biostatistical, data management and analytical expertise necessary to characterize th total renal patient population, and describe the distribution of patients by sociodemographic variables across treatment modalities; (2) report on the incidence, prevalence, and mortality rates of renal disease by primary diagnosis; (3) develope and analyze aggregate data on the effect of various modalities of treatment by disease and patient group categories; (4) identify problems and opportunities for more focused investigations of renal research issues currently unaddressed by the consolidated data system; and (5) share data with other Public Health Service (PHS) agencies and HCFA for their use in research analysis and program administration.

Patients' Social Security and HCFA beneficiary identification numbers will

be provided to the System. However, NIDDK will not use records in this system to make any determination concerning rights, benefits, or privileges of the individuals.

The records in this system wil be maintained in a secure manner compatible with their content and use. Access will be given only to authorized contractor staff whose official duties require access for purposes of carrying out the contract. Computerized records will be maintained in accordance with Part 6, "ADP System Security," of the HHS Information Resource Management Manual and Chapter 45–13, "Safeguarding Records Contained in System of Records" of the HHS General Administrative Manual.

The first routine use proposed for this system allows disclosure to the Department of Justice or a court in the event of litigation. The second routine use, permitting disclosure to a congressional office, is proposed to allow subject individuals to obtain assistance from their representatives in Congress, should they so desire. The third routine use in proposed to allow contractors to accomplish logistical work related to the projects. The fourth routine use is for the conduct of research.

This system notice is written in the present, rather than the future tense, in order to avoid the unnecessary expenditure of public funds to republish the notice after it becomes effective.

Dated: December 15, 1989.

Wilford J. Forbush,

Deputy Assistant Secretary for Health Operations and Director, Office of Management and Budget.

09–25–0160

SYSTEM NAME:

United States Renal Data System (USRDS), HHS/NIH/NIDDK.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Records are located at contractor operated coordinating center. Write to the System manager at address below for address of current location.

U.S. Renal Data System, Coordinating Center (CC), 2100 M Street, NW, Suite 400, Washington, D.C. 20037.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons with end-stage renal disease (ESRD), providers of ESRD services.

CATEGORIES OF RECORDS IN THE SYSTEM:

Health and medical record data; fiscal information; patient names, social security number, Health Care Financing Administration (HCFA) beneficiary ID, patient demographic, epidemiologic and survival characteristics; physician provider characteristics; facility provider characteristics.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 USC 241a, 289c, as last amended by Pub. L. 100–607, November 4, 1988 under the Health Omnibus Programs Extension of 1988.

PURPOSE(S):

(1) To design and implement a consolidated renal disease system that will provide the biostatistical, data management and analytical expertise necessary to characterize the total renal patient population and describe the distribution of patients by sociodemographic variables across treatment modalities.

(2) To report on the incidence, prevalence, and mortality rates of renal disease by primary diagnosis.

(3) To identify the modalities of treatment best suited to individual patients. To compare the various treatment alternatives to examine the prevention and progression of renal disease by morbidity, mortality, and quality of life criteria.

(4) To identify problems and opportunities for more focused investigations of renal research issues currently unaddressed by the consolidated data system.

(5) To share data with other PHS agencies and HCFA for their use in research analysis and program administration.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure from the record of an individual may be made to:

(1) The Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her official capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

(2) A Congressional office from the record of an individual in response to a written inquiry from the Congressional office made at the written request of the individual.

(3) To the HHS contractor for the purpose of collating, analyzing, aggregating or otherwise refining or processing records in this system for developing, modifying and/or manipulating ADP software. Data would also be disclosed to contractors incidental to consultation, programming, operation, user assistance, or maintenance for an ADP or telecommunications systems containing or supporting records in the system. The contractor shall be required to maintain Privacy Act safeguards with respect to such records.

(4) A record may be disclosed for a research purpose, when the Department:

(A) Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained;

(B) Has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring;

(C) Has required the recipient to (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except—(a) in emergency circumstances affecting the health or safety of any individual, (b) for use in another research project, under these same conditions, and with written authorization of the Department, (c) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (d) when required by law;

(D) Has secured a written statement attesting to the recipients understanding

of, and willingness to abide by these provisions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic medium; selected hard copy backup.

RETRIEVABILITY:

Information will be retrieved by patient identification number such as social security number and HCFA beneficiary ID. Individual patient data provided only as noted above. Statistical data provided as noted above and to the general public as part of periodic published reports.

SAFEGUARDS:

A variety of safeguards are implemented for the various sets of records in this system according to the sensitivity of the records:

Authorized users: Regular access is limited to National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), HCFA and contract personnel who have a need for the data in performance of their duties as determined by the system manager.

Physical security: Records are stored in areas where access is restricted to areas where data are maintained and processed; data tapes and hard copy data are stored in locked files in secured areas; terminal access controlled by user ID and keywords; offsite data backups in two locations—a remote area of the same building and a separate building; and fire protection secured by Halon fire extinguisher system and fire alarm system present in the computer room.

Procedural safeguards: Contractors who maintain records in this system are instructed to make no further disclosure of the records except as authorized by the system manager and permitted by the Privacy Act. Privacy Act requirements are specifically included in contracts and in agreements with grantees or collaborators participating in research activities supported by this system. HHS project directors, contract officers, and project officers oversee compliance with these requirements.

Implementation Guidelines: DHHS Chapter 45–13 and supplementary Chapter PHS.hf: 45–13 of the General Administrative Manual, and Part 6, "ADP System Security" in the HHS Information Resource Management Manual.

RETENTION AND DISPOSAL:

Records will be retained according to Section 3000–G–3(b) of the NIH Record Control Schedule which allows the principal investigator or the project leader to determine that the record is no longer useful for research purposes.

SYSTEM MANAGER AND ADDRESS:

Epidemiology Program Director, DKUHD, National Institute of Diabetes and Digestive and Kidney Diseases, Division of Kidney, Urologic and Hematologic Diseases, 5333 Westbard Avenue, Westwood Building, Room 621, Bethesda, Maryland 20892.

NOTIFICATION PROCEDURES:

To determine if a record exists, write to the System Manager at the address noted above. Provide notarized signature as proof of identity. The request should include as much of the following information as possible: (a) Full name; (b) title of project individual participated in; and (c) approximate dates of participation.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requestors should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURES:

Contact the System Manager at the address specified under Notification Procedures above and reasonably identify the record, specify the information being contested, and state the corrective action sought, with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Information contained in this system is from the Health Care Financing Administration—Medicare and ESRD patient program records, Veterans Administration ESRD patient records, the Census, NIH Continuous Ambulatory Peritoneal Dialysis (CAPD) Registry, Indian Health Service ESRD patient records, United Network of Organ Sharing (UNOS) transplant patient records and the National Death Index.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 89–29960 Filed 12–26–89; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT 744133

Applicant: Memphis Zoo, Memphis, TN.

The applicant requests a permit to import one male and one female captive born black lemur from Metro Toronto Zoo, Toronto, Canada, for enhancement of propagation of the species and display.

PRT 744878

Applicant: Institute for Wildlife Studies, Arcata, CA.

The applicant requests a permit to collect eggs from bald eagle (*Haliaeetus leucocephalus*) nests on Santa Catalina Island, California, replace such eggs with artificial eggs, transport the eggs to an artificial incubation facility, hatch out the eggs and release the resulting chicks on Santa Catalina Island. Applicant will attach leg bands markers and telemetry transmitters and will draw blood for pesticide and lead analysis. If artificial incubation of collected eggs is unsuccessful, applicant will capture two chicks in northern California for release on Santa Catalina Island. Addled eggs and eggshells will be salvaged for analysis. Any eagles found dead will be salvaged and any injured bird will be placed in approved facility. All activities are to be conducted as part of the ongoing Santa Catalina Island bald eagle reintroduction program.

PRT 744868

Applicant: Jeff C. Neal, Tulsa, OK.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) culled from the captive-herd maintained by Mr. Herman Kock, Deelfontein, Republic of South Africa, for the purpose of enhancement of survival of the species.

PRT 667512

Applicant: Howard Shellhammer, Department of Biological Sciences, San Jose State University, San Jose, CA.

The applicant requests a permit to live trap, ear tag, and release of salt marsh harvest mice (*Reithrodontomys raviventris*) in the marshes of San Francisco Bay and associated bays for the purpose of scientific research.

PRT 745025

Applicant: San Diego Zoo, San Diego, CA.

The applicant requests a permit to import two wild caught male Fiji crested iguana's (*Brachylohphus vitiensis*) from the Fiji Islands, for the purpose of captive propagation.

PRT 745027

Applicant: San Diego Zoo, San Diego, CA.

The applicant requests a permit to import two captive-hatched female Fiji crested iguana's (*Brachylophus vitiensis*) from the Taronga Zoo, Sydney, Australia, for the purpose of captive propagation.

PRT 744441

Applicant: Leroy R. McClenaghan, San Diego, CA.

The applicant requests a permit to trap, weigh, measure, ear-tag, blood sample and release wild specimens of Stephans' kangaroo rat (*Dipodomys stephansii*) at several sites in Riverside County, California, to determine where the species occurs and approximately how many exists, whether the population is expanding and the genetic variability of several groups within the population, for the purpose of scientific research. The information will be used to develop a habitat conservation plan.

PRT 744404

Applicant: Bio-Research Institute, Grand Terrace, CA.

The applicant requests a permit to trap, weigh, measure and release wild Stephans' kangaroo rats (*Dipodomys stephansii*) at several sites in Riverside County, California, to determine where the species occurs at certain sites and if so, how many, for the purpose of scientific research. The information will be used to develop a habitat conservation plan and by the Service.

PRT 745324

Applicant: U.S. Fish and Wildlife Service, Puerto Rico Research Station, Palmer, Puerto Rico.

The applicant requests a permit to export blood samples and formalin-fixed tissue samples taken from captive-held Puerto Rican Amazon's (*Amazona vittata*) for the purpose of DNA fingerprinting analysis.

PRT 745033

Applicant: Scientific Research & Consulting Service, Dr. Stephen B. Ruth, Marina, CA.

The applicant requests a permit to take (i.e. capture by drift fencing & can trapping, use of nets for larval sampling, captive-raise three larvae from any new locality for identification purposes and return to capture site) the Santa Cruz long-toad salamander (*Ambystoma macrodactylum croceum*) in various locations through-out South Santa Cruz County and North Monterey County, California, for the purpose of enhancement of propagation or survival of the species. If an outbreak of parasitic infection occurs, take and sacrifice 25 Santa Cruz long-toad salamanders for scientific research purposes.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 432, 4401 N. Fairfax Dr., Arlington, VA 22203, or by writing to the Director, U.S. Office of Management Authority, P.O. Box 3507, Arlington, Virginia 22203–3507.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Date: December 21, 1989.

Karen Willson,

Acting Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 89–30005 Filed 12–26–89; 8:45 am]

BILLING CODE 4310–55–M

United States Fish and Wildlife Service

Klamath Fishery Management Council Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Klamath Fishery Management Council, established under the authority of the Klamath River Basin Fishery Resources Restoration Act (16 U.S.C. 460ss et seq.). The meeting is open to the public.

DATES: The Klamath Fishery Management Council will meet from 9:00 a.m. to 4:00 p.m. Thursday, January 4, 1990; from 9:00 a.m. to 4:00 p.m. on Friday, January 5, 1990; and from 8:00 a.m. to 12:00 Noon on Saturday, January 6, 1990.

Place: The meeting will be held at the Southwest Fisheries Center, 8604 La Jolla Shores Drive, La Jolla, California.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald A. Iverson, Project Leader, U.S. Fish and Wildlife Service, P.O. Box 1006 (1030 South Main), Yreka, California 96097–1006, telephone (916) 842–5763.

SUPPLEMENTARY INFORMATION: For background information on the Task Force, please refer to the notice of their initial meeting that appeared in the **Federal Register** on July 8, 1987 (52 FR 25639).

The Council will continue development of the long-range plan and policy for the management of in-river and ocean harvesting affecting an adromous fish stocks of the Klamath River basin. This task is expected to require the entire scheduled meeting time, except for a public comment period during the afternoon of January 5th.

Dated: December 12, 1989.

Marvin L. Plenart,

Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 89–29958 Filed 12–26–89; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

National Register of Historic Places; Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before December 16, 1989. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by January 11, 1990.

Carol D. Shull,

Chief of Registration, National Register.

FLORIDA

Alachua County

Melrose Historic District, Roughly bounded by Seminole Ridge Rd., Grove St., South St., Quail St., and Melrose Bay, Melrose, 89002305

Yonge, P.K., Laboratory School, Old, SW. 13th St. on University of Florida campus, Gainesville, 89002302

GEORGIA

Hall County

Head's Mill, Whitehall Rd., E of jct. with US 23, Lula vicinity, 89002301

IOWA

Franklin County

Reeve Electric Association Plant, RR 1, SW of Hampton, Hampton vicinity, 89002307

MASSACHUSETTS

Middlesex County

Saint John's Episcopal Church, Maynard Rd. and Church St., Framingham, 89002300

MICHIGAN

Branch County

Fisk, Abram C., House, 867 E. Chicago Rd., Coldwater, 89002306

NORTH DAKOTA

Cass County

Watts Free Library (Philanthropically Established Libraries in North Dakota MPS), 101 3rd St. N., Leonard, 89002304

Richland County

Leach Public Library (Philanthropically Established Libraries in North Dakota MPS), 417 Second Ave. N., Wahpeton, 89002303

WASHINGTON

King County

Redelsheimer—Ostrander House, 200 40th Ave. E., Seattle, 89002298

Kitsap County

Old-Man-House Site (45KP2), Old Man House State Park, Suquamish vicinity, 89002299

The fifteen-day comment period has been waived for the following property:

SOUTH CAROLINA

Richland County

Greyhound Bus Depot, Columbia MRA, 1200 Blanding St., Columbia 83005383

Proposed moves are being considered for the following properties:

CONNECTICUT

Hartford County

Gillette, Francis, House, 511 Bloomfield Ave., Bloomfield 82004391

FLORIDA

Lake County

Mote—Morris House, 1021 N. Main St., Leesburg 74000647

NORTH CAROLINA

Dare County

Cape Hatteras Light Station, SE of Buxton off NC 12 in Cape Hatteras National Seashore, Buxton vicinity 78000266

[Fr Doc. 89–29946 Filed 12–26–89; 8:45 am]

BILLING CODE 4310–70–M

Bureau of Reclamation

Paradox Valley Unit, Colorado River Basin Salinity Control Project, Colorado

AGENCY: Bureau of Reclamation (Reclamation).

ACTION: Notice of intent to prepare a draft supplement to the final environmental statement (INT–FES 79–14).

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), as amended, the Bureau of Reclamation intends to prepare a draft supplement to the Final Environmental Statement (DSES) (FES 79–14) for the Paradox Valley Unit (Unit), Colorado River Basin Salinity Control Project, Colorado. The primary purpose of the Unit is to reduce the amount of salt entering the Colorado River drainage.

FOR FURTHER INFORMATION CONTACT: Mr. Stan Powers, U.S. Bureau of Reclamation, 835 Second Avenue, Durango, Colorado 81301, telephone: (303) 385–6500.

Additional Information: The draft supplement will cover changes in the plans for the Unit resulting from investigations and tests conducted after the FES was prepared in 1979. Additional testing indicates that the goal of preventing 180,000 tons of salt from entering the Dolores River annually can be achieved with a reduced brine pumpage rate of 1.5 cubic feet per second (ft^3/s) instead of the rate of 5.0 ft^3/s presented in the FES. As a result of the reduced pumpage rate, the brine disposal method proposed in the FES was reevaluated. Injection of the brine in deep wells now appears to be more feasible than the evaporation plan recommended in the FES. The deep-well injection alternative consists of two injection wells, two surface injection facilities, a brine treatment facility, connecting pipelines, access roads, and powerlines.

No formal scoping meetings are planned for the draft supplement since informal scoping has been taking place since 1981 through public meetings, newsletters, news releases, and state and Federal government agency coordination.

In April 1986, a draft Environmental Assessment on the Deep Well Injection Testing Program for the Unit was distributed to the public for review and comment. After resulting comments were incorporated, a Finding of No Significant Impact was signed in July 1986. Since then, a public meeting was held in the Unit area, several news articles and newsletter have been released, and information on the proposed changes were provided to the general public.

Interested public entities and individuals may obtain information on the proposed changes to the Unit plans and provide input to the draft supplement to the FES by contacting Mr. Stan Powers at the address above. The draft supplement is expected to be completed and available for review and comment in the fall of 1990.

Dated: December 19, 1989.

Joe A. Hall,

Deputy Commissioner.

[FR Doc. 89–29985 Filed 12–26–89; 8:45 am]

BILLING CODE 4310–09–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Public Information Collection Requirements Submitted to OMB for Review

The Agency for International Development (A.I.D.) submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of the entry no later than ten days after publication. Comments may also be addressed to, and copies of the submissions obtained from the Reports Management Officer, John H. Elgin, (703) 875–1608, IRM/PE, Room 1100B, SA–14, Washington, DC 20523.

Date Submitted: December 19, 1989.

Submitting Agency: Agency for International Development.

OMB Number: 0412–0518.

Type of Submission: Renewal.

Title: Matching Grant Schedule.

Purpose: Foreign Assistance legislation encourages A.I.D. to channel significant portions of economic development aid to developing countries through private voluntary agencies (PVOs). Through a competitive selection process, applications for funding of PVOs' international development programs on a cost-shared basis are considered each year. The Matching Grant Schedule invites interested PVOs to apply and provides the schedule for applications for the next selection cycle. Guidelines which state the selection criteria and format for grant applications are attached to the invitation.

Reviewer: Donald Arbuckle (202) 395–7340, Office of Management and Budget, Room 3201, New Executive Office Building, Washington, DC 20503.

Dated: November 18,1989.

Wayne H. Van Vechten,

Planning and Evaluation Division.

[FR Doc. 89–30002 Filed 12–26–89; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF JUSTICE

Information Collections Under Review

December 18, 1989.

The Office of Management and Budget (OMB) has been sent the following

collection of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information: (1) the title of the form/collection; (2) the agency form number, if any, and the applicable component of the Department sponsoring the collection; (3) how often the form must be filled out or the information is collected; (4) who will be asked or required to respond, as well as a brief abstract; (5) an estimate of the total number of respondents and the amount of time estimated for an average respondent to respond; (6) an estimate of the total public burden (in hours) associated with the collection; and, (7) an indication as to whether Section 3504(h) of Public Law 96–511 applies. Comments and/or suggestions regarding the item(s) contained in this notice, especially those regarding the estimated public burden and the associated response time, should be directed to the OMB reviewer, Mr. Edward H. Clarke, on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Larry E. Miesse, on (202) 633–4312. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Larry E. Miesse, DOJ Clearance Oficer, SPS/JMD/5031 CAB, Department of Justice, Washington, DC 20530.

Reinstatement of a Previously Approved Collection for Which Approval Has Expired

(1) National Needs Assessment Survey.
(2) No form number. National Institute of Justice, Office of Justice Programs.
(3) Every three years.
(4) State or local governments. The National Needs Assessment Survey is the vehicle by which the National Institute of Justice collects generalizable information on the needs of, and the problems of criminal justice practitioners, thus enabling NIJ to meet its Congressional mandate to conduct research on current and future problems of State and local criminal justice agencies.
(5) 211 estimated respondents at .417 hours each.
(6) 880 estimated annual burden hours.
(7) Not applicable under 3504(h).

(1) Request to enforce affidavit of financial support and intent to petition for custody for public law 97–359 Amerasian.
(2) I–363. Immigration and Naturalization Service.
(3) On occasion.
(4) Individuals or households. This form is used to determine whether an affidavit of financial support and intent to petition for legal custody, form I–361, requires enforcement.
(5) 50 estimated annual responses at .5 hours per response.
(6) 25 estimated annual public burden hours.
(7) Not applicable under 3504(h).

(1) Affidavit of financial support and intent to petition for legal custody for public law 97–359 Amerasian.
(2) I–361. Immigration and Naturalization Service.
(3) On occasion.
(4) Individuals or households. Used in support of INS Form I–360 to assure financial support for Public Law 97–359 Amerasian.
(5) 100 estimated annual respondents at .5 hours per response.
(6) 50 estimated annual public burden hours.
(7) Not applicable under 3504(h).

(1) Petition to classify public law 97–359 Amerasian as the child, son, or daughter of a U.S. Citizen.
(2) I–360. Immigration and Naturalization Service.
(3) On occasion.
(4) Individuals or households. Data is used by the INS to determine immigrant eligibility of Public Law 97–359 Amerasians and sponsorship eligibility of petitioner.
(5) 100 estimated annual respondents at 1 hour per response.
(6) 100 estimated annual burden hours.
(7) Not applicable under 3504(h).

Extension of the Expiration Date of a Currently Approved Collection Without any Change in the Substance or in the Method of Collection

(1) Application for permit to export controlled substances.
(2) DEA–161. Drug Enforcement Administration.
(3) On occasion.
(4) Businesses or other for-profit. 21 CFR 1312.22 requires individuals who export controlled substances in Schedules I & II to obtain a permit from the Drug Enforcement Administration. Information is used to issue export permits and exercise control over exportation of controlled substances as well as to compile data for submission to the United Nations for treaty requirements.
(5) 67 respondents, reporting approximately 13 times each year for 871 estimated annual responses at .247 hours per response.
(6) 215 estimated annual burden hours.
(7) Not applicable under 3504(h)

(1) DEA/USMS/USSS drugs of abuse chain of custody form.
(2) No form number. Drug Enforcement Administration.
(3) On occasion.
(4) Individuals or households. Information is needed to document and control the chain of custody for drug testing an individual selected for a job vacancy prior to actual employment under E.O. 12564, in order to maintain a drug-free Federal workplace.
(5) 1,200 estimated annual respondents at .083 hours per response.
(6) 100 estimated annual public burden hours.
(7) Not applicable under 3504(h).

(1) Application for waiver of the foreign residence requirement of section 212(e) of the immigration and nationality act, as amended.
(2) I–612. Immigaration and Naturalization Service.
(3) On occasion.
(4) Individuals or households. Certain aliens admitted into the United States as exchange visitors are subject to the foreign residence requirements of Section 212(e) of the Immigration and Nationality Act. This form provides for a waiver of the foreign residence requirement in certain instances.
(5) 1,300 estimated annual responses at .332 hours per response.
(6) 432 estimated annual burden hours.
(7) Not applicable under 3504(h).

(1) Application for a new naturalization or citizenship paper.
(2) N–565. Immigration and Naturalization Service.
(3) On occasion.
(4) Individuals or households. Form is used by a person who has been issued a declaration of intention, naturalization, citizenship, or repatriation certificate which has been changed after issuance by marriage or court order, to voluntarily apply for a new certificate reflecting the name change.
(5) 16,000 estimated annual responses at .25 hours per response.
(6) 4,000 estimated annual burden hours.
(7) Not applicable under 3504(h).

(1) Request for determination that prospective immigrant is an investor.

(2) I–526. Immigration and Naturalization Service.
(3) On occasion.
(4) Individuals or households. Form is used to determine if a prospective immigrant is an investor where he will be the principal manager and employ persons who are United States citizens or lawful permanent residents.
(5) 29 estimated annual responses at .5 hours per response.
(6) 15 estimated annual burden hours.
(7) Not applicable under 3504(h).

(1) Request for information selective service files.
(2) N–422. Immigration and Naturalization Service.
(3) On occasion.
(4) Individuals or households. Form is used to obtain information from Selective Service to determine eligibility for naturalization.
(5) 2,000 estimated annual responses at .166 hours per response.
(6) 332 estimated annual burden hours.
(7) Not applicable under 3504(h).

(1) Passenger list—crew list.
(2) I–418. Immigration and Naturalization Service.
(3) On occasion.
(4) Businesses or other for-profit. Form is prescribed by the Attorney General for the INS (Section 231, Immigration and Nationality Act) for use by masters, owners or agents of vessels to list alien and citizen passengers arriving or departing, as well as a record of resident aliens and citizens leaving permanently for a foreign country.
(5) 95,000 estimated annual responses at one hour per response.
(6) 95,000 estimated annual burden hours.
(7) Not applicable under 3504(h).

(1) Request for cancellation of public charge bond.
(2) I–356. Immigration and Naturalization Service.
(3) On occasion.
(4) Individual or household. Information is used to determine if a bond posted on behalf of an alien in the United States should be cancelled.
(5) 2,000 estimated annual responses at .25 hours per response.
(6) 500 estimated annual burden hours.
(7) Not applicable under 3504(h).

(1) Application for Removal.
(2) I–243. Immigration and Naturalization Service.
(3) On occasion.
(4) Individuals or households. Information is used to determine eligibility of an applicant under Section 250 of the Immigration and Nationality Act which provides that an alien in the United States who has fallen into distress or needs public aid may apply for removal from the United States.
(5) 22 estimated annual responses at .166 hour per response.
(6) 4 estimated annual burden hours.
(7) Not applicable under 3504(h).

(1) Application for Advance Permission to enter as nonimmigrant.
(2) I–192. Immigration and Naturalization Service.
(3) On occasion.
(4) Individuals or households. Form is used by aliens seeking a waiver of inadmissibility for entry into the United States as a nonimmigrant under section 212(d)(3) of the Immigration and Nationality Act.
(5) 5,000 estimated annual responses at .25 hour per response.
(6) 1,250 estimated annual burden hours.
(7) Not applicable under 3504(h).

(1) Application by Lawful Permanent Resident for new alien registration card.
(2) I–90. Immigration and Naturalization Service.
(3) On occasion.
(4) Individuals or households. Form is used to determine eligibility of any lawful permanent resident wishing to obtain an alien registration card because no card has yet been issued or the original issued card has been lost, stolen, mutilated, or the information on the original must be updated or corrected.
(5) 200,000 estimated annual responses at .5 hour per response.
(6) 100,000 estimated annual burden hours.
(7) Not applicable under 3504(h).

(1) Request for Verification of Naturalization.
(2) N–25. Immigration and Naturalization Service.
(3) On occasion.
(4) Individuals or households. Form is used to obtain information from the records of a clerk of the court which may be needed by a person applying for benefits under various provisions of the Immigration and Nationality Act.
(5) 1,000 estimated annual responses at .25 hour per response.
(6) 250 estimated annual burden hours.
(7) Not applicable under 3504(h).

(1) Petition to classify nonimmigrant as temporary worker or trainee.
(2) I–129B. Immigration and Naturalization Service.
(3) On occasion.
(4) Individuals or households. The form is used by the INS to determine the merit and ability of the petitioner (employer/trainee) and that the nonimmigrant temporary worker/trainee is as defined in the law and regulations (8 CFR 214).
(5) 70,000 estimated annual responses at one hour per response.
(6) 70,000 estimated annual burden hours.
(7) Not applicable under 3504(h).

(1) Application by Refugee for waiver of grounds of excludability.
(2) I–602. Immigration and Naturalization Service.
(3) On occasion.
(4) Individuals or households. Form is used by the INS to determine the eligibility for waivers and to report to the Congress the reason for granting such waivers.
(5) 2,500 estimated annual responses at .25 hour per response.
(6) 625 estimated annual burden hours.
(7) Not applicable under 3504(h).

Larry E. Miesse,

Department Clearance Officer, U.S. Department of Justice.

[FR Doc. 89–30003 Filed 12–26–89; 8:45 am]

BILLING CODE 4410–10–M

Office of Justice Programs

Bureau of Justice Assistance; State Reimbursement Program for Incarcerated Mariel-Cubans

AGENCY: Bureau of Justice Assistance, Office of Justice Programs, Justice.

ACTION: Notice of issuance of solicitation for applications to reimburse States for expenses incurred by the incarceration of Mariel Cubans.

SUMMARY: The Bureau of Justice Assistance (BJA) is administering a program to reimburse states for expenses incurred by the incarceration of certain Mariel Cubans in State facilities.

ADDRESS: Bureau of Justice Assistance, 633 Indiana Avenue, NW., Washington, DC 20531

FOR FURTHER INFORMATION CONTACT: Louise Lucas, (202) 724–8374. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: The Bureau of Justice Assistance (BJA) is publishing a notice of issuance of solicitation to implement a State Reimbursement Program for Incarcerated Mariel Cubans. The Department of Justice Appropriations Act, 1990 (Title II of Pub. Law 101–162; H.R. 2991–15) allocates up to $5 million for the purpose of making grants to States for their expenses by reason of

Mariel Cubans having to be incarcerated in State facilities for terms requiring incarceration for the full period October 1, 1989, through September 30, 1990, following their conviction of a felony committed after having been paroled into the United States by the Attorney General.

I. General Provisions

Statutory authority: The statutory authority is the Department of Justice Appropriations Act, 1990, Title II of Public Law 101–162 (H.R. 2991–15).

Submission date: The submission date for State applications is no later than February 1, 1990.

Eligible applicants: All States are eligible to apply for and receive grants. *State* means any State of the United States and includes the District of Columbia and the Commonwealth of Puerto Rico.

Participating States: It is expected that the 36 States that participated last year may participate again this year, specifically, Arkansas, Arizona, California, Colorado, Connecticut, District of Columbia, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Jersey, New Mexico, New York, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Virginia, Washington, West Virginia and Wisconsin. There is the possibility of a few additional States participating.

II. Allocations and Use of Funds

Fund availability: The Act provides a total of $5 million for the purpose of making grants to States. The total amount of funds awarded will be on the basis that the certified number of incarcerated persons in a State bears to the total certified number of such incarcerated persons. The amount of reimbursement per prisoner, per annum, shall not exceed $12,000.

Fund use: The intent of the public law is to reimburse the States for partial expenses incurred by reason of Mariel Cubans having to be incarcerated in State facilities. A budget or expenditure plan is not required as the award will be solely for reimbursement. No match funds are required.

III. Application Content

(a) All State applicants *must* submit Standard Form 424 (Application for Federal Assistance), and a certified listing of incarcerated Mariel Cuban prisoners. BJA requests that inmates previously verified be separated from newly submitted inmates. For those previously verified, there is no need to resubmit Items 13 & 14 below. The certified listing will include information in the following sequence:

(1) Name (last name first)
(2) AKA (also known as)
(3) Alien Identification Number (*e.g.*, A24456789)
(4) Inmate Number
(5) Date of Birth
(6) Incarceration Date
(7) Probable earliest release date
(8) Description of Conviction Offense (the violated Criminal Offense Code No. alone is not acceptable)
(9) Conviction date
(10) Last known address
(11) State facility housing the prisoner
(12) State facility address
(13) I-247 Form—Immigration Detainer Notice (If INS has filed a Detainer on this prisoner, submit a copy)
(14) Fingerprint card

Submission of Mariel Cuban data in an alternative format *must* be approved by the BJA prior to submission of an application. Please contact Louise Lucas, BJA, 202/724–8374.

(b) The certified listing must be signed by the Governor or his or her authorized representatives.

(c) The period of incarceration for reimbursement purposes is October 1, 1989 to September 30, 1990. The computation of funds will be based on an aggregate total of certified prisoners incarcerated for a 12-month period (e.g., if two prisoners are incarcerated for six months during the period, the State will be reimbursed the full amount for one year).

(d) The Act is specific in that the prisoner must have been paroled into the United States by the Attorney General. This occurred during the 1980 influx of Mariel Cubans. This means those Cubans who Entered Without Inspection (EWI), earlier arrivals (pre-boatlift), and/or later arrivals (post-boatlift), cannot be included and, thus, no expenses will be reimbursed.

(e) State law will prevail when a determination is required as to what constitutes a State facility and/or a State prisoner.

IV. Review of State Applications

State applications must be submitted in the form and at the time prescribed.

(a) The application and certified listing will be reviewed by BJA and a cross-check verification of prisoners will be made by the Immigration and Naturalization Service of the U.S. Department of Justice. This review will be accomplished no later than April 1, 1990, and grants will be immediately made to States.

(b) Compliance with Executive Order 12372, "Intergovernmental Review of Federal Programs." This program is covered by Executive Order 12372 and Department of Justice implementing regulations 28 CFR part 30. At the same time applications are submitted to BJA, States must submit grant applications to the State's Single Point of Contact, if there is a Single Point of Contact, and if this program has been selected for coverage by the State process. State processes have 60 days starting from the application deadline to comment on applications. Applicants should contact their state "Single Point of Contact" as soon as possible to alert them to the prospective application and receive instructions regarding the process.

(c) The BJA will notify the applicant in writing of the specific reasons for the disapproval of the application amendment, in whole or in part.

V. Civil Rights Assurances

The applicant State must specifically assure that it will comply, and that subgrantees and contractors will comply, with all applicable Federal non-discrimination laws and regulations, including the following:

(a) Title VI of the Civil Rights Act of 1964;
(b) Section 809(c) of Justice Assistance Act of 1984;
(c) Section 504 of the Rehabilitation Act of 1973, as amended;
(d) Title IX of the Education Amendments of 1972;
(e) The Age Discrimination Act of 1975; and,
(f) The Department of Justice Non-Discrimination Regulations, 28 CFR part 42, subparts C, D, E, and G.

Any application for $500,000 or more shall be accompanied by a copy of the current Equal Employment Opportunity Program of the corrections department in accordance with the provisions of 28 CFR 42.301 *et seq.* State applicants that previously applied for and received funding under this initiative, and had an Office of Justice Programs' approval of their Equal Employment Opportunity Program, need only submit a statistical update of the previously approved program.

Charles P. Smith,

Director, Bureau of Justice Assistance.

[FR Doc. 89–29934 Filed 12–26–89; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in. Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue NW., Room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New Collection

Bureau of Labor Statistics
Pilot survey of occupational employment and wages
BLS-2877

Form #	Affected public	Respondents	Frequency	Average time per response
073-0	Businesses or other for-profit; Small businesses or organizations.	1,200	Single-time	1 hour and 34 min.
073-1	Businesses or other for-profit; Small businesses or organizations.	784	Single-time	30 min.
073-2	Businesses or other for-profit; Small businesses or organizations.	288	Single-time	30 min.
073-3	Businesses or other for-profit; Small businesses or organizations.	856	Single-time	30 min.
073-7	Businesses or other for-profit; Small businesses or organizations.	1,626	Single-time	30 min.

3,652 total hours

The current OES survey is a Federal/State sample survey of employment by occupation in non-farm establishments. The proposed OES pilot survey will produce data on current occupational wages in addition to employment. This pilot survey is designed to test collection procedures and feasibility and to measure data quality.

Extension

Employment Standards Administration
Overpayment Recovery Questionnaire
1215-0144; OWCP 20
On occasion
Individuals or households
6,500 respondents; 6,500 total hours; 1 hr. per response; 1 form

To determine whether or not an individual is able to pay a claim for recovery of an overpayment. Consideration must be given to the individual's present and potential income, possible concealment or improper transfer of assets, and assets of the individual which may be available in enforced collection procedures.

Signed at Washington, DC, this 21st day of December 1989.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 89-29986 Filed 12-26-89; 8:45 am]

BILLING CODE 4510-24-M

Employment and Training Administration

Job Training Partnership Act: Native American Programs' Advisory Committee; Notice of First Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, and section 401(h)(1) of the Job Training Partnership Act, as amended (29 U.S.C. 1671(h)(1)), notice is hereby given of the first meeting of the Job Training Partnership Act Native American Programs' Advisory Committee. The meeting will be chaired by Mr. Eddie L. Tullis, who has been selected as chairperson of the Committee. Mr. Tullis is the Chairman and Chief Executive Officer of the Poarch Band Tribal Council.

Time and Date: The meeting will begin at 9:00 a.m. on January 17, 1990, and continue until close of business that day; and will reconvene at 9:00 a.m. on January 18, 1990, and adjourn at 12:00 p.m. that day. The final hour of the meeting on January 18 will be reserved for participation and presentations by members of the public.

Place: Rooms S-4215 A, B, and C, Frances Perkins Department of Labor Building, 200 Constitution Avenue, NW., Washington, DC.

Status: The meeting will be open to the public.

Matters To Be Considered: The agenda will focus on broad policy concerns including targeting of resources, program linkage and coordination, literacy attainment, long-

term economic self-sufficiency of participants, and performance standards objectives.

Contact Person for More Information: Paul A. Mayrand, Director, Office of Special Targeted Programs, Employment and Training Administration, United States Department of Labor, Room N-4614, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: 202-535-0500 (this is not a toll-free number).

Signed at Washington, DC, this 20th day of December, 1989.

Roberts T. Jones,

Assistant Secretary of Labor.

[FR Doc. 89-29987 Filed 12-26-89; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-89-24-M]

Becker Minerals, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Becker Minerals, Inc., P.O. Drawer 848, Cheraw, South Carolina 29520 has filed a petition to modify the application of 30 CFR 56.14102 (brakes for rail equipment) to its Marlboro Mine (I.D. No. 38-00120) located in Marlboro County, South Carolina. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that braking systems on railroad cars and locomotives be maintained in functional condition.

2. In lieu of installing a braking system on railroad cars which are used to cross three secondary roads, petitioner proposes that:

(a) Railroad-type signals with crossing arms would be used at one crossing;

(b) A full-time flagman would be used at the other two crossing; and

(c) A 10 mile per hour speed limit would be posted at each crossing.

3. In support of this request, petitioner states that there has never been any accident using this procedure.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 26, 1990. Copies of the petition are available for inspection at that address.

Dated: 18 December 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-29988 Filed 12-26-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-178-C]

Consolidation Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, Consol Plaza, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.1100-1(f)(2) (type and quality of firefighting equipment) to its Humphrey No. 7 Mine (I.D. No. 46-01453) located in Monongalia County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a fire hose installed for use in underground coal mines have a bursting pressure at least 4 times the water pressure.

2. As an alternate method, petitioner proposes the following procedures.

(a) All firefighting nozzles would be modified to prevent shutoff; farthest closure would be a fog pattern. This modification would eliminate shock loads which could be imposed on the hose by nozzle closure;

(b) Delivery pressure would be maintained less than 600 pounds per square inch (psi);

(c) The fire hose utilized would be at least one and one-half inch in diameter;

(d) All fire hose to be deployed as firefighting equipment would be mildew resistant and contain a single polyester jacket with a manufacturers minimum specified burst strength of 750 psi; and

(e) The fire hose would only be used for emergency firefighting purposes;

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 26, 1990. Copies of the petition are available for inspection at that address.

Dated: December 18, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-29989 Filed 12-26-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-175-C]

Gordon Coal Co., Petition for Modification of Application of Mandatory Safety Standard

Gordon Coal Company, HC 73, Box 415, Barbourville, Kentucky 40906 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its Mine No. 7 (I.D. No. 15-14124) located in Knox County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on electric face cutting equipment, continuous mining machines, longwall face equipment and loading machines. The monitor is required to be properly maintained and frequently tested.

2. As an alternate method, petitioner proposes to use handheld continuous oxygen and methane monitors instead of methane monitors on three-wheel tractors as outlined in the petition. In further support of this request, petitioner states that:

(a) No methane has been detected in the mine.

(b) Each three-wheel tractor would be equipped with a hand-held continuous monitoring methane and oxygen detector and all persons would be trained in the use of the detector;

(c) Prior to allowing the coal loading tractor in the face area, a gas test would be performed to determine the methane concentration in the atmosphere. When the elapsed time between trips does not exceed 20 minutes, the air quality would be monitored continuously after each trip. This would provide continuous monitoring of the mine atmosphere for methane to assure the detection of any methane buildup between trips; and

(d) If one percent methane is detected, the operator would manually deenergize the battery tractor immediately. Production would cease and would not resume until the methane level is lower than one percent.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 26, 1990. Copies of the petition are available for inspection at that address.

Dated: 18 December 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-29990 Filed 12-26-89; 8:45 am]

BILLING CODE 9510-43-M

MARTIN LUTHER KING, JR., FEDERAL HOLIDAY COMMISSION

Meeting

AGENCY: The Martin Luther King, Jr., Federal Holiday Commission.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463 as amended, the Martin Luther King, Jr., Federal Holiday Commission announces a forthcoming meeting of the Commission.

DATE: January 8, 1990, 12 Noon to 3:00 p.m.

ADDRESS: The Supreme Court, West Conference Room, One First Street, NE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Madeline Y. Lawson, the Martin Luther King, Jr., Federal Holiday Commission, Washington, DC 20410 (202) 755-1005.

Type of Meeting: Open.

Agenda

Monday, January 8

12:00

—Swearing in of new Commission Members/lunch
—Review of Commission activities for 1990

12:30

—Adoption of Minutes of Previous Meeting.
—Review of Commission activities for 1990
—Discussion of responsibilities of Commission under Federal Advisory Committee Act and H.R. 1385 as amended.
—Financial Report
—Reports from subcommittees of the Commission

3:00 p.m.—Adjourn

Madeline Y. Lawson,

Acting Deputy Executive Director.

[FR Doc. 89-30046 Filed 12-22-89; 9:15 am]

BILLING CODE 4210-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Council on the Humanities; Renewal

The charter of the National Council on the Humanities, a statutory advisory committee of the National Endowment for the Humanities established by law at 20 U.S.C. 957, is being renewed for an additional two years. The continuation of the National Council on the Humanities is required by law.

Dated: December 19, 1989.

Catherine Wolhowe,

Advisory Committee, Management Officer (Alternate).

[FR Doc. 89-29975 Filed 12-26-89; 8:45 am]

BILLING CODE 7536-01-M

NATIONAL SCIENCE FOUNDATION

Meeting

The National Science Foundation announces the following meeting:

Name: Instructional Materials Development Panel Meeting.

Date and Time: January 12-13, 1990, from 8:30 a.m. to 5:00 p.m.

Place: National Science Foundation, 1800 G. St. NW., Washington, DC 20550. Rooms 642, 536, and 643.

Type of Meeting: Closed Meeting.

Contact Person: Alice J. Moses, Gerhard Salinger, Tom Berger, Frank Sutman or Mary Kohlerman, National Science Foundation, 1800 G. St. NW., Washington, DC 20550. Instructional Materials Development, Room 635-A, Phone (202) 357-7066.

Summary of Minutes: May be obtained from the Contact persons at the above address.

Purpose of Meeting: To attend Instructional Materials Development Panel and provide advice and recommendations concerning K-12 Math, Science and Technology education.

Agenda: To review and evaluate Instructional Materials Development proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a propriety confidential including nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Dated: December 21, 1989.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 89-30010 Filed 12-27-89; 8:45 am]

BILLING CODE 7555-01-M

Materials Research Advisory Committee

The National Science Foundation announces the following meeting:

Name: Materials Research Advisory Committee (MRAC)
Place: Room 1243, National Science Foundation, 1800 G Street, NW; Washington, DC 20550
Date: Thursday and Friday, January 11 & 12, 1990
Time:
8:00 a.m.-5:00 p.m., Thursday
9:00 a.m.-3:00 p.m., Friday
Type of Meeting: Part Open (Thursday a.m.) Part Closed (Thursday p.m., Friday)
Contact Person: Dr. A.I. Schindler, Division Director, Division of Materials Research, Room 408, National Science Foundation, Washington, D.C., 20550 Telephone: (202) 357-9794
Committee Reports: May be obtained from the Contact Person, Dr. A.I. Schindler, at the above stated address.
Purpose of Committee: To carry out Committee of Visitors review of the Materials Research Laboratories, Materials Research Groups, National Facilities, and Instrumentation for Materials Research Programs.
Agenda: Thursday Morning, January 11, 1990 (open)
8:00 a.m.—Welcome and Introductions
8:15 a.m.—Division Overview
9:00 a.m.—Staff Briefing on Programs:
- Materials Research Laboratories
- Materials Research Groups
- National Facilities
- Instrumentation for Materials Research

Thursday Afternoon, January 11, 1990 (closed)
12:00 noon—Lunch
1:00 p.m.—COV Review of the Materials Research Laboratories, Materials Research Groups, National Facilities and Instrumentation for Materials Research Programs, including examination of proposals, reviewer comments, and other privileged materials.
5:00 p.m.—Adjourn
Friday, January 12, 1990 (closed)
9:00 a.m.—Continuation of COV Review
3:00 p.m.—Adjourn

Reason for Closing: The oversight committee's review of proposal actions will include privileged intellectual property and personal information that could harm individuals if it were disclosed and predecisional intra-agency records not available by law. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act would improperly be disclosed.

Dated: December 20, 1989.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 89-29959 Filed 12-26-89; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 40-8943]

Ferret Exploration Co. of Nebraska, Inc.; Final Finding of No Significant Impact Regarding the Issuance of a Source Material License to Ferret Exploration Company of Nebraska, Inc., Crow Butte Commercial Operation Located in Dawes County, Nebraska

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of final finding of no significant impact.

1. Proposed Action

The proposed administrative action is to issue a commercial Source and Byproduct Material License. This license would allow in-situ leach uranium recovery at the Crow Butte Operation located in Dawes County, Nebraska.

2. Reasons for Final Finding of No Significant Impact

An environmental assessment was prepared by the staff at the U.S. Nuclear Regulatory Commission (NRC) and issued by the Commission's Uranium Recovery Field Office, Region IV. The environmental assessment performed by the Commission's staff evaluated potential impacts onsite and offsite due to radiological releases that may occur during the course of the operation. Documents used in preparing the assessment included operational data from the Crow Butte Research and Development in-situ leach operation and the licensee's application dated October 7, 1987, as revised. Based on the review of the operational data and the application materials, the Commission has determined that no significant impact will result from the proposed action, and therefore, an Environmental Impact Statement is not warranted.

A draft finding of no significant impact was published in the **Federal Register** on December 1, 1988. Several editorial comments were received, as well as a comment regarding disposal of radiological wastes generated at the site. Since that time, Ferret has formulated a contract for long-term disposal of contaminated wastes at an appropriately licensed site. Due to this, there is no longer a waste disposal concern.

The following statements support the final finding of no significant impact and summarize the conclusions resulting from the environmental assessment.

A. The ground-water monitoring program proposed by Ferret Exploration Company of Nebraska, Inc., is sufficient to monitor the operations and will provide a warning system that will minimize any impact on ground water. Furthermore, aquifer testing indicates that the production zone is adequately confined, thereby assuring hydrologic control of mining solutions.

B. Radiological effluents from the proposed operation of the well field and processing plant will be within regulatory limits and will be continuously monitored.

C. The environmental monitoring program is comprehensive and will detect any radiological releases resulting from the operation.

D. Radioactive wastes will be minimal and will be disposed of at an approved site in accordance with applicable Federal and State regulations.

E. Ground water, based upon previous testing, can be restored to baseline concentrations or applicable class of use standards.

In accordance with 10 CFR part 51.33(a), the Director of the Uranium Recovery Field Office made the determination to issue a final finding of no significant impact and concurrent with this final finding, issue Source Material License SUA-1534.

This finding, together with the environmental assessment setting forth the basis for the findings, is available for public inspection and copying at the Commission's Uranium Recovery Field Office at 730 Simms Street, Golden, Colorado, and at the Commission's Public Document Room at 2120 L Street, NW., Washington, DC.

Dated at Denver, Colorado, this 11th day of December, 1989.

For the Nuclear Regulatory Commission.

Ramon E. Hall,

Director.

[FR Doc. 89-29971 Filed 12-26-89; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Regulatory Policies and Practices; Postponed

The ACRS Subcommittee meeting on Regulatory Policies and Practices scheduled for January 10, 1990 has been postponed to March 22, 1990, room P-110, 7920 Norfolk Avenue, Bethesda, MD. The notice of this meeting was previously published in the **Federal Register** on Tuesday, December 19, 1989 (54 FR 51960).

Dated: December 19, 1989.

Raymond F. Finlay,

Executive Director.

[FR Doc. 89-29972 Filed 12-26-89; 8:45 am]

BILLING CODE 7590-01-M

Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular biweekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from December 4, 1989 through December 14, 1989. The last biweekly notice was published on December 13, 1989 (54 FR 51251).

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or

consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC The filing of requests for hearing and petitions for leave to intervene is discussed below.

By January 26, 1990, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to

(*Project Director*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: October 19, 1989

Description of amendment request: This amendments would add a footnote to Tables 2.2.1-1 and 3.3.2-2 for the adjustment of the main steam line radiation monitors trip setpoints to compensate for the increased background radiation levels while the hydrogen water chemistry system is in service. Table 2.2.1-1 addresses reactor protection system instrumentation setpoints. Table 3.3.2-2 addresses isolation actuation instrumentation septoints. The use of the hydrogen water chemistry system during power operation will tend to mitigate intergranular stress corrosion cracking of the Brunswick Steam Electric Plant, Units 1 and 2, (Brunswick) stainless steel piping. The addition of hydrogen will increase the radioactivity of the radioactive steam in the main steam lines.

Basis for proposed no significant hazard consideration determination: The Commission has provided standards for determining whether a no significant hazard consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has provided an analysis in support of the no significant hazards consideration as follows:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The only accident scenario which takes credit for the MSLRM high radiation scram and isolation setpoints is the Control Rod Drop Accident (CRDA)as described in the Brunswick FSAR Chapter 15. Specifically, the Main Steam Isolation Valves (MSIVs) are assumed to receive an automatic closure signal at 0.5 seconds after detection of high radiation in the main steam lines and to be fully closed at 5 seconds from the receipt of the closure signal. The MSLRMs are provided to detect a gross failure of the fuel cladding. When high radiation is detected, a trip is initiated to reduce the continued failure of fuel cladding. At the same time, the MSIVs are closed to limit the release of fission products. The trip setting is high enough above background radiation levels to prevent spurious trips yet low enough to promptly detect gross failures in the fuel cladding.

NEDO-10527, "General Electric Rod Drop Accident Analysis For Large Boiling Water Reactors," dated July 1972, concluded that the consequences of the CRDA are most severe under Hot Standby conditions. Furthermore, the consequences of the CRDA are increasingly less severe above 10 percent power due to a faster Doppler response and a lower rodworth. Finally and most importantly, this report concluded that above 20% of Rated Thermal Power the consequences of the CRDA are minimal. Therefore, the proposed change specifies when the HWC system can be operated and identifies restrictions associated with changing the MSLRM setpoints. First, the HWC system cannot be placed in service until reactor power reaches 20% of Rated Thermal Power. This restriction is based on the Control Rod Drop Accident which is only of concern at power level below 20% of Rated Thermal Power. After reaching 20% of Rated Thermal Power the MSLRM setpoint can be increased since no other FSAR Chapter 15 accident scenarios take credit for the operation of the MSLRM scram and isolation setpoints. Within 24 hours after decreasing below 20% of Rated Thermal Power or after the HWC system has been shutoff, the background level and associated setpoint shall be returned to the normal full power values. If a power reduction event occurs so that the reactor power is below 20% of Rated Thermal Power for longer than 24 hours without the required setpoint change, control rod motion shall be suspended (except for scram or other emergency action) until the necessary adjustments are made.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not affect the design of any safety related systems and as such does not affect the performance of any safety related functions. The proposed amendment allows the operation of a new system, that is the HWC system. This system has been extensively analyzed by EPRI, approved for use by the NRC, and in operation at a number of facilities.

The design and installation of the permanent hydrogen water chemistry facility at Brunswick was review by the NRC during a site visit on August 23 and 24, 1988. As a result of this review, the Staff concluded that the hydrogen and oxygen supply facilities, hydrogen and oxgen injection systems, instrumentation and controls, and safety considerations meet the recommendations of EPRI NP 5283-SR A - September 1987. This conclusion is documented in a memorandum from Frank J. Witt, Chemical Engineer, Chemist Engineering Branch to Conrad E. McCracken, Chief, Chemical Engineering Branch, dated September 6, 1988.

3. The proposed amendment does not involve a significant reduction in the margin of safety.

The proposed amendment includes specific requirements regarding the operation of the HWC system:

- Operation of the HWC system is only permitted above 20% of Rated Thermal Power.
- When the HWC system is in operation, the MSLRM setpoints can be adjusted upward to account for the increase in the background main steam line radiation levels.
- Within 24 hours after decreasing reactor power to below 20% of Rated Thermal Power, the setpoints must be adjusted to their pre-HWC system operation levels.
- If the power level fails below 20% for longer than 24 hours without the setpoint change, control rod motion is suspended (except for scrams or other emergency situation) until the setpoint adjustment is made.

These requirements will assure that the HWC system is operated safely and with sufficient margin such that spurious MSL isolations are precluded while maintaining the ability to detect any gross failures in the fuel cladding.

As discussed in Item 1, A CRDA is the only accident which takes credit for the MSL isolation trip function. However, above 20% of Rated Thermal Power, the consequences of the CRDA are minimal. Therefore, the change has no significant affect on the margins of safety for this accident scenario.

The increase in background radiation levels has been analyzed and it has been determined that neither plant personnel nor the health and safety of the public are at risk with operating with the HWC system.

Based on the above, it is concluded that the proposed amendment does not involve a significant reduction in a margin of safety.

The licensee has concluded that the proposed amendment meets the three standards in 10 CFR 50.92 and, therefore, involves no significant hazards consideration.

The NRC staff has made a preliminary review of the licensee's no significant hazards consideration determination. The licensee determined that there would be no significant increase in the consequences of a control rod drop accident and that there would no significant affect on the margin of safety while the hydrogen water chemistry system is in operation above 20% of rated thermal power. In addition, the licensee analyzed the increase in radiological background levels and concluded that neither plant personnel nor the health and safety of the public are at risk when operating the hydrogen water chemistry system. Thus, there will be no significant reduction in the margin of safety. The staff agrees that the licensee met the three standards. Accordingly, the Commission proposes to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, P. O. Box 1551, Raleigh, North Carolina 27602

NRC Project Director: Elinor G. Adensam

Commonwealth Edison Company, Docket No. 50-454 and 50-455, Byron Station, Units 1 and 2, Ogle County, Illinois

Date of application for amendment: November 17, 1989

Description of amendment request: This amendment would change the heatup and cooldown curves, the power operated relief valve (PORV) Low Temperature Overpressure Protection (LTOP) Setpoints, and their bases.

Basis for proposed no significant hazards consideration determination: The staff has evaluated this proposed amendment and determined that it involves no significant hazards consideration. According to 10 CFR 50.92, a proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated; or
2. Create the possibility of a new or different kind of accident from any accident previously evaluated; or
3. Involve a significant reduction in a margin of safety.

The probability of an occurrence or the consequence of an accident, or malfunction of equipment important to safety, as previously evaluated in the FSAR, has not increased because the revised heatup, cooldown, and Low-Temperature Overpressurization (LTOP) setpoint curves are more conservative than the current curves. In addition, these curves have been revised per Regulatory Guide (RG) 1.99 Revision 2 and thus meet the NRC standards of methodology for calculating heatup and cooldown curves. By maintaining the revised heatup and cooldown limits during operation, due to the increased conservation of the limits, the probability or consequence of an accident or malfunction of equipment important to safety is not increased. In addition, none of the transients described in the FSAR will result in pressures or temperatures exceeding the limits of the revised heatup and cooldown curves. The Power Operated Relief Valve (PORV) LTOP setpoint enable temperatures remain the same while the Unit 2 LTOP lift setpoints have been revised to become more restrictive than the previous LTOP setpoints. Thus, the PORV cold overpressurization protection system provides protection per Technical Specification 3.4.9.3, Modes 4, 5, and 6. Additionally, the PORVs and safety valves provide overpressurization protection during power operation. Finally, the heatup and cooldown curves are not an initiating event for any accident. Therefore, the probability of an occurrence or the consequence of an accident, or malfunction of equipment important to safety as previously evaluated in the FSAR has not increased because the heatup, cooldown, and LTOP setpoint curves are more conservative than the current curves.

The possibility of a new or different kind of accident from any previously evaluated is not created because operation within the limits of the revised heatup, cooldown, and LTOP setpoint curves provide additional conservatism in operation compared to the present curves. The curves have been reviewed in accordance with RG 1.99 Revision 2 to ensure that the heatup, cooldown, and LTOP setpoint limits are conservative. The heatup and cooldown curve change does not result in any modification. Operating with new limits does not introduce any new variables. Operating with the revised curves has no effect on the creation of the possibility for an accident or malfunction of a different type of accident or malfunction than any previously evaluated in the FSAR. Operation will be maintained within the pressure and temperature limits based on minimum reference nil-ductibility temperatures and reactor vessel materials during heatup and cooldown, thus, ensuring reactor vessel structural integrity.

The proposed Technical Specification change does not involve a significant reduction in the margin of safety since the revised heatup, cooldown, and LTOP setpoint curves are more conservative than the present curves and are based on the RG 1.99 Revision 2 methodology which maintains or increases the margin of safety for operations. Since the revised heatup, cooldown, and LTOP setpoint limits are more conservative than the present curves, they ensure that reactor vessel structural integrity will be maintained based on minimum reference nil-ductility temperatures and reactor vessel materials.

Therefore, based upon the above analysis, the staff concludes that the proposed amendment to the Technical Specification does not involve a significant hazards consideration.

Local Public Document Room location: Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61103.

Attorney to licensee: Michael Miller, Esquire, Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

NRC Project Director: John W. Craig

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: November 30, 1989

Description of amendment request: The proposed amendment would delete Technical Specification (TS) 3.3.A.2.e., the action statement for the Boron Injection Tank (BIT) flow path heat tracing, since the BIT has been removed and high concentration boric acid requiring heat tracing is no longer used in this flow path.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety. In accordance with 10 CFR 50.92, Consolidated Edison Company of New York, Inc. has reviewed the proposed deletion of TS

3.3.A.2. and has concluded that it does not involve a significant hazards consideration because the deletion would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The safety injection pumps are required to deliver borated water from the Refueling Water Storage Tank (RWST) to the reactor coolant system during various accident scenarios.

The heat tracing on the BIT flow path was previously required to prevent solidification of the minimum 20,000 ppm boric acid solution in the lines from the BIT to the suction of the safety injection pumps. The requirement for the BIT was previously removed by License Amendment No. 104 which deleted the LCO and surveillance requirements associated with the BIT. With the subsequent physical removal of the BIT, there is now only a 2000 ppm boric acid solution in the lines from the RWST to the suction of the safety injection pumps. This lower concentration does not require heat tracing to prevent solidification.

Therefore, there is no adverse effect on the safety injection pumps by the removal of the suction line heat tracing.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

Deletion of the BIT flow path heat tracing does not change or affect the safety function of the safety injection system. Therefore, there is no potential for a new or different kind of accident from any previously evaluated.

3. Involve a significant reduction in a margin of safety.

Since there is no technical need to heat trace a line containing 2000 ppm boric acid solution, deletion of the heat tracing does not involve a reduction in a margin of safety.

The staff agrees with the licensee's analysis. The staff also notes that TS 3.3.A.2.e. should have been deleted during the processing of License Amendment No. 104 but was not due to an administrative error. The proposed amendment would correct this error. The proposed change meets Example (i) of the Commission's Examples of Amendments that Are Considered Not Likely to Involve Significant Hazards Considerations (51 FR 7751, dated March 6, 1986). For the above reasons the staff proposes that this proposed change will not involve a significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10610.

Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003

NRC Project Director: Robert A. Capra

Florida Power and Light Company, Docket No. 50-335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of amendment request: December 5, 1989

Description of amendment request: The purpose of the amendment is to incorporate revised pressure/temperature (P-T) limits and the results of a revised low temperature overpressure protection (LTOP) analysis into the Technical Specifications for St. Lucie Unit 1. The current St. Lucie Unit 1 Technical Specifications for P-T/LTOP are applicable to 10 effective full power years (EFPY). Accordingly, the St. Lucie Unit 1 Technical Specifications require revision prior to the plant reaching 10 EFPY.

The proposed P-T limits, which are based upon fluence predictions at 15 EFPY, and revised limiting conditions for operations ensure that all reactor coolant system (RCS) components will be able to withstand the effects of cyclic loads due to system temperature and pressure changes without their functions or performance being impaired. These cyclic loads are introduced by normal load transients, reactor trips, and startup and shutdown operations. Overpressure protection provided by the Overpressure Mitigation System ensures RCS overpressurization below certain temperatures would be prevented, thus maintaining reactor coolant pressure boundary integrity.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee provided the following discussion regarding the above three criteria.

Criterion 1

Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The pressure-temperature (P-T) limit curves in the Technical Specifications are conservatively generated in accordance with the fracture toughness requirements of 10 CFR [Part] 50 Appendix G as supplemented by the ASME Code Section III, Appendix G recommendations. The RT_{NDT} values for the revised curves are based on Regulatory Guide 1.99, Revision 02 shift prediction and attenuation formula. Analyses of reactor vessel material irradiation surveillance specimens are used to verify the validity of the fluence predictions and the P-T limit curves. Use of the revised curves in conjunction with the surveillance specimen program ensures that the reactor coolant pressure boundary will behave in a non-brittle manner and that the possibility of rapidly propagating fracture is minimized.

In conjunction with revising the P-T limit curves, a low temperature overpressure protection (LTOP) analysis has been performed to confirm that the current Overpressure Mitigation System (OMS) setpoints for the power-operated relief valves (PORVs) will provide the appropriate overpressure protection at the low Reactor Coolant System (RCS) temperatures. The LTOP analysis also revised the current values of the limiting temperatures for the PORV setpoints' applicability, heatup and cooldown rates, and disabling of non-essential components, based upon the revised P-T limits.

To ensure compliance with the P-T limit curves, overpressure protection is provided to keep the RCS pressure below the P-T limits for any given temperature after the initiation of assumed pressure transients (energy-addition and mass-addition transients) while operating below the enable temperatures that were determined in accordance with Standard Review Plan 5.2.2, Revision 02.

The revised P-T curves and applicable OMS temperatures do not represent a significant change in the configuration or operation of the plant. The results of the LTOP analysis show that the limiting pressures for given temperatures are not exceeded for the assumed transients and that reactor vessel integrity is maintained. Thus, the proposed amendment does not involve an increase in the probability or consequences of accidents previously evaluated.

Criterion 2

Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The evaluation performed has resulted in revised P-T limits based on the fracture toughness requirements of 10 CFR [Part] 50 Appendix G, and in revised OMS temperatures based on standard energy and mass addition transients. Since there is no significant change in the configuration or operation of the facility as a result of the proposed amendment, the use of revised P-T limits and the OMS setpoints do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3

Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The proposed amendment does not involve a significant reduction in a margin of safety.

because the fracture toughness requirements of 10 CFR [Part] 50 Appendix G are satisfied and conservative operating restrictions are applied for the purpose of low temperature overpressure protection.

In conclusion, based on the analysis performed, we have determined that the amendment request does not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the probability of a new and different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety; and therefore does not involve a significant hazards consideration.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the NRC staff proposes to determine that the proposed changes to the TS involve no significant hazards consideration.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 33450

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036

NRC Project Director: Herbert N. Berkow

Florida Power and Light Company, et al., Docket Nos. 50-335 and 50-389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of amendment requests: November 17, 1989

Description of amendment requests: These amendments would make administrative changes to the St. Lucie Unit 1 and Unit 2 Technical Specifications and achieve consistency throughout the Technical Specifications by removing outdated material, making minor text changes, correcting errors and implementing the line item improvements recommended by Generic Letter 89-14, "Removal of the 3.25 Limit on Extending Surveillance Intervals."

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee provided the following discussion regarding the above three criterion:

Criterion 1

Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The NRC [s]taff has concluded that the deletion of the 3.25 limit is acceptable and previously evaluated the proposed change in Generic Letter 89-14, "Line-Item Improvements in Technical Specifications - Removal of the 3.25 Limit on Extending Surveillance Intervals". Based on the NRC review, this alternative to the current requirement of Specification 4.0.2 will remove an unnecessary restriction on extending surveillance requirements and will result in a benefit to safety when plant conditions are not conducive to the safe conduct of surveillance requirements. The removal of the 3.25 limit will provide greater flexibility in the use of the provision for extending surveillance intervals, reduce the administrative burden associated with its use, and have a positive effect on safety. Therefore, the proposed amendment will not involve a significant increase in the probability or consequences of [an] accident previously evaluated.

The administrative changes do not affect assumptions contained in plant safety analyses, nor do they affect Technical Specifications that preserve safety analysis assumptions. Therefore, the proposed changes do not affect the probability or consequences of accidents previously analyzed.

Criterion 2

Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The NRC has previously evaluated the acceptability of this change on a generic basis in Generic Letter 89-14 and concluded that it will have a positive effect on safety.

A new or different kind of accident is not created since Technical Specification Limiting Conditions for Operation (LCO) and ACTION statement requirements remain unchanged.

The administrative changes being proposed by FPL will not lead to material procedure changes or to physical modifications [of the] St. Lucie Plant. Therefore, the proposed changes do not create the possibility of a new or different kind of accident.

Criterion 3

Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The use of the allowance to extend surveillance intervals by 25 percent can also result in a significant safety benefit for surveillances that are performed on a routine basis during plant operation. This safety benefit is incurred when a surveillance interval is extended at a time that conditions are not suitable for performing the surveillance.

The changes being proposed do not relate to or modify the safety margins defined in and maintained by the Technical Specifications. Therefore, the proposed changes would not involve any reduction in a margin of safety.

Based on the above, we have determined that the amendment request does not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the probability of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety; and therefore, does not involve a significant hazards consideration.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the NRC staff proposes to determine that the proposed changes to the TS involve no significant hazards consideration.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 33450

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036

NRC Project Director: Herbert N. Berkow

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendment request: November 21, 1989

Description of amendment request: The proposed amendments would revise Technical Specifications 3/4.4.1.4.2, "Cold Shutdown-Loops Not Filled," and 3/4.9.1, "Boron Concentration," to allow for periodic chemical addition via the chemical mixing tank. The current specifications require that the reactor makeup water storage tank be isolated from the chemical and volume control system by four locked closed valves in Mode 5 with the Reactor Coolant System loops not filled and in Mode 6. The proposed amendments would allow two of those valves to be opened periodically under administrative control so that chemical additions may be made in those modes of operation.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed

amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated: or (2) create the possibility of a new or differnet kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

In regard to the proposed amendments, the licensee has determined the following:

1. This chemical addition procedure does not increase the probability of an accident previously evaluated in the FSAR. No new performance requirements or alignments are being imposed on the CVCS or RMWS such that any design criteria will be exceeded. The recommended chemistry guidelines will continue to be adhered to, precluding the creation of an adverse chemical environment which may prematurely affect component performance. This dilution flow path, although administratively precluded in Modes 5b and 6, was previously considered for Modes 3, 4, 5 and 6 in Chapter 15 of the FSAR. The classification of the boron dilution event continues to be an ANS condition II incident, one of moderate frequency. Other boron dilution flow paths will continue to be precluded by the technical specifications.

The consequences of an accident previously evaluated in the FSAR are not increased due to this chemical addition procedure. The results presented in the FSAR for the Modes 3, 4, and 5a dilution events remain valid. Boron dilution as a result of chemical addition in Modes 5b and 6 will not create more severe dose consequences.

2. This chemical addition does not create the possibility of an accident which is different than any already evaluated in the FSAR. Boron dilution configurations in Modes 5b and 6 have been previously considered and evaluated in the FSAR. The conclusion was to keep the flow paths isolated so that no dilution flow was possible. In order to support the chemical addition procedure, an alternative approach, which utilized specific analyses that are bounding for the injection path configuration, was used. The results indicate that the required operator action time is available given the expected dilution flow rates. Therefore, the Modes 5b and 6 boron dilution analyses meet the Plant Vogtle licensing basis acceptance criteria for this event. Other boron dilution flow paths will continue to be precluded by the technical specifications.

3. The margin of safety in the plant licensing basis for boron dilution is defined as operator action time between the high flux at shutdown alarm and loss of shutdown margin (criticality). The high flux at shutdown alarm setpoint defined in Technical Specification Table 4.3-1, Note 9, is 2.3 times background. For Mode 5b, the operator action acceptance criteria as defined in SRP Section 15.4.6 is fifteen minutes and for Mode 6, SRP Section 15.4.6 defines the acceptance criteria as thirty minutes. The analysis criteria is designed to provide sufficient time for the operator to mitigate the event and prevent the complete loss of shutdown margin. Prevention of the loss of shutdown margin ensures that all ANS Condition II criteria are met. Therefore, the margin of safety is not reduced.

The Commission's staff has reviewed the licensee's determination and concurs with its findings.

Accordingly, the Commission proposes to determine that the proposed change involves no significant hazards consideration.

Local Public Document Room location: Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830.

Attorney for licensee: Mr. Arthur H. Domby, Troutman, Sanders, Lockerman and Ashmore, Candler Building, Suite 1400, 127 Peachtree Street, NE., Atlanta, Georgia 30043.

NRC Project Director: David B. Matthews

GPU Nuclear Corporation, et al., Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: December 4, 1989

Description of amendment request: This amendment would revise Technical Specification (TS) 3.7A to clarify operability requirements for batteries B and C and, in addition specify switchgear control power requirements associated with each battery. The bases for Section 3.7 has also been clarified with respect to the 125 VDC System.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a) GPU Nuclear has determined that operation of the Oyster Creek Nuclear Generating Station in accordance with the proposed technical specifications does not involve a significant hazard. The change does not:

(1) Involve an increase in the probability or consequences of an accident previously evaluated. The proposed change provides guidance with respect to the requirements applicable to the station batteries. There are no changes to plant configuration, availability of safety systems, the manner in which safety systems are initiated or plant operation. As a result, an increase in the probability or consequences of an accident previously evaluated is not involved.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change does not alter the plant configuration, nor does it change the availability of safety systems or the manner in which they respond to initiating events. As such, the possibility of a new or different kind of accident from any previously evaluated is not created.

(3) Involve a significant reduction in a margin of safety. The operability requirements of the existing Technical Specifications are not altered by the proposed change. In addition, safety systems availability, initiation and response are not altered. Therefore, the margin of safety is not reduced.

The staff has reviewed the proposed amendment and agrees with the licensee's determination that it does not involve a significant hazards consideration.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753

Attorney for licensee: Ernest L. Blake, Jr., Esquire. Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: November 17, 1989

Description of amendment request: The amendment would modify Technical Specification (TS) 4.0.2 to remove the provision that limits the combined time interval for three consecutive surveillances to less than 3.25 times the specified interval. Guidance regarding this proposed TS change was provided to all power reactor licensees and applicants by Generic Letter 89-14 dated August 21, 1989. The proposed change would maintain the present maximum allowance of 25 percent for extending surveillances intervals. The November 17, 1989 submittal also proposes modifying the bases for TS 4.0.2.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee provided an analysis that addressed the above three standards in the amendment application.

The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated because the 3.25 surveillance interval extension criteria of Technical Specification 4.0.2 was not considered in the plant accident analysis (SAR Chapter 15).

The proposed amendment does not create the possibility of a new or different kind of

accident from any accident previously evaluated because the surveillance interval will still be constrained by the 25 percent interval extension criteria of Technical Specification 4.0.2.

The proposed amendment does not involve a significant reduction in the margin of safety because deletion of the requirement "any three consecutive intervals must not exceed 3.25 times the interval" will not significantly effect equipment reliability. This exemption will allow all surveillance intervals to be constrained by the maximum allowable extension of 25 percent of the specified surveillance interval which will maintain safe operation when used during plant operation. Normal scheduling would still be at the specified surveillance interval.

Based upon the above considerations, the proposed change does not result in a significant increase in the probability or the consequences of any accident previously evaluated, does not create the possibility of a new or different kind of accident than previously evaluated and does not result in a reduction in the margin of safety. Therefore, GSU proposes that no significant hazards considerations are involved with approval of the proposed change.

The NRC staff has reviewed the licensee's no significant hazards consideration determination. Based on the review and the above discussion, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

Attorney for licensee: Troy B. Conner, Jr., Esq., Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Frederick J. Hebdon

Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: November 17, 1989

Description of amendment request: The amendment would remove certain cycle-specific parameter limits from the Technical Specifications (TSs) and relocate these limits into a Core Operating Limits Report (COLR) in accordance with guidance provided in Generic Letter 88-16 dated October 4, 1988. Three separate actions are required to modify the TSs: (1) the addition of the definition of a named formal report that includes the values of cycle-specific parameter limits that have been established using an NRC-approved methodology and consistent with all applicable limits of the safety analysis; (2) the addition of an administrative reporting requirement to submit the formal report on cycle-specific parameter limits to the Commission for information; and (3) the modification of individual TSs to note that cycle-specific parameters shall be maintained within the limits provided in the defined formal report.

The proposed amendment would revise TSs 2.2.1, 3/4.2.1, 3/4.2.2, 3/4.2.3, 3/4.2.4, 3.3.1, and 3.3.6 to replace the values of cycle-specific parameter limits with a reference to the COLR which would contain the values of these limits. The COLR has been added to the Definitions section of the TSs indicating that it is the document that contains the cycle-specific parameter limits for the current operating cycle. Furthermore, the definition notes that the cycle-specific core operating limits shall be determined for each reload cycle in accordance with Specifications 6.9.3.1, 6.9.3.2, 6.9.3.3, and 6.9.3.4. These TSs require the core operating limits be determined for each reload cycle in accordance with the NRC-approved methodology and consistent with the applicable limits of the safety analysis. The provisions of the proposed TSs state that the COLR and any mid-cycle revisions shall be provided to the NRC upon issuance. TS Section 5.3, Design Features - Fuel Assemblies would also be modified to delete details of fuel and control rod designs which may change with the loading of new, approved designs or different enrichments. This information would be included in the Supplemental Reload Licensing Report and will be referenced in the COLR. The applicable Bases sections of the TSs would also be revised to reflect the above changes.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee provided an analysis that addressed the above three standards in the amendment application.

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. The abnormal operational transients analyzed in the RBS Updated Safety Analysis Report will remain bounding. There will be no change in the operation of the facility as a result of this amendment. No safety-related equipment or function is altered. The proposed amendment removes cycle-specific parameter limits from the Technical Specifications and references their inclusion in the CORE OPERATING LIMITS REPORT (COLR). NRC approved analytical methodology will continue to be used as the basis for the results that will now be reported in the COLR.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. As stated above, no safety-related equipment, safety function, or plant operations will be altered as a result of this amendment. The requested change does not create any new accident mode. The proposed amendment is in accordance with the guidance provided in Generic Letter 88-16 for licensees requesting removal of the values of cycle-specific parameters from Technical Specifications. The establishment of these limits in accordance with an NRC-approved methodology and the incorporation of these limits into the COLR will ensure that proper steps have been taken to maintain the values of these limits. Furthermore, the submittal of the COLR to the Commission will allow the Staff to continue to trend the values of these limits without the need for prior Staff approval of these limits and without introduction of an unreviewed safety question.

3. The proposed amendment does not alter the requirement that the plant be operated within the limits for cycle-specific parameters nor the required remedial actions that must be taken if these limits are not met. While it is recognized that such limits are essential to plant safety, the values of such limits can be determined in accordance with NRC-approved methods without affecting nuclear safety. The removal of the values of these limits from the RBS Technical Specifications is coincident with their incorporation into the COLR that is submitted to the NRC. Hence, appropriate measures exist to control the values of these limits. Therefore, the proposed changes are administrative in nature and do not impact the operation of the facility in a manner that involves a reduction in the margin of safety. Indeed, as stated in Generic Letter 88-16, the proposed amendment is responsive to industry and NRC efforts on improvements in Technical Specifications, and will result in a resource savings for the licensee and the NRC by eliminating the majority of license amendment requests for changes in values of cycle-specific parameters in Technical Specifications.

Based upon the above considerations, the proposed change does not result in a significant increase in the probability or the consequences of any accident previously evaluated, does not create the possibility of a new or different kind of accident than previously evaluated and does not result in a reduction in the margin of safety. Therefore, GSU concludes that no significant hazards considerations are involved with approval of the proposed change.

The staff has reviewed the licensee's no significant hazards consideration

determination. Based on the review and the above discussions, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

Attorney for licensee: Troy B. Conner, Jr., Esq., Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Frederick J. Hebdon

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: January 27, 1984 and June 30, 1987, as superseded September 1, 1989

Description of amendment request: By letter dated January 27, 1984, Iowa Electric Light and Power Company (the licensee) proposed amendments to the Duane Arnold Energy Center (DAEC) Technical Specifications, as requested in NRC Generic Letter 83-36. These changes addressed several requirements set forth in NUREG-0737, "Clarification of TMI Action Plan Requirements." The staff's proposed no significant hazards consideration determination for the requested changes was published on March 22, 1984 (49 FR 10736). All TMI Action Plan Items addressed in the licensee's January 27, 1984 submittal were the subjects of subsequent license amendments, except for Item III.D.3.4 - Control Room Habitability Requirements.

By letter dated June 30, 1987, superseded by letter dated September 1, 1989, the licensee proposed a revised amendment to address TMI Action Plan Item III.D.3.4. Specifically, the proposed revision will: (1) reflect the nomenclature found in more recent plant surveillance test procedures, (2) change the definition for the control room ventilation flow rate, (3) revise the halogenated hydrocarbon removal rate of the charcoal adsorber banks in the control room, and (4) provide a requirement that, upon a high radiation signal, the control room standby filter unit will automatically switch to the isolation mode and maintain the control room at a positive pressure greater than or equal to 1/10-inch water gage.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards (10 CFR 50.92 (c)) for determining whether a significant hazards consideration exists. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new of different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has reviewed this proposed request for Technical Specification change and has determined the following:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed amendment would revise Limiting Conditions for Operation (LCOs) and surveillance requirements for the air treatment system of the DAEC main control room. The incorporation of the guidance of Generic Letter 83-36, "NUREG-0737 Technical Specifications," into the licensee's Technical Specifications ensures that, during a design basis accident, control room personnel may gain access to and occupy the control room for a 30-day post-accident period without receiving radiation exposures in excess of 5 rem (whole body). In addition, incorporation of the generic guidance ensures continued compliance with General Design Criteria (GDC) 19 of Appendix A to 10 CFR Part 50 and Item III.D.3.4 of NUREG-0737.

The amendment involves no changes in plant hardware or operation. Rather, it clarifies the LCOs applicable to the standby filter units and in-corporates new surveillance requirements.

2. The proposed amendment does not create a possibility of a new or different kind of accident. No changes are being made to the existing systems, setpoints, frequency of tests, or plant design. The proposed changes do, however, follow NRC guidance to assure continued operability of the standby filter units in the plant's main control room ventilation system by performance of appropriate surveillance tests.

3. The proposed amendment does not involve a significant reduction in a margin of safety. The proposed changes will have no effect on margins of safety and will ensure that, during a design basis accident, control room occupants will be adequately protected from radiological hazards.

The staff has reviewed the licensee's proposed no significant hazards consideration determination and finds it acceptable.

Therefore, the staff proposes to determine that the requested changes do not involve a significant hazards consideration.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401.

Attorney for licensee: Jack Newman, Esquire, Kathleen H. Shea, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036.

NRC Project Director: John N. Hannon.

Northeast Nuclear Energy Company, Docket No. 50-245, Millstone Nuclear Power Station, Unit No. 1, New London County, Connecticut

Date of amendment request: November 28, 1989

Description of amendment request: The proposed change to the Technical Specifications (TS) Section 3.6.J.1 would lower the minimum condensate demineralizer capacity from 30 pounds to 5 pounds (as chloride ion). The licensee also proposed deleting requirements relating to regenerated demineralizer resin in TS Sections 3/4.6.J.1 and 3/4.6.J.2 since resin is not regenerated any longer.

Basis for proposed no significant hazards consideration determination: The licensee has reviewed the proposed changes in accordance with 10 CFR 50.92 and has concluded, and the NRC agrees, that they do not involve a significant hazards consideration in that the changes do not:

1. Involve a significant increase in the probability or consequences of any accident previously evaluated. Changing the minimum resin capacity of the condensate demineralizers from 30 to 5 pounds as chloride ion does not compromise the quality of the reactor water because Plant Operating Procedures are in place which provide for increased monitoring, plant shutdown, and scram as conductivity levels rise and limits are exceeded. Procedures require a controlled plant shutdown at greater than or equal to 5 umho conductivity in the condensate pump discharge and a scram at greater than or equal to 15 umho. The procedures, which are not being changed, along with 5-pound minimum capacity will continue to ensure enough time is available for a controlled plant shutdown before the quality of reactor water is degraded to a point where damaging effects on core internals and fuel would occur. Therefore there is no adverse effect to the consequences of the design basis accidents.

Removal of the regeneration requirements has no impact on any conductivity transient since Millstone Unit 1 no longer regenerates resin, but rather replaces spent resin with new resin.

2. Create the possibility of a new different kind of accident. There is no change in plant design or operating procedures proposed by the subject changes. The modification of Technical Specification requirements does not change the probability of any conductivity transient. Additionally, there are no new failure modes introduced by the change. Therefore, there can be no impact on plant response to the point where a different accident is created.

3. Involve a significant reduction in the margin of safety. The changes have no adverse impact on the consequences of an accident or on any of the protective

boundaries. Therefore, there is no reduction in any margin safety.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Northern States Power Company, Docket Nos. 50-282 and 50-306, Prairie Island Nuclear Generating Plant Units 1 and 2, Goodhue, Minnesota

Date of application for amendment: November 17, 1989

Description of amendment request: The proposed amendment would revise Technical Specifications 3.1.F, and 3.10 of Appendix A of that license to replace the values of cycle-specific parameter limits with a reference to the Core Operating Limits Report, which contains the values of those limits. In addition, the Core Operating Limits Report has been included in the Definitions Section of the Technical Specifications (TS) to note that it is the unit-specific document that provides core operating limits for the current operating reload cycle. Furthermore, the definition notes that the values of these cycle-specific parameter limits are to be determined in accordance with TS 6.7.a.6. This TS requires that the Core Operating Limits be determined for each reload cycle in accordance with the referenced NRC-approved methodology for these limits and consistent with the applicable limits of the safety analysis. Finally, this report and any mid-cycle revisions shall be provided to the NRC upon issuance. Generic Letter 88-16, dated October 4, 1988, from the NRC provided guidance to licensees on requests for removal of the values of cycle-specific parameter limits from TS. The licensee's proposed amendment is in response to this Generic Letter (GL).

Basis for proposed no significant hazards consideration determination: The staff has evaluated this proposed amendment and determined that it involves no significant hazards consideration. According to 10 CFR 50.92(c), a proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated; or
2. Create the possibility of a new or different kind of accident from any accident previously evaluated; or
3. Involve a significant reduction in a margin of safety.

The proposed revision to the TS is in accordance with the guidance provided in GL 88-16 for licensees requesting removal of the values of cycle-specific parameter limits from the TS. The establishment of these limits in accordance with an NRC-approved methodology and the incorporation of these limits into the Core Operating Limits Report will ensure that proper steps have been taken to establish the values of these limits. Furthermore, the submittal of the Core Operating Limits Report will allow the staff to continue to trend the values of these limits without the need for prior staff approval of these limits and without introduction of an unreviewed safety question. The revised TS with the removal of the values of cycle-specific parameter limits and that addition of the referenced report for these limits does not create the possibility of a new or different kind of accident from those previously evaluated. They also do not involve a significant reduction in the margin of safety since the change does not alter the methods used to establish these limits.

Consequently, the proposed change on the removal of the values of cycle-specific limits do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Because the values of cycle-specific parameter limits will continue to be determined in accordance with an NRC-approved methodology and consistent with the applicable limits of the safety analysis, these changes are administrative in nature and do not impact the operation of the facility in a manner that involves significant hazards consideration.

The proposed amendment does not alter the requirement that the plant be operated within the limits for cycle-specific parameters nor the required remedial actions that must be taken when these limits are not met. While it is recognized that such requirements are essential to plant safety, the values of limits can be determined in accordance with NRC-approved methods without affecting nuclear safety. With the removal of the values of these limits from the TS, they have been incorporated into the Core Operating Limits Report that is submitted to the Commission. Hence, appropriate measures exist to control the values of these limits. These changes are administrative in nature and do not impact the operation of the facility in a manner that involves significant hazards consideration.

Based on the preceding assessment, the staff believes this proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Minnesota Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401

Attorney for Licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N. Street, NW., Washington, DC 20037

NRC Project Director: John O. Thoma, Acting

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: December 1, 1989

Description of amendment request: The proposed amendment to the Technical Specification is for clarification in Table 3-4, Item 1, "Minimum Frequencies for Sampling Test", by adding Operating Mode numbers for each of the operating modes. This change is administrative in nature.

Presently, for the Refueling Shutdown mode where fuel is still in the core, the type of measurement and analysis required is to determine the boron concentration and chloride in the water surrounding the fuel elements in the core. The boron concentration sample is to ensure adequate shutdown margin for all core configurations during the refueling operation, and the chloride sample is to ensure the prevention of chloride stress corrosion cracking. However, when the total core has been off-loaded in the Refueling Shutdown mode, this sampling and analysis are not required since there is no fuel in the core. This proposed amendment, therefore, incorporates that this testing is not required when the core is off-loaded in the Refueling Shutdown mode.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee provided an analysis that addressed the above

three standards in the amendment application as follows:

The proposed amendment to the Technical Specifications does not involve a significant hazard consideration because the operation of the Fort Calhoun Station in accordance with this amendment would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. This administrative change clarifies wording in Table 3-4, Item 1, by adding Operating Mode numbers.

2. Create the possibility of a new or different kind of accident from any previously analyzed. It has been determined that a new or different kind of accident will not be possible due to this change. This change is administrative and clarifies Table 3-4, Item 1, thus assuring operation will be as specified in the Technical Specifications.

3. Involve a significant reduction in a margin of safety. The change is administrative, will not eliminate any sampling requirements, and clarifies the requirement to sample during the Refueling Shutdown condition.

The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Attorney for licensee: LeBoeuf, Lamb, Leiby, and MacRae, 1333 New Hampshire Avenue, NW., Washington, DC 20036

NRC Project Director: Frederick J. Hebdon

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: August 3, 1987

Description of amendment request: The proposed amendments would change the expiration date for the Salem Unit 1 Operating License from September 25, 2008 to August 13, 2016 and for the Salem Unit 2 Operating License from September 25, 2008 to April 18, 2020.

Basis for proposed no significant hazards consideration determination: The currently licensed term for Salem Units 1 and 2 is 40 years commencing with the issuance of the construction permits (September 25, 1968 for both units). Accounting for the time that was required for construction, this represents an effective operating license term of 32 years for Salem Unit ▲ and 28 years for Salem Unit 2. The licensee's application requests a 40-year operating license term for Salem Unit 1 and Salem Unit 2.

The licensee's request for extension of the operating license is based primarily on the fact that a 40-year service life was considered during design and construction of the plant. Although this does not mean that some components will not wear out during the plant lifetime, replacement of equipment will be either in-kind or upgraded equipment which meets or exceeds the original equipment specifications. A comprehensive program of in-service inspection and testing has been implemented to identify safety related equipment degradation prior to the occurrence of a failure. Should such a failure occur, the Technical Specifications conservatively define to the operators the requirements for continued plant operation or shutdown.

The licensee has evaluated the neutron fluence effects upon the reactor vessel and has concluded that a 40-year service life will not result in a projected reactor vessel Reference Nil Ductility Transition Temperature (RT_{NDT}) in excess of the NRC's screening criteria of 10 CFR 50.61. Continued evaluation of the service life of the reactor vessel will be accomplished through the analysis of material specimens located within the vessel itself and through maintenance of a comprehensive in-service inspection and testing program.

All safety related electrical equipment required for accident mitigation has been reviewed and analyzed in accordance with NRC instructions to determine environmental qualification requirements and concerns. Those analyses assumed a 40-year operating life of the plants. Any equipment aging concerns have been identified and incorporated into the appropriate equipment maintenance and replacement programs. Further, a program has been implemented to satisfy the requirements of 10 CFR 50.49, Environmental Qualification of Electric Equipment Important to Safety for Nuclear Power Plants.

Local area demographics were reviewed by comparing 1970 census data, utilized during the Salem Units 1 and 2 licensing proceedings, and more recent data from the 1980 census. The results show that a significant reduction occurred in the population residing within the ten-mile Emergency Planning Zone. Also, a comparison of population data which were prepared for the Salem units (1970 census data) and the Hope Creek Station (1980 census data) was made. This comparison indicates that the values given in the Salem FSAR will continue to be conservative through the year 2020.

The licensee has indicated that the Environmental Report (June 1971), Supplemental Environmental Report (November 1971) and the Final Environmental Statement (April 1973) were reviewed with respect to the proposed changes and has determined that the proposed changes will have no effect on the previous conclusions.

The licensee has upgraded the radiation protection programs and has significantly increased their awareness and commitment to the as-low-as-reasonably-achievable (ALARA) concept. This commitment has led to reductions in personnel exposures, the volume of radioactive waste generated and the number of contaminated areas. Based on this commitment and program, occupational exposure during the extended period is not a significant consideration.

The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has analyzed the proposed amendments to determine if a significant hazards consideration exists:

1) The proposed change does not increase the probability or the consequences of an accident previously evaluated. A 40 year service life was assumed in the design and construction of the plant, and no physical, procedural or programmatic modifications are required to support extended operation.

2) The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated. No physical changes in plant equipment or operating procedures are required to support extended operation.

3) The proposed change does not involve a significant reduction in a margin of safety. The various accident analyses described in the FSAR assumed a forty year operating life at a thermal power level of 3411 Mwt. The proposed change does not involve operation beyond a forty year period or an increase in the licensed power level of either Salem Unit No. 1 or 2.

The staff has reviewed the licensee's submittal and significant hazards analysis and concurs with the licensee's determination that the proposed amendments do not involve a significant hazards consideration. Therefore, the staff proposes to determine that the

requested amendments do not involve a significant hazards consideration relative to the requested extension of the Salem Unit Nos. 1 and 2 Operating Licenses.

Local Public Document Room location: Salem Free Public library, 112 West Broadway, Salem, New Jersey 08079

Attorney for licensee: Mark J. Wetterhahn, Esquire, Conner and Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Walter R. Butler

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Dates of amendment request: September 19, 1989, October 19, 1989, and December 11, 1989

Description of amendment request: The proposed Technical Specification changes concern the relocation of several cycle-specific core operating limits for Virgil C. Summer Nuclear Station from the Technical Specifications to the Core Operating Limits Report (COLR). A new definition of the COLR will be added to the Technical Specifications. Additionally, certain individual Technical Specifications will be amended to note that cycle-specific parameter limits are contained in the COLR. A COLR paragraph will be added to the Administrative Controls Section of the Technical Specification which will replace the Peaking Factor Limit Report. The COLR will be required to be submitted to the NRC to allow continued trending of the cycle-specific parameters.

The proposed changes will reference the COLR for specific parameters and will ensure that cycle-specific parameters are maintained with the limits of the COLR. The cycle-specific parameter limits proposed for relocation to the COLR as part of this license amendment request include:

(a) 3.1.1.3 Moderator Temperature Coefficient

(b) 3.1.3.5 Shutdown Rod Insertion Limit

(c) 3.1.3.6 Control Rod Insertion Limit

(d) 3.2.1 Axial Flux Difference

(e) 3.2.2 Heat Flux Hot Channel Factor

(f) 3.2.3 RCS Flow Rate and Nuclear Enthalpy Rise Hot Channel Factor

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

Pursuant to 10 CFR 50.91, South Carolina Electric & Gas Company has determined that operation of the facility in accordance with the proposed license amendment request does not involve any significant hazards considerations as defined by NRC regulations in 10 CFR 50.92.

1) The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The removal of cycle-specific core operating limits from the Virgil C. Summer Nuclear Station Technical Specificiations has no influence or impact on the probability or consequences of any accident previously evaluated. The cycle-specific core operation limits, although not in Technical Specifications, will be followed in the operation of the Virgil C. Summer Nuclear Station. The proposed amendment still requires exactly the same actions to be taken or if limits are exceeded as is [sic] required by current Technical Specifications. The cycle specific limits within the COLR will be implemented and controlled per VCSNS programs and procedures. Each accident analysis addressed in the Virigl C. Summer Nuclear Station Final Safety Analysis Report (FSAR) will be examined with respect to changes in cycle-dependent parameters, which are obtained from application of the NRC-approved reload design methodologies, to ensure that the transient evaluation of new reloads are [sic] bounded by previously accepted analyses. This examination, which will be performed per requirements of 10 CFR 50.59, ensures that future reloads will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2) The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

As stated earlier, the removal of the cycle specific variables has no influence or impact, nor does it contribute in any way to the probability or consequences of an accident. No safety-related equipment, safety function, or plant operation will be altered as a result of this proposed change. The cycle specific variables are calculated using the NRC-approved methods and submitted to the NRC to allow the Staff to continue to trend the values of these limits. The Technical Specifications will continue to require operation within the required core operating limits and appropriate actions will be taken when or if limits are exceeded.

Therefore, the proposed amendment does not in any way create the possibility of a new of different kind of accident from any accident previously evaluated.

3) The proposed amendment does not result in a significant reduction in the margin of safety.

The margin of safety is not affected by the removal of cycle-specific core operating limits from the Technical Specifications. The margin of safety presently provided by current Technical Specifications remain [sic] unchanged. Appropriate measures exist to control the values of these cycle-specific limits. The proposed amendment continues to require operation within the core limits as obtained from the NRC-approved reload design methodologies and appropriate actions to be taken when or if limits are violated remain unchanged.

The development of the limits for future reloads will continue to conform to those methods described in NRC-approved documentation. In addition, each future reload will involve a 10 CFR 50.59 safety review to assure that operation of the unit within the cycle specific limits will not involve a significant reduction in a margin of safety.

The licensee has concluded that the proposed amendment meets the three standards in 10 CFR 50.92 and, therefore, involves no significant hazards consideration.

The NRC staff has made a preliminary review of the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: Fairfield County Library, Garden and Washington Street, Winnsboro, South Carolina 29180

Attorney for licensee: Randoplh R. Mahan, South Carolina Electric & Gas Company, P. O. Box 764, Columbia, South Carolina 29218

NRC Project Director: Elinor G. Adensam

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of amendment request: November 20, 1989

Description of amendment request: Technical Specification 4.0.2, "Surveillance Requirements," provides the allowable tolerances for extending surveillance intervals beyond those specified in the nominal surveillance requirements. Currently, Specification 4.0.2 requires that each surveillance activity be performed within the specified time interval with: (a) a maximum allowable extension not to exceed 25% of the surveillance interval, and (b) the combined time interval for

any three consecutive surveillance intervals shall not exceed 3.25 times the specified surveillance interval.

The purpose of the 25-percent extension is to aid in the scheduling of surveillance activities and to permit surveillances to be postponed when plant conditions are not suitable for conducting a surveillance. The 3.25 limit was designed to prohibit routine use of the 25-percent interval extension.

This amendment eliminates restriction (b) based on the NRC staff conclusion that the removal of the 3.25 limit results in a greater benefit to safety than limiting the use of the 25-percent allowance to extend surveillance intervals.

South Carolina Electric & Gas Company (SCE&G) is requesting this revision because it will offer VCSNS more flexibility in using the Specification for extending surveillance intervals and will also reduce the administrative burden associated with its use.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed amendment has been reviewed by SCE&G and determined not to involve a significant hazards consideration for the following reasons:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated. The change simply removes an unnecessary restriction on surveillance requirements and does not, therefore, affect the consequences of any the previously evaluated accidents. The 25-percent limitation is based on engineering judgement and the recognition that the most probable result of any surveillance is the verification that Surveillance Requirements are being met. This restriction is sufficient to ensure that the reliability associated with the surveillance activities is not significantly degraded beyond that obtained from the nominal surveillance interval. This revision, therefore, does not involve a significant increase in the probability of any previously evaluated accident.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. The revision does not involves a change in plant equipment or the manner in which plant equipment is operated. This change removes an existing undue restriction from the Specifications and does not create any new accident scenarios.

3. The proposed change does not result in a significant reduction in a margin of safety. The proposed change results in a benefit to safety because it will extend surveillance intervals when conditions are not favorable to perform the surveillance activity. Also, any safety risk incurred by allowing the deletion of the 3.25 limit for refueling surveillances is low compared to the risk incurred by having a forced shutdown to perform the surveillances.

With the 3.25 limit eliminated, the reliability ensured through surveillance activities will continue to be ensured through the 25-percent limit on surveillance extensions. This limit, which is based on engineering judgement and the recognition that the most probable result of any performance surveillance is verification that the Surveillance Requirement is being met, ensures that reliability associated with surveillance activities is not significantly degraded beyond that obtained from the specified surveillance interval provided in the Technical Specifications.

For these reasons, the proposed change will not result in a significant reduction in a margin of safety.

The licensee has concluded that the proposed amendment meets the three standards in 10 CFR 50.92 and, therefore, involves no significant hazards consideration.

The NRC staff has made a preliminary review of the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180

Attorney for licensee: Randolph R. Mahan, South Carolina Electric and Gas Company, P.O. Box 764, Columbia, South Carolina 29218

NRC Project Director: Elinor G. Adensam

Toledo Edison Company and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: March 7, 1988

Description of amendment request: The proposed amendment would revise the provisions in the Davis-Besse Nuclear Power Station, Unit No. 1, Technical Specifications (TSs), related to the third type A test (the Containment Integrated Leak Rate Test) and the 10-year inservice inspection (ISI) of the plant as presently specified in TS Section 4.6.1.2.a. Specifically, the proposed amendment would delete the requirement that the third ILRT of each set of Type A tests be conducted during the shutdown for the 10-year ISI. Since this requirement is also contained in Section III.D.1(a) of Appendix J to 10 CFR Part 50, the licensee previously filed a request for exemption from this specific requirement in its letter dated November 20, 1987. This exemption request is being treated as a separate but parallel action by the Commission.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92 (c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new of different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee addressed the above standards in the amendment application. In regard to the three standards, the licensee provided the following analysis.

The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated because uncoupling of the third Type A test and the 10-year ISI does not affect frequencies, types of testing or acceptance criteria from those previously (and currently) analyzed for verification of the operability of the containment vessel and components.

The proposed changes do not create the possibility of a new or different kind of accident than any previously evaluated. Uncoupling the third Type A test and the 10-year ISI does not introduce any new type of accident since the frequencies, types of testing, and acceptance criteria remain unchanged; therefore, operability will be assured consistent with current analyses.

The proposed changes do not involve a significant reduction in a margin of safety. The third Type A test and the 10-year ISI will be performed in accordance with the requirements of 10 CFR 50 except that they will not be performed during a common outage. The uncoupling of the testing does not change previously approved frequencies of testing, manner of testing, or final acceptance criteria. Therefore, the margin of safety is not reduced.

The staff has reviewed and agrees with the licensee's no significant hazards consideration determination

analysis. Therefore, based on its review, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Attorney for licensee: Gerald Charnoff, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John N. Hannon

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment requests: November 14, 1989

Description of amendment requests: The proposed changes would revise Technical Specification (TS) Section 6.4.B by (1) deleting the "buddy system" requirement in order to reduce unnecessary radiation exposure; (2) deleting requirements that are duplicative of the Code of Federal Regulations (6.4.B.1.c, 6.4.B.1.d and 6.4.B.1.h); and (3) reorganizing TS 6.4.B using the format in the Standard Technical Specifications (STS).

Included in TS 6.4.B is a requirement to maintain a "buddy system" for entrance into radiation areas in excess of 1 R/hr. For this requirement, one worker maintains positive control of the locked gate regardless of whether it is opened or closed at the time while the other worker (his "buddy") performs the necessary work. The two individuals are required to maintain continuous communication by visual or verbal means during this period. Due to this requirement, two individuals are subject to radiation exposure, regardless of whether both are required to accomplish the work.

In reviewing the historical record, the licensee can find no technical bases or discussion which justifies or directs the inclusion of the "buddy system" into the Technical Specifications. With respect to the regulatory and radiation protection standards of today, the "buddy system" requirement of TS 6.4.B.1.f is inconsistent with STS and contrary to common ALARA practices. Deletion of TS 6.4.B.1.f will result in a significant reduction in man-rem exposure (approximately 9.6 man-rem per year).

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has reviewed the proposed changes in accordance with the requirements of 10 CFR 50.92 and has determined that the request does not involve a significant hazards consideration in that:

1. No significant increase in the probability or consequences of an accident previously evaluated is created. The change to TS 6.4.B revises the TS format, removes TS requirements that are duplicated in other 10 CFR sections, and deletes the use of the "buddy system" for entering areas with radiation levels in excess of 1 R/hr. Thus, the only significant change to TS 6.4.B is to remove the "buddy system" when accessing certain high radiation areas. This change does not alter the facility, its equipment, or procedures affecting equipment operation and, therefore, has no effect on the probability or consequences of any accident.

2. No possibility of a new or different kind of accident from any accident previously evaluated is created. The TS change only levels in excess of 1 R/hr. As noted before, the proposed changes do not make any change to the facility or plant operation.

3. No significant reduction in a margin of safety is involved. The revised TS provides access control for areas with radiation levels in excess of 1 R/hr by requiring a locked door with the keys under administrative control of the Shift Supervisor on duty and/or the senior station individual assigned responsibility for health physics and radiation protection. The TS also requires the issuance of a Radiation Work Permit for access, except for Health Physics personnel during the performance of their assigned radiation protection duties. These controls comply with the access control alternatives specified in 10 CFR 20.203(c)(2)(iii).

Based on the staff's review of the licensee's evaluation, the staff agrees with the licensee's conclusions as stated above. Therefore, the staff proposes to determine that the proposed amendments do not involve a significant hazard consideration.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, Post Office Box 1535, Richmond, Virginia 23213.

NRC Project Director: Herbert N. Berkow

Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2, Benton County, Washington

Date of amendment request: October 27, 1989

Description of amendment request: The licensee requested an amendment to Technical Specifications Section 3.4.6.1, "Reactor Coolant System, Pressure/Temperature Limits." Specifically, the licensee would remove Figure 3.4.6.1-1, "Minimum Reactor Vessel Metal Temperature Versus Reactor Vessel Pressure (Initial Values)," and would replace Figure 3.4.6.1-2, "Minimum Reactor Vessel Metal Temperature Versus Reactor Vessel Pressure (Operational Values)," with a new Figure 3.4.6.1, "Minimum Reactor Vessel Metal Temperature versus Reactor Vessel Pressure." The narrative in the technical specifications would be revised to refer to only the single figure. Corresponding Bases Section 3/4.4.6, "Pressure/Temperature Limits" would be revised to indicate that the figure is based on Revision 2 of Regulatory Guide 1.99, "Radiation Embrittlement of Reactor Vessel Materials," and that nickel rather than phosphorus is a limiting constituent of the reactor vessel beltline material.

Basis for Proposed No Significant Hazards Consideration Determination: The license declared that the changes to the technical specification and supporting bases resulted from the implementation of Regulatory Guide 1.99, Revision 2, methodologies as directed by the Generic Letter 88-11, "NRC Position on Radiation Embrittlement of Reactor Vessel Materials and its Impact on Plant Operations," dated July 12, 1988. The generic letter directed licensees to complete technical analysis using methods described in the revised regulatory guide to ensure continued compliance with the requirements of Section V of 10 CFR Part 50, Appendix G.

Existing Figure 3.4.6.1-1 is no longer considered applicable since WNP-2 has passed 3 effective full-power years of operation. The existing bases to the technical specifications noted that Figure 3.4.6.1-1 was to be effective for the first three years of operation. Since this figure is removed on the basis that it is no longer applicable to WNP-2, its deletion is not addressed in the following no significant hazards analysis.

The proposed Figure 3.4.6.1 is in compliance with Title 10 of the Code of Federal Regulations, Part 50,

Appendices G and H, and is submitted to replace the reactor pressure vessel pressure/temperature limit curves represented by existing Technical Specification Figure 3.4.6.1-2. The new figure reflects the End-of-Life (EOL) operational limits for WNP-2's reactor pressure vessel.

The proposed replacement figure has been updated incorporating the requirements of Regulatory Guide 1.99, Revision 2. The new curves on the revised Figure 3.4.6.1 were developed utilizing the revised Regulatory Guide criteria on irradiation damage.

Both the reactor pressure vessel beltline and feedwater nozzle regions were assessed and are reflected in the new curves. Calculations were completed in compliance with SRP 1.70, Section III ASME Code and Summer 1972 Addenda Appendix G and Welding Research Council Bulletin 175. Changes to the text of Specification 3/4.4.6 and the List of Figures have been made to reflect the replacement of Figures 3.4.6.1-1 and 3.4.6.1-2 by the revised figure now numbered 3.4.6.1.

The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The Supply System has evaluated this amendment request per 10 CFR 50.92 and determined that it does not represent a significant hazard because it does not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment reflects shifts in the pressure temperature limit curves to values which are more conservative then those presently in use. The methodology used to derive these values is recognized by the NRC and Industry as providing acceptable margins.

Hence the probability of a previously evaluated accident is not impacted by these changes but remains at an acceptable value. Higher temperature values for corresponding pressures further reduce brittle fracture possibilities. Nor do these changes increase the consequences of an accident in that the pressure temperature shift is well within all equipment operating margins.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated.

These changes, as described above, are more conservative yet well within any upper bound limit. No new modes of plant operation result from these changes. The only changes will be in operation of the plant within more conservative limits. As such no new or different kind of accident is credible.

(3) Involve a significant reduction in a margin of safety.

As described in 1) above these changes reflect the application of methodologies recognized by the NRC and Industry as providing a sufficient margin of safety. The shift in limits is more conservative than values presently in use but within any upper bound limits. Hence no reduction in a margin of safety is credible with the approval of these changes.

The NRC staff has reviewed the licensee's analysis and, based on that review, it appears that the three criteria are satisfied. Therefore the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Richland City Library, Swift and Northgate Streets, Richland, Washington 99352.

Attorneys for licensee: Nicholas S. Reynolds, Esq., Bishop, Cook, Purcell and Reynolds, 1400 L Street, NW., Washington, DC 20005-3502 and G. E. Doupe, Esq., Washington Public Power Supply System, P.O. Box 968, 3000 George Washington Way, Richland, Washington 99352.

NRC Project Director: George W. Knighton.

Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2, Benton County, Washington

Date of amendment request: October 27, 1989

Description of amendment request: The licensee has requested that Technical Specification 4.02 be revised to remove the requirement that "...each Surveillance Requirement shall be performed within the specified time interval with the combined time interval for any 3 consecutive surveillance intervals shall not exceed 3.25 times the specified interval." The basis for this requirement would be deleted from the corresponding Bases section of the technical specifications. The technical specification would retain the provision for a maximum allowable extension of 25 percent for a surveillance interval.

Basis for Proposed No Significant Hazards Consideration Determination: Specification 4.0.2 of the Technical Specifications permits surveillance intervals to be extended up to 25 percent of the specified interval to facilitate the scheduling of surveillance activities. Specification 4.0.2 also currently limits extending the surveillances such that the combined time interval for any three consecutive surveillance intervals shall not exceed 3.25 times the specified surveillance interval. The intent of the 3.25 limit, as expressed in the existing basis, was to preclude routine use of the provision for extending a surveillance interval by 25 percent.

The licensee declared that in Generic Letter 89-14, "Removal of the 3.25 Limit on Extending Surveillance Intervals," dated August 21, 1989, the NRC staff recognized that the 3.25 limit could arbitrarily require a plant to perform a surveillance test under conditions unsuitable for performing the test or could cause a plant shutdown. The staff noted that the risk to the 3.25 limit is "low in contrast to the alternative of a forced shutdown." Concern over these two potential actions, performance of surveillances under less than optimum conditions and forced shutdowns based on maintaining the 3.25 limit, justify the proposed amendment, according to the licensee.

The licensee submitted the proposed change in accordance with the generic letter and has contended that approval of the amendment request would enhance plant safety and decrease the administrative burden of ensuring compliance to the present 3.25 limit.

The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The Supply System has evaluated this amendment request per 10 CFR 50.92 and has determined that it does not represent a significant hazard because it does not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because any slight enhancement in the reliability of the equipment that might be realized by adhering to the 3.25 limitation is thought to be significantly offset by the forced need to perform the surveillance recognizing that the 25 percent limit remains in place. The use of the allowance to extend surveillance intervals by 25 percent and not observe the 3.25 limit will result in a decreased probability of an evaluated accident over the plant lifetime because surveillance intervals will be extended at times when conditions

are not suitable for performing the surveillance. Testing at unsuitable times or forced shutdowns offer the potential for a condition that would challenge plant safety systems and unnecessarily burden plant personnel. Because a vast majority of surveillances demonstrate that systems or components are in fact operable, this amendment enhances plant safety and does not adversely impact the consequences of an accident.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated. Because this amendment addresses only the scheduling of surveillance activities and involves no alteration of plant design or operating procedures there is no possibility of creating a new type of accident.

(3) Create a significant reduction in a margin of safety because the more important 25 percent limit is being retained. ...This change to the requirements of Specification 4.0.2 will remove an unnecessary restriction on extending surveillance requirements and will result in a benefit to safety when plant conditions are not conducive to the conduct of surveillance requirements. The removal of the 3.25 limit will provide greater flexibility in the use of the provision for extending surveillance intervals, reduce the administrative burden associated with its use, and have a positive effect on safety....

The NRC staff has reviewed the licensee's analysis and based on that review, it appears that the three criteria are satisfied. Therefore the staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Richland City Library, Swift and Northgate Streets, Richland, Washington 99352.

Attorneys for licensees: Nicholas S. Reynolds, Esq., Bishop, Cook, Purcell and Reynolds, 1400 L Street, NW., Washington, DC 20005-3502 and G. E. Doupe, Esq., Washington Public Power Supply System, P.O. Box 968, 3000 George Washington Way, Richland, Washington 99352.

NRC Project Director: George W. Knighton.

PREVIOUSLY PUBLISHED NOTICES OF CONSIDERATION OF ISSUANCE OF AMENDMENTS TO OPERATING LICENSES AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Maintowoc County, Wisconsin

Date of application for amendment: August 3, 1989, amended October 3, 1989

Brief description of amendment request: The proposed amendments would revise provisions of the Technical Specifications (TS) relating to the permissible heatup and cooldown curves. The heatup and cooldown limitation curves have been revised to be applicable through 18.1 effective full power years. Further, the technical specifications have been simplified by taking the most limiting set of curves derived for either Unit 1 or Unit 2 and making that set applicable to both units. The proposed changes are necessary to provide an acceptable operating range of pressures and temperatures to protect the reactor vessels against non-ductile failure. These curves need to be revised periodically to account for changes in reactor vessel materials characteristics due to neutron embrittlement. Specifically, the proposed amendments would replace TS figures 15.3.1-1 and 15.3.1-2 with revised heatup and cooldown curves applicable to both units. Technical Specification figures 15.3.1-3 and 15.3.1-4, applicable to Unit 2 only, would be deleted. Technical Specification references to these figures in TSs 15.3.1.B.1, 15.3.1.B.4, 15.3.1.F.3, and 15.3.15.A.1 would be changed to reflect the use of only one set of heatup and cooldown limit curves for both units. The Basis section for TS 15.3.1.B would also be changed both to reflect the use of only one set of heatup and cooldown curves and to reflect revised methodology for how these curves are calculated. Finally, the Basis section for TS 15.3.1.F would be revised to correct a reference from 10 CFR Part 50, Appendix G, Section IV.A.2.c to Section IV.A.3.

Date of individual notice in **Federal Register:** December 5, 1989 (54 FR 50296)

Expiration date of individual notice: January 4, 1990

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of application for amendment: May 23, 1986 as supplemented on August 21, 1989

Brief description of amendment: This amendment deletes Technical Specifications, Section 3.6.4, 4.6.H and Table 4.6.2, which includes limiting conditions for Operation (LCO) and Surveillance requirements for visual inpsections of high energy piping outside of the primary containment while the unit is operating. The visual inspections and LCOs were interim requirements until modifications, described in Revison No. 34 to the Pilgrim Final Safety Analysis Report, were completed. The amendment also deletes the Basis Section for 3.5.H and 3.6.H.

Date of issuance: December 4, 1989

Effective date: December 4, 1989 and shall be implemented within 30 days.

Amendment No.: 126

Facility Operating License No. DPR-35: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 16, 1986 (51 FR 25767). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 4, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of application for amendment: September 11, 1989

Brief description of amendment: This amendment revises Technical Specification Section 3/4.9, "Auxiliary Electrical System," by adding Sections 3.9.A.7 and 4.9.A.4. These sections include limiting conditions of operation and surveillance requirements reflecting the installation of Electrical Protection Assemblies to the Reactor Protection System power supplies at the Pilgrim Nuclear Power Station. The bases for Section 3/4.9 are also revised to reflect the proposed changes.

Date of issuance: December 4, 1989

Effective date: December 4, 1989

Amendment No.: 127

Facility Operating License No. DPR-35: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 1, 1989 (54 FR 46140). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 4, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of application for amendment: March 30, 1989, as supplemented April 25, 1989, and May 16, 1989.

Brief description of amendment: The amendment changes two Technical Specifications associated with refueling operations. The first is TS 3/4.9.1, Boron Concentration. Currently, Table 4.9-1 provides a valve arrangement intended to prevent a boron dilution event while in Mode 6. The specified valve arrangement does not allow the Refueling Water Storage Tank (RWST) to be refilled while in Mode 6. The change allows an alternate valve arrangement permitting makeup to the RWST. Also, the following administrative changes to TS 3/4.9.1 and 3/4.9.2 makes them easier to use and avoid possible operator confusion.

(1) In the first change, the table related to administrative controls on valves to prevent dilution during refueling, Table 4.9-1 is moved from the surveillance TS, referenced in the Limiting Condition for Operation (LCO) section and renumbered as Table 3.9-1 to prevent confusion in the LCO section. Table 3.9-1 is reformatted. The reformatting includes a new title and a descriptively expanded "Valve Position During Refueling" column.

(2) The second change in TS 3/4.9.2 clarifies that both action requirements must be fulfilled with two inoperable Source Range Neutron Flux Monitors.

Date of issuance: December 7, 1989

Effective date: December 7, 1989

Amendment No. 16

Facility Operating License No. NPF-63. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 17, 1989 (54 FR 21299). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 7, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Commonwealth Edison Company, Docket No. STN 50-454, Byron Station, Unit 1, Ogle County, Illinois

Date of application for amendment: October 13, 1989

Brief description of amendment: The amendment modifies the Technical Specifications to allow a one-time extension of the interval for performance of the visual inspection of inaccessible snubbers.

Date of issuance: December 12, 1989

Effective date: December 12, 1989

Amendment No.: 35

Facility Operating License No. NPF-37. The amendment revised the Technical Specification.

Date of initial notice in **Federal Register:** November 1, 1989 (54 FR 46144). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 12, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61101.

Commonwealth Edison Company, Docket No. 50-374, LaSalle County Station, Unit No. 2, LaSalle County, Illinois

Date of application for amendment: December 2, 1988 and supplemented January 11, 1989 and May 17, 1989.

Brief description of amendment: This amendment modified TS Table 3.8.3.2-1 to reflect new locations of breakers for the RHR shutdown cooling suction isolation valve, delete manufacturer part number references, and correct typographical errors.

Date of issuance: October 25, 1989

Effective date: October 25, 1989

Amendment No.: 52

Facility Operating License No. NPF-18. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 22, 1989 (54 FR 7628). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 25, 1989

No significant hazards consideration comments received: No

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348

Commonwealth Edison Company, Docket No. 50-374, LaSalle County Station, Unit No. 2, LaSalle County, Illinois

Date of application for amendment: September 7, 1988, and augmented May 25, 1989, and August 29, 1989

Brief description of amendment: The amendment revised the TS by deleting the specifications added by Amendment 30 to allow installation and use of the Fine Motion Control Rod Drive (FMCRD) during Unit 2, Cycle 2. The test for which the FMCRD was installed has been completed and the FMCRD was

removed during the Unit 2 refueling outage that concluded in February 1989. The information contained in the May 25 and August 29, 1989 CECo letters was clarifying in nature and did not affect the staff's previous proposed no significant hazards consideration determination.

Date of issuance: November 28, 1989
Effective date: November 28, 1989
Amendment No.: 53
Facility Operating License No. NPF-18. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** December 30, 1988 (53 FR 53091). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 28, 1989
No significant hazards consideration comments received: No
Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348.

Duke Power Company, Docket Nos. 50-269, 50-270 and 50-287, Oconee Nuclear Station, Units 1, 2 and 3, Oconee County, South Carolina

Date of application for amendments: July 14, 1989
Brief description of amendments: The amendments revised Technical Specification 4.8.2 to delete requirements to leak rate test the main steam stop valves during each refueling outage.
Date of issuance: December 13, 1989
Effective date: December 13, 1989
Amendment Nos.: 179, 179, 176
Facility Operating License Nos. DPR-38, DPR-47 and DPR-55. Amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** August 9, 1989 (54 FR 32790). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 13, 1989
No significant hazards consideration comments received: No.
Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691

Duquesne Light Company, Docket No. 50-412, Beaver Valley Power Station, Unit No. 2, Shippingport, Pennsylvania

Date of application for amendment: May 4, 1989
Brief description of amendment: The amendment revises the reactor trip system overtemperature delta T and overpower delta T response times listed in Table 3.3-2 of the Technical Specifications from 4.0 seconds to 5.5 seconds.
Date of issuance: December 6, 1989
Effective date: December 6, 1989
Amendment No. 24
Facility Operating License No. NPF-73. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** June 14, 1989 (54 FR 25374). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 6, 1989
No significant hazards consideration comments received: No
Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Florida Power and Light Company, et al., Docket No. 50-335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of application for amendment: October 2, 1989
Brief description of amendment: The amendment changes Technical Specifications Table 4.4-5 and Bases 3/4.4.9 to revise the reactor vessel material surveillance capsule removal schedule. The revised capsule removal schedule is consistent with the recommendations of ASTM E 185-82 as required by Appendix H to 10 CFR Part 50.
Date of Issuance: December 6, 1989
Effective Date: December 6, 1989
Amendment No.: 100
Facility Operating License No. NPF-16: Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** November 1, 1989 (54 FR 46146). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 6, 1989.
No significant hazards consideration comments received: No.
Local Public Document Room location: Indian River Junior College Library, 3209 Virgina Avenue, Ft. Pierce, Florida.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of application for amendments: October 20, 1989
Brief description of amendments: The amendments (1) add a definition of End-of-Cycle Recirculation Pump Trip (EOC-RPT) system response time to the Unit 2 Technical Specifications (TS) as well as increase the response time acceptance criteria; and (2) add the EOC-RPT system response time acceptance criteria to the Unit 1 TS with a note defining EOC-RPT system response time.
Date of issuance: December 4, 1989
Effective date: December 4, 1989
Amendment Nos.: 167, 103
Facility Operating License Nos. DPR-57 and NPF-5. Amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** November 1, 1989 (54 FR 46148). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 4, 1989
No significant hazards consideration comments received: No.
Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

National Aeronautics and Space Administration, Docket No. 50-30, Plum Brook Reactor

Date of application for amendment: February 27, 1989 and June 22, 1989
Brief description of amendment: The amendment changes portions of the licensee's organizational structure to reflect changes at the Lewis Research Center.
Date of issuance: November 30, 1989
Effective date: November 30, 1989
Amendment No.: 8
Facility License No. TR-3: Amendment changed the Technical Specifications.
Date of initial notice in **Federal Register:** September 20, 1989 (54 FR 38765). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 30, 1989.
No significant hazards consideration comments received: No
Local Public Document Room Location: N/A

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

Date of application for amendment: March 16, 1989
Brief description of amendment: This amendment revises the Technical Specifications to correct an error in Table 3.3.4 "Primary Containment Isolation Valve Lines Entering Free Space of the Containment." The change clarifies that the containment spray isolation valves do not receive automatice initiation signals to open on reactor low-low water level and high drywell pressure.
Date of issuance: December 1, 1989
Effective date: December 1, 1989
Amendment No.: 112

Facility Operating License No. DPR-63: Amendment revises the Technical Specifications.

Date of initial notice in Federal Register: April 19, 1989 (54 FR 15831). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 1, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit No. 2, Scriba, New York

Date of application for amendment: December 15, 1988

Brief description of amendment: This amendment revises the Technical Specifications to increase the test interval for the performance of Channel Functional Tests on the Reactor Protection System Electrical Protection System Electrical Protection Assemblies. By this revision, a Channel Functional Test will be performed each time the plant is in cold shutdown for a period of more than 24 hours, unless it has been performed within the previous 6 months.

Date of issuance: November 29, 1989

Effective date: November 29, 1989

Amendment No.: 11

Facility Operating License No. NPF-69: Amendment revises the Technical Specifications.

Date of initial notice in Federal Register: April 5, 1989 (54 FR 13767). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 29, 1989.

Significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit No. 2, Scriba, New York

Date of application for amendment: January 13, 1989

Brief description of amendment: This amendment revises Technical Specifications Section 3/4.4.1, Recirculation System and the associated Bases, to differentiate the terms recirculation loop drive flow and jet pump flow as used in the Technical Specifications and to change two surveillance requirements for demonstrating jet-pump operability. This amendment will also incorporate final values for Reactor Coolant System flow parameters as determined from startup tests.

Date of issuance: November 30, 1989

Effective date: November 30, 1989

Amendment No.: 12

Facility Operating License No. NPF-69: Amendment revises the Technical Specifications.

Date of initial notice in Federal Register: May 17, 1989 (54 FR 21312). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 30, 1989.

Significant hazards consideration comments received: No.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Units 1 and 2, San Luis Obispo County, California

Date of application for amendments: September 25, and October 16, 1989 (Reference LAR 89-13).

Brief description of amendments: The amendments revised Technical Specifications Section 6, "Administrative Controls," to change (1) the reporting relationship of the Onsite Safety Review Group, (2) the membership and reporting relationship of the General Office Nuclear Plant Review and Audit Committee, and (3) references to President were changed to Vice President, Nuclear Power Generation.

Date of issuance: December 4, 1989.

Effective date: December 4, 1989.

Amendment Nos.: 47 and 46

Facility Operating License Nos. DPR-80 and DPR-82: Amendments changed the Technical Specifications.

Date of initial notice in Federal Register: November 1, 1989 (54 FR 46152). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 4, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: California Polytechnic State University Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

NRC Project Director: George W. Knighton

Philadelphia Electric Company, Docket No. 50-352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of application for amendment: August 3, 1989

Brief description of amendment: The amendment revised the Technical Specifications to ensure that the design level of counting certainty is maintained at all times for the Source Range Monitors.

Date of issuance: December 13, 1989

Effective date: December 13, 1989

Amendment No. 34

Facility Operating License No. NPF-39. This amendment revised the Technical Specifications.

Date of initial notice in Federal Register: October 4, 1989 (54 FR 40932). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 13, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Philadelphia Electric Company, Docket No. 50-353, Limerick Generating Station, Unit 2, Montgomery County, Pennsylvania

Date of application for amendment: October 10, 1989

Brief description of amendment: The amendment revised Surveillance Requirement 4.7.4.b of the Technical Specifications to allow the first visual inspection of each type of snubber to be performed after completing three rather than four months of Power Operation.

Date of issuance: December 1, 1989

Effective date: December 1, 1989

Amendment No. 1

Facility Operating License No. NPF-85. This amendment revised the Technical Specifications.

Date of initial notice in Federal Register: November 1, 1989 (54 FR 46152). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 1, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: July 19, 1989 and supplemental letter dated November 14, 1989.

Brief description of amendments: These amendments changed the Technical Specifications to permit removal of the rod sequence control system, and reduced the rod worth minimizer low power setpoint.

Date of issuance: December 4, 1989

Effective date: December 4, 1989

Amendments Nos.: 151 and 153

Facility Operating License Nos. DPR-44 and DPR-56: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 23, 1989 (54 FR 35108). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 4, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (Regional Depository) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: June 14, 1989

Brief description of amendment: The amendment changes Table 3.2-6 to reflect changes to the suppression chamber temperature monitoring instrumentation.

Date of issuance: November 30, 1989

Effective date: November 30, 1989

Amendment No.: 144

Facility Operating License No. DPR-59: Amendment revised the Technical Specification.

Date of initial notice in **Federal Register:** July 12, 1989 (54 FR 29409). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 30, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Penfield Library, State University College of Oswego, Oswego, New York.

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: June 14, 1989

Brief description of amendment: The amendment corrects the number of reactor pressure channels indicated on Table 3.2-6, "Surveillance Instrumentation."

Date of issuance: November 30, 1989

Effective date: November 30, 1989

Amendment No.: 145

Facility Operating License No. DPR-59: Amendment revised the Technical Specification.

Date of initial notice in **Federal Register:** July 12, 1989 (54 FR 29410). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 30, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Penfield Library, State University College of Oswego, Oswego, New York.

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: July 14, 1989

Brief description of amendment: The amendment corrects Table 3.2-3, "Instrumentation That Initiates Control Rod Blocks," Note 1 regarding the operability requirements for the Average Power Range Monitor System rod blocks during startup.

Date of issuance: November 30, 1989

Effective date: November 30, 1989

Amendment No.: 146

Facility Operating License No. DPR-59: Amendment revised the Technical Specification.

Date of initial notice in **Federal Register:** October 4, 1989 (54 FR 40933). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 30, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Penfield Library, State University College of Oswego, Oswego, New York.

Public Service Company of Colorado, Docket No. 50-267, Fort St. Vrain Nuclear Generating Station, Platteville, Colorado

Date of amendment request: September 14 as revised October 13, 1989

Brief description of amendment: Provides necessary TS changes to allow the use of unfueled elements during reactor defueling.

Date of issuance: December 1, 1989

Effective date: December 1, 1989

Amendment No.: 74

Facility Operating License No. DPR-34. Amendment revised the Technical Specifications/license.

Date of initial notice in **Federal Register:** October 18, 1989 (54 FR 42860). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 1, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Greeley Public Library, City Complex Building, Greeley, Colorado

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: March 23, 1989 and supplemental letters dated April 14, 1989, August 25, 1989 and September 22, 1989

Brief description of amendments: Table 3.8-1, Containment Penetration Conductor Overcurrent Protective Devices is deleted from Salem Unit 2 Technical Specifications and controls for maintaining the list and surveillance requirements are added to Salem Unit 1 and 2 Technical Specifications.

Date of issuance: December 4, 1989

Effective date: As of date of issuance and should be implemented within 60 days of the date of issuance for Unit 2 and before startup from the ninth refueling outage for Unit 1.

Amendment Nos. 105 and 82

Facility Operating License Nos. DPR-70 and DPR-75. These amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 31, 1989 (54 FR 23323). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 4, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of application for amendments: December 22, 1987 and modified October 19, 1989.

Brief description of amendments: These amendments revise TS 4.0.3, TS 4.0.4 and the bases sections for TS 3.0

and TS 4.0. These changes reflect the guidance promulgated by Generic Letter 87-09.

Date of issuance: December 7, 1989
Effective date: December 7, 1989
Amendment Nos.: 81 and 70
Facility Operating License Nos. NPF-10 and NPF-15: Amendments changed the Technical Specifications.
Date of initial notice in Federal Register: March 9, 1988 (53 FR 7603). The October 29, 1989 letter provided supplemental information and did not change the initial determination of no significant hazards consideration. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 7, 1989
No significant hazards consideration comments received: No.
Local Public Document Room location: General Library, University of California, P.O. Box 19557, Irvine, California 92713.

System Energy Resources, Inc., et al., Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: August 15, 1989 as supplemented by letters dated August 22, September 22, September 27 (2 letters), October 25, October 27, October 30, November 21, and November 30, 1989. The licensee submittals of August 22, September 22, September 27 (2 letters), October 25, October 27, October 30, November 21, and November 30, 1989 contained only minor corrections to the original submittal. It was, therefore determined unnecessary to renotice the application.
Brief description of amendment: The amendment changes the operating license to reflect the transfer of authority to control and operate Grand Gulf Nuclear Station, Unit 1 from System Energy Resources, Inc. to Entergy Operations, Inc.
Date of issuance: December 14, 1989
Effective date: December 14, 1989
Amendment No. 65
Facility Operating License No. NPF-29. This amendment revises the Operating License, Technical Specifications, and Environmental Protection Plan
Date of initial notice in Federal Register: September 6, 1989 (54 FR 37053). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 14, 1989. Antitrust comments were received and are addressed in the Commission's related Safety Evaluation.
No significant hazards consideration comments received: No
Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154

Vermont Yankee Nuclear Power Corporation, Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: October 16, 1989
Brief description of amendment: This amendment revises the Technical Specifications to reduce the frequency of fire watches, when required, from continuous to not less than once per hour in the cable vault or switchgear room.
Date of issuance: December 8, 1989
Effective date: December 8, 1989
Amendment No. 117
Facility Operating License No. DPR-28. Amendment revised the Technical Specifications and/or License.
Date of initial notice in Federal Register: November 7, 1989 (54 FR 46765). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 8, 1989.
No significant hazards consideration comments received: No
Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION AND OPPORTUNITY FOR HEARING (EXIGENT OR EMERGENCY CIRCUMSTANCES)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for a Hearing. For exigent circumstances, the Commission has either issued a Federal Register notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has

made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By January 26, 1990, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room for the particular facility involved.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Project Director*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Commonwealth Edison Company, Docket No. 50-254, Quad Cities Nuclear Power Station, Unit 1, Rock Island County, Illinois

Date of application for amendment: November 16, 1989

Brief description of amendment: The amendment revised the Technical Specifications to delete all reference to reactor head spray or control rod drive return lines for containment isolation and containment penetration leakage testing as these were removed by modifications to the plant.

Date of issuance: December 4, 1989

Effective date: December 4, 1989

Amendment No.: 123

Facility Operating License No. DPR-29. Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No. The Commission's related evaluation of the amendment and final determination of no significant hazards consideration are contained in a Safety Evaluation dated December 4, 1989.

Attorney for licensee: Michael Miller, Esq., Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

Local Public Document Room location: Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Arizona Public Service Company, et al, Docket Nos. STN 50-529 and STN 50-530, Palo Verde Nuclear Generating Station, Units 2 and 3, Maricopa County, Arizona

Date of application for amendments: October 25, 1989

Brief description of amendments: The Amendments revised Surveillance Requirement 4.5.2.h of Technical Specification 3/4.5.2, "Emergency Core Cooling Systems," by specifying minimum flow requirements during simultaneous hot leg and cold leg injection. In addition, a maximum allowable pump flowrate was specified to ensure pump protection. Corresponding editorial changes were made to Bases 3/4.5.2, as well as correction of minor typographical errors.

Date of issuance: October 26, 1989

Effective date: October 26, 1989

Amendment Nos.: 29 and 19

Facility Operating License Nos. NPF-51 and NPF-74: Amendments changed the Technical Specifications.

Public comment requested as to proposed no significant hazards consideration: No. The Commission's related evaluation of the amendments, finding of emergency circumstances, consultation with the State of Arizona, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated October 26, 1989.

Attorney for licensees: Mr. Arthur C. Gehr, Snell & Wilmer, 3100 Valley Center, Phoenix, Arizona 85007.

Local Public Document Room location: Phoenix Public Library, Business and Science Division, 12 East McDowell Road, Phoenix, Arizona 85004.

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of Application for amendment: October 19, 1989

Brief description of amendment: Technical Specification changes to provide one time temporary relief from operability requirements of differential temperature leakage monitors.

Date of Issuance: December 6, 1989

Effective Date: October 20, 1989

Amendment Nos.: 94 and 61

Facility Operating License Nos. NPF-14 and NPF-22: Amendments revised the Technical Specifications

Public comments requested as to proposed no significant hazards consideration: No

The Commission's related evaluation of the amendments, consultation with the Commonwealth of Pennsylvania and final no significant hazards considerations determination are contained in a Safety Evaluation dated December 6, 1989.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge 2300 N Street NW., Washington, DC 20037

Local Public Document Room Location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18071.

NRC Project Director: Walter R. Butler

Dated at Rockville, Maryland, this 20th day of December, 1989.

For the Nuclear Regulatory Commission

Steven A. Varga,

Director, Division of Reactor Projects-I/II, Office of Nuclear Reactor Regulation

[Doc. 89-29868 Filed 12-26-89; 8:45 am]

BILLING CODE 7590-01-D

[Docket Nos. 030-05980, 030-05981, 030-05982, 030-08335, 030-08444

Safety Light, Corp. et al.; Appointment of Special Assistant to the Presiding Officer

ASLBP No. 89-590-01-OM, 90-598-01-OM-2; (Byproduct material license No. 37-00030-02 *et al.*)

Before Administrative Judges: Helen F. Hoyt, Chair, Oscar H. Paris, Frederick J. Shon.

December 19, 1989.

Following consultation with the Panel Chairman, pursuant to the provisions of 10 CFR 2.722, the Presiding Officer has appointed Administrative Judge Marshall E. Miller to assist the Presiding Officer in taking evidence and in preparing a suitable record for review.

All correspondence, documents and other materials shall be filed with Judge Miller in accordance with 10 CFR 2.701. His address is: Administrative Judge Marshall E. Miller, 1920 South Creek Blvd., Spruce Creek Fly-In, Daytona Beach, FL 32124.

Dated: December 19, 1989. Bethesda, Maryland

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 89-29973 Filed 12-26-89; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-27542; File No. SR-AMEX-89-17]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Approving a Proposed Rule Change Relating to Borrowing Requirement for Delivery of Short Sales

I. Introduction

The American Stock Exchange, Inc. ("AMEX" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC") on July 5, 1989, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] a proposed rule change that would amend its short sale borrowing policy. The AMEX is proposing to amend this policy to require, with limited exceptions, that members arrange to borrow securities, or obtain other assurances that delivery will be possible, prior to effecting short sales either on a proprietary or agency basis.

Notice of filing of the proposed rule change was provided by the issuance of a Commision release (Securities Exchange Act Release No. 27031, July 13, 1989) and by publication in the **Federal Register** (54 FR 30486, July 20, 1989). No comments were received by the Commission on the proposed rule change.

II. Description of the Proposal

AMEX Rule 784(c) ("Mandatory Closing of Fails") requires members and member organizations to employ "[e]very reasonable means to borrow securities in order to make delivery on open contracts." The Exchange reports that it has periodically advised members to arrange for the borrowing of specific stocks when, for example, an increased short interest or undue concentration in the publicly traded float has been noted and which may result in a lack of liquidity in the borrowing market. However, Rule 784(c) does not explicitly require that arrangements be made to borrow the stock prior to effecting short sale transactions when market conditions for a particular security may warrant such arrangements.

The Exchange proposes to amend its existing stock borrowing policy to require member organizations effecting short sales for both customer and proprietary accounts to either make

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1989).

prior arrangements to borrow the stock or obtain other acceptable assurances that prompt delivery can be made on settlement date. Such assurances would include knowledge that the security is available for borrowing, obtaining conversion privileges or rights exercises, or other similar situations, so long as the security needed for delivery can be exchanged in normal transfer time. The policy will provide an exception for short sales by specialists, market makers and odd-lot dealers in fulfilling their market-making responsibilities. However, arbitrageurs and other participating traders will not be able to rely on this exception.

The Exchange contends that implementation of the new policy is expected to provide increased stability to the market for AMEX stocks subject to significant short selling, by decreasing the number of "fails" (*i.e.*, instances where a short seller fails to effect delivery of the stock). It will also conform AMEX policy to that of the New York Stock Exchange ("NYSE"), which has such a policy in effect, and should therefore eliminate possible confusion as to whether AMEX policy is different from the NYSE's.[3] The Exchange intends to issue the new borrowing policy to its membership in the form of an information circular.[4] The Exchange contends that the proposed policy change is consistent with section 6(b)(5) [5] of the Act in that it is designed to promote just and equitable principles of trade and protect investors and the public interest.

III. Discussion and Conclusion

The Commission has considered carefully the Exchange's proposed rule change and finds, for the following reasons, that the AMEX proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.

The Commission agrees with the Exchange that imposing a formalized, affirmative borrowing requirement on AMEX members effecting short sales for both customer and proprietary accounts is appropriate for the protection of investors and the maintenance of fair and orderly markets. By restricting "naked" short selling,[6] the requirement should curtail downward speculative selling pressures in stocks traded on the AMEX.

The proposed rule change also should reduce the number of failed trades on the AMEX. This will save brokers for purchasers of AMEX issues the added expense of issuing buy-in notices or other actions to secure delivery of the securities. Additionally, the proposed rule change will help to fulfill public customers' reasonable expectations that securities that they have purchased will be delivered to the broker at settlement. The requirement that members affirmatively determine that the subject security is indeed available for borrowing, conversion privileges, or exercise rights appropriately places the burden on Exchange members to monitor the risks of accounts under their control, whether customer or proprietary accounts. Similarly, it is appropriate for those members that normally rely on the stock loan market without advance borrowing to monitor the liquidity (or illiquidity) of a particular stock in order to comply with the policy's borrowing mandate.

Furthermore, it is appropriate for the Exchange to exempt specialists, market makers and odd-lot dealers from the general borrowing requirement in fulfilling their market-making responsibilities, because their short selling is often undertaken passively pursuant to their market-making operations. In this connection, it is reasonable for the Exchange not to exempt arbitrageurs and other traders from the borrowing requirement because their short selling activities are not passive in nature. Finally, it is also appropriate for the Exchange to continue to obligate member organizations to secure prior borrowing arrangements with respect to securities which have been exempted from the mandatory buy-in rule because the sell side ultimately must cover its short position in such securities.[7]

For the reasons discussed above, the Commission finds that the proposed rule change is consistent with the requirements of the section 6 of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,[8] in that it is designed to promote just and equitable principles of trade, as well as further the interests of investor protection and the public interest in fair and orderly auction markets on national securities exchanges.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[9] that the proposed rule change (SR–AMEX–89–17) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Dated: December 15, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–29938 Filed 12–26–89; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–27543; File No. SR–AMEX–89–06]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Approving Proposed Plan for Enforcing and Reporting Minor Disciplinary Rule Violations

I. Introduction

On April 24, 1989, the American Stock Exchange ("AMEX" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to sections 19(b)(1) and (d)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rules 19b–4 and 19d–1(c)(2) thereunder, [2] a proposed rule change to adopt a new fine system for general rule violations (new Rule 590) and amend the Exchange's minor rule violation enforcement and reporting plan ("Plan").[3] Amendments No. 1 and 2, submitted by the Exchange on April 17, 1989 and July 13, 1989, respectively, conform the proposed rule change to the Exchange's internal governance procedures required for Constitutional

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[3] See NYSE, Interpretation Handbook at 4450, Rule 440C.10/01 ("Deliveries Against Short Sales") (1989).

[4] See letter from Claudia Crowley, Special Counsel, AMEX, to Mary Revell, Branch Chief, Division of Market Regulation, SEC, dated November 22, 1989.

[5] 15 U.S.C. 78f(b)(5) (1982).

[6] A "naked" security position may be defined as an unhedged or uncovered security position that exposes the holder to the entire market risk associated with the position. A short sale becomes a "naked" short sale when the short seller or the short seller's broker fails to borrow and deliver stock to the broker's clearing agent. Brokers may fail to deliver stock to the clearing agent in long sales as well, but such fails are normally for short periods or for relatively small quantities of stock.

[7] The AMEX's mandatory buy-in rule, Rule 784(a), generally requires the broker on the buy side to close an Exchange contract which has not been fulfilled in accordance with its terms in certain circumstances. The mandatory buy-in rule exempts buy side brokers from the buy-in requirement when, for example, upon application, an Exchange Floor Official determines that "unusual circumstances exist whereby securities cannot be borrowed."

[8] 15 U.S.C. 78f(b)(5) (1982).

[9] 15 U.S.C. 78s(b)(2) (1982).

[10] See 17 CFR 200.30–3(a)(12) (1989).

[1] 15 U.S.C. 78s(b)(1), (d)(1) (1982).

[2] 17 CFR 240.19b–4 and 240.19d–1(c)(2) (1989).

[3] See letter from Delia McQuade Emmons, Vice President and Secretary, AMEX, to Sharon Lawson, Branch Chief, SEC, Division of Market Regulation, dated March 8, 1989.

changes and remove one substantive violation from the original proposal. [4]

Notice of the proposed rule change was provided by the issuance of a Commission release (Securities Exchange Act Release No. 26852, May 22, 1989), and by publication in the **Federal Register** (54 FR 22990, May 30, 1989). The Commission received no comments on the proposed rule change.

II. Description of the Proposal

A. Introduction

1. AMEX's Minor Rule Plan

Rule 19d–1(c)(2) under the Act authorizes national securities echanges to adopt minor rule violation plans for the summary discipline and abbreviated reporting of minor rule violations by exchange members and member organizations.[5] In 1985, the Commission approved the Exchange's minor rule violation Plan,[6] which provides for quarterly reporting to the Commission of uncontested Floor decorum,[7] operational and member reporting violations with sanctions not exceeding $2,500.

The Exchange's existing Plan authorizes the Exchange, in lieu of commencing a disciplinary proceeding before a hearing panel, to impose a fine not to exceed $2,500, on any member, member organization, or registered or non-registered employee of a member organization for any violation of an Exchange rule which the AMEX determines to be minor in nature.[8] The AMEX's Plan permits any person to contest the Exchange's imposition of the fine through the submission of a written Answer, at which time the matter will become a "disciplinary proceeding" subject to Article V, section 1(b) of the Exchange's Constitution, and, where applicable, the reporting provisions of paragraph (c)(1) of Rule 19d–1 under the Act.

For covered minor disciplinary rule violations, the Plan relieves the Exchange from the current reporting requirement otherwise imposed by section 19(d)(1) of the Act for "final" disciplinary actions. In accordance with paragraph (c) (2) of Rule 19d–1, the AMEX's existing Plan specifies those uncontested minor rule violations with sanctions not exceeding $2,500 that would not be subject to the current reporting provisions of paragraph (c) (1) of Rule 19d–1, provided the Exchange gives notice of such violations to the Commission on a quarterly basis.

2. New Rule 590

The AMEX proposes to amend its existing Plan by consolidating into new Rule 590 the enforcement and reporting of Floor decorum violations and member operational and reporting violations. The AMEX's amended Plan would encompass two systems: (1) an expanded disciplinary system, which would include general rule violations as well as minor rule violations, and (2) a quarterly reporting system to the Commission for minor rule violations. Furthermore, AMEX proposes to increase to $5,000 the amount that the Exchange is authorized to fine members and member organizations for general rule violations.

In place of the current summary disciplinary procedure contained in Aritcle V, section 1(c) of the Exchange Constitution,[9] which is presently utilized by the Exchange's Enforcement Department to charge members with minor substantive rule violations, new Rule 590 sets forth three separate fine systems: Part 1, for general rule violations; part 2, for Floor decorum violations; and part 3, for reporting violations.[10] The current Floor decorum and reporting violations fine systems will remain substantially the same, continuing to be administered by Market Operations and the various Exchange departments responsible for receiving Exchange reports.

The new general rule violation fine system permits the Exchange's Enforcement Department, after a matter has been referred to it, to impose fines ranging from $500 to $2,500 against individuals and from $1,000 to $5,000 against member firms, depending on the number of similar violations within a rolling 12-month period.[11] As in the Floor decorum and reporting violations fine systems, the member or member organizations may plead guilty and pay the fine or contest the charge and request a hearing before an Exchange Disciplinary Panel.

B. General Rule Violations

As stated above, the AMEX's general rule violation fine system will permit the Exchange's Enforcement Department to impose a fine not to exceed $5,000 on any member, member organization, approved person, or employee of a member or member organization with respect to any enumerated general rule violation. The Exchange proposes to incorporate the following AMEX rule violations into part 1 of the Rule 590 Plan: [12] (1) Short sale rule violations; (2) violations of registered trader stabilization requirements; (3) violations of position limit rules; (4) violations of exercise limit rules; (5) violations of the option exercise rule; (6) failure to submit books and records, to furnish information, or to appear and testify within the time period required by the Exchange; (7) failure to submit audit trail data or accurate audit trail data; (8)

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[4] See letter from Delia McQuade Emmons, Vice President and Secretary, AMEX, to Sharon Lawson, Branch Chief, SEC, Division of Market Regulation, dated April 13, 1989, and letter from J. Bruce Ferguson, Assistant Vice President and Assistant General Counsel, AMEX, to Mary Revell, Branch Chief, SEC, Division of Market Regulation, date July 11, 1989.

[5] See Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23828 (June 8, 1984) (order approving amendments to paragraph (c)(2) of Rule 19d–1 under the Act). Pursuant to paragraph (c)(1) of Rule 19d–1, a self-regulatory organization ("SRO") is required to file promptly with the Commission notice of any "final" disciplinary action taken by the SRO. Pursuant to paragraph (c)(2) of Rule 19d–1, any disciplinary action taken by the SRO for violation of an SRO rule that has been designated a minor rule violation pursuant to the plan shall not be considered "final" for purposes of section 19(d)(1) of the Act if the sanction imposed consists of a fine not exceeding $2,500 and the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted his or her administrative remedies. By deeming unadjudicated, minor violations as not final, the Commission permits the SRO to report violations on a periodic, as opposed to an immediate, basis.

[6] See Securities Exchange Act Release No. 21918 (April 3, 1985), 50 FR 14068 (April 9, 1985) (order approving AMEX minor rule enforcement and reporting plan).

[7] Certain uncontested floor decorum violations included in the Exchange's minor rule infraction fine system already are exempt from Commission reporting under Rule 19d–1(c)(1). See Securities Exchange Act Release No. 17085 (August 22, 1980), 45 FR 57707 (August 29, 1980) (order approving amendments to paragraph (c)(1) of Rule 19d–1 under the Act). When the Commission adopted Rule 19d–1 (c)(2), see *supra* note 5, the Rule 19d–1 (c)(1) floor decorum violation reporting threshold was increased from $500 to $1,000.

[8] Although the AMEX's Board of Governors makes the initial determination of whether an Exchange rule violation is "minor" for purposes of inclusion in new Rule 590, this determination is subject to Commission review pursuant to sections 19 (b) (1) and (d) (1) of the Act and Rules 19b–4 and 19d–1 (c) (2) thereunder.

[9] The proposed rule change amends the Article V, section 1(c) constitutional provision with general language authorizing the AMEX's Board of Governors to adopt rules for purposes of implementing disciplinary fine systems for the resolution of minor rule violations.

[10] Subject to compliance with Rules 19b–4 and 19d–1 under the Act, the Exchange will issue periodically an information circular to its membership listing the Exchange Constitution, general rule provisions, floor decorum policies, minor rule provisions and reporting requirements subject to the Rule 590 Plan.

[11] Any fine imposed in excess of $2,500 will be subject to current rather than quarterly reporting to the SEC, in accordance with Rule 19d–1 under the Act. See also, supra note 7.

[12] Amendment No. 2, *supra* note 4, deleted the Exchange's proposal to include in Part 1 of the Rule 590 Plan violations of the prohibition against a member trading as agent and principal in the same security in the same trading session. See AMEX Rules 111(c) and 950(c).

violations of certain recordkeeping requirements; and (9) violations of certain reporting rules.[13] The fine schedule under Part 1 of Rule 590 is as follows: (1) First offense, $500 for individuals and $1,000 for member organizations; (2) second offense, $1,000 for individuals and $2,500 for member organizations; and (3) subsequent offenses within a rolling 12-month period, $2,500 for individuals and $5,000 for member organizations.[14]

C. Floor Decorum Violations

The Exchange proposes to incorporate five types of violations of existing Floor decorum and member and member organization operational violations into Part 2 of the Rule 590 Plan. The first is any provision of the Exchange's Floor decorum policy,[15] which generally sets forth specific guidelines concerning the personal appearance and conduct of persons on the trading Floor and generally prohibits any other act or omission which disrupts the orderly conduct of business on the Floor or which causes interference with the personal comfort or safety of other persons on the Floor. The second is the failure of a specialist to be properly represented at the trading post at scheduled times to answer inquiries regarding the status of orders and to resolve equity "DK" notices.[16] Third, the Rule 590 Plan will include the failure of a specialist to respond to inquiries regarding unreported PER/AMOS[17] automated order routing market orders. The last two violations are the failure to submit option trade comparison data to the Exchange by specified deadlines and the failure to be represented in the Exchange's options reconciliation room at scheduled times to resolve rejected option trades. The fine schedule under part 2 of Rule 590 is as follows: (1) $100 for a first offense; (2) $300 for a second offense; and (3) $500 for any subsequent offenses within a rolling 12-month period.[18]

D. Exchange Reporting Violations

The Exchange proposes to incorporate the failure to file accurately the following reports as possible violations of part 3 of the Rule 590 Plan:[19] (1) Examinations Division reports, including net capital, FOCUS reports and self-clearing specialist financial forms; (2) Trading Analysis Division reports, including specialist principal trading and financial reports; and (3) Market Surveillance Reports, including short positions, orders initiated from off-Floor and round lot short sale transactions.[20] The fine schedule under Part 3 of Rule 590 authorizes the Exchange to impose a fine of $50 a day on any member or member organization for the late filing of those reports specified in Rule 590, Part 3(g) that are required to be filed pursuant to Rule 30.

E. Procedural Rights

In any action taken by the Exchange pursuant to part 1, 2 or 3 of new Rule 590, any person against whom a fine is imposed will be served with a written statement (signed by a Floor Governor or Exchange Official) setting forth (1) the act or omission constituting the violation,[21] (2) the fine imposed for the violation, and (3) the date, not less than 20 days after the date of service of the written statement, by which the determination becomes final and the fine becomes due and payable to the Exchange, or by which the determination must be contested.

If the person against whom a fine is imposed pursuant to part 1, 2 or 3 of new Rule 590 pays the assessed fine, the Exchange will deem such payment to be a waiver of both the person's right to a full disciplinary hearing before an Exchange Disciplinary Panel and the right to an appeal to the Exchange's Board of Governors. Alternatively, any person against whom a fine is imposed pursuant to parts 1, 2 or 3 of new Rule 590 may contest the Exchange's determination by notifying the Secretary of the Exchange not later than 20 days after the date of service of the written statement,[22] at which time the matter becomes a formal disciplinary proceeding subject to the provisions of Article V, section 1(b) of the Exchange's Constitution. In any such formal disciplinary proceeding, if the Disciplinary Panel determines that the person charged is guilty of the violation, the Panel has the discretion to impose any one or more of the disciplinary sanctions authorized by the Exchange's Constitution and Rules.

F. Quarterly Reporting

Exchange actions taken pursuant to any covered minor disciplinary rule violation, excluding uncontested Floor decorum violations,[23] will be reported to the Commission on a quarterly basis. Such quarterly reports include (1) the Exchange's internal file number for the case, (2) the Commission's file number, (3) the name of the individual or member organization, (4) the nature of the violation, (5) the specific rule provision violated, if applicable, (6) the date of violation, (7) the fine imposed,[24] (8) an indication of whether the fine is joint and several, (9) the number of times the violation has occurred, and (10) the date of disposition.

III. Discussion and Conclusion

The Commission finds that proposed new Rule 590 and the amendments to the AMEX's Plan are consistent with the

[13] See AMEX Rules 7, 11, 31, 111, 114, 153, 180, 341, 342, 904, 904C, 905, 905C, 906, 906C and 980 and AMEX Constitution, Article V, sections 4(h)-(k). With the exception of AMEX Rules 904, 904C, 905, 905C and 980—all of which relate to options trading—these general rule violations are currently included in the NYSE's minor rule plan. See NYSE Rule 476A.

[14] The 2,500 and $5,000 maximum fines for any violation subsequent to a second offense may be imposed for a first or second offense if warranted under the circumstances in the view of the Exchange's Enforcement Department. AMEX Rule 590, part 1(e). In addition, the Exchange is not required to impose a fine pursuant to Rule 590 for violation of any of the above rules. The Exchange instead may elect to proceed under Article V, Section 1(b) of the Constitution (formal disciplinary proceeding) rather than under Rule 590. See Rule 590, Commentary .01.

[15] The Exchange's Floor decorum policy is published periodically and distributed among the members and member organizations. The Floor decorum violations included in the Exchange's minor rule infraction fine system already are exempt from Commission reporting under Rule 19d–1(c)(1). See *supra* note 7.

[16] A "DK" ("Don't Know") trade is a questioned trade ("QT"), *i.e.*, a trade that results in a discrepancy when the contra sides of a trade attempt to verify at comparison the details of the trade.

[17] The Exchange's Post Execution Reporting ("PER") Service electronically routes market and marketable limit orders in equity securities of up to 2,000 shares to the applicable specialist post. Similarly, the Amex Options Switching System ("AMOS") allows Exchange members to route options market and marketable limit orders of up to 20 contracts directly to the applicable specialist post.

[18] The $500 maximum fine for any violation subsequent to a second offense may be imposed for a first or second offense if warranted under the circumstances in the view of the Floor Governor or Exchange Official. The Floor Governor or Exchange Official also may impose a lesser fine of $50 for a first offense, again if circumstances warrant. AMEX Rule 590, part 2 (f).

[19] The Exchange's proposed rule change rescinds the AMEX Rule 30 fine schedule for the failure to file required reports while retaining the general authorizing language for purposes of implementing the Rule 590 reporting fine systems for this violation.

[20] The complete list of covered reporting obligations are set forth in Rule 590, part 3(g).

[21] In addition, disciplinary matters proceeding under part 1 of Rule 590 must state the rule or rules alleged to have been violated. AMEX Rule 590, part 1(b).

[22] In addition, disciplinary matters proceeding under part 1 of Rule 590 must submit a written response meeting the requirements of an "Answer" as provided in Article V, section 1(b) of the Exchange's Constitution. AMEX Rule 590, part 1(d).

[23] See *supra* note 7.

[24] Any fine in excess of $2,500 imposed for uncontested minor rule violations will be subject to current, rather than quarterly, reporting to the SEC, in accordance with Rule 19d–1(c)(2) under the Act. See also, *supra* note 7.

requirements of the Act and the rules and regulations thereunder, and in particular, with the requirements of Sections 6(b) (1), (5) and (7) and section 19(d).[25] The proposed rule change establishes a simplified disciplinary system that will enable the Exchange to resolve a broader range of minor rule violations conveniently and quickly. Because the fine systems provide members with a simple, equitable method under which they can plead guilty to a minor rule violation charge and pay an appropriate fine, they enable the Exchange to deal more efficiently with minor rule violations, as well as provide a more meaningful deterrent, thus furthering the purposes of Sections 6(b)(1) and 6(b)(5) of the Act.

In addition, the Commission notes that because violations of the rules that will be subject to the proposed Plan can be adjudicated quickly and objectively, it is reasonable for them to be included in such an abbreviated periodic reporting plan.[26] For example, the determination of whether or not a member has violated the position limits contained in AMEX Rules 904 or 940C is simply a matter of mathematics. As a second example, compliance with Rule 590's part 2(b) off-floor operational deadlines is easily determined. The substantive violations included in AMEX Rule 590 and the minor rule violation reporting Plan are essentially administrative in nature, and, accordingly, efficient and equitable enforcement of the Plan's provisions should not entail the complicated factual and interpretative inquiries associated with more sophisticated Exchange disciplinary actions.

Furthermore, because the proposed Plan provides procedural rights to persons who are fined and permits disciplined persons to contest the Exchange's imposition of the fine and request a full disciplinary proceeding, the proposed Plan is consistent with section 6(b)(7) of the Act, which requires that the rules of an exchange must comply with section 6(d) and generally must provide a fair procedure for disciplining members.[27] The Commission also notes that the AMEX will retain the discretion to bring full disciplinary proceedings for violations of the rules listed in the Rule 590 Plan and should do so when appropriate for the particular violation(s) involved.[28] Finally, the AMEX's decision to publish its heretofore unpublished general and minor rule violation enforcement and reporting Plan in its rule book should assist Exchange members and member organizations in complying with the substantive and procedural provisions of the Plan.

It is therefore ordered, Pursuant to section 19(b)(2) and Rule 19d–1(c)(2) under the Act,[29] that the above mentioned proposed rule change and proposed amendments to the Plan be, and hereby are, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[30]

Dated: December 15, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–29939 Filed 12–26–89; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–27552; File No. SR–NYSE–89–37]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Changes in the Method of Calculating Electronic Access Membership Fees

On November 13, 1989, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to institute a new method for calculating electronic access membership fees.[3]

The proposed rule change was noticed in Securities Exchange Act Release No. 27468 (November 22, 1989), 54 FR 49380 (November 30, 1989). No comments were received on the proposal.

The current method of calculation, done annually, bases the electronic access membership fee on 70% of the prior 12 month average (*e.g.*, December–November), including initiation fees and dues, of the physical access membership fees.[4] The proposed fee calculation, done quarterly instead of annually, would be based on 70% of the prior six (instead of 12) month average of the physical access membership fees, but would exclude initiation fees and dues. The Exchange has determined that by utilizing the current method, the 1990 fee would equal $70,736, while the average fee for January–March of 1990 would equal the lesser value of $63,642 under the proposed method of calculation.[5] In addition, the Exchange proposes that each new quarterly rate will be the annual charge to any new or renewing electronic access member approved during that quarter.

The proposed calculation method is designed to adjust the electronic access membership cost to more accurately reflect current market conditions. Costs for alternative forms of access, such as the purchase of equity seats or the fixing of lease rentals, are determined by market conditions in negotiations between purchaser and seller or lessor and lessee. Furthermore, the dues for a physical access membership are largely measured by the average of the annual rentals payable under *bona fide* leases and are thus also affected by current market conditions.[6]

In this regard, the Exchange believes that by instituting a fee calculation method which is based on a six month average, as opposed to a 12 month average, of physical access membership fees, the fee for an electronic access membership will more accurately reflect current market conditions as evidenced by the change in seat prices and annual lease rentals.

After careful review, the Commission has decided to approve the proposed rule change. The Commission finds that the proposed rule change is consistent with section 6(b) of the Act and, in particular, furthers the objectives of the section 6(b)(4) requirement that the

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[25] 15 U.S.C. 78f(b) (1), (5) and (7) and 78s(d)(1) (1982).

[26] See, *e.g.*, Securities Exchange Act Release No. 22415 (September 17, 1985), 50 FR 38600 (September 23, 1985) (order approving New York Stock Exchange minor disciplinary rule violation plan).

[27] 15 U.S.C. 78f(d) (1982).

[28] Inclusion of a rule in an exchange's minor rule plan should not be interpreted to mean it is an unimportant rule. On the contrary, the Commission recognizes that inclusion of objective rules under a minor rule violation plan not only can reduce reporting burdens of an SRO but also can make its disciplinary system more efficient in prosecuting violations of these rules.

[29] 15 U.S.C. 78s(b)(2) (1982) and 17 CFR 240.19d–1(c)(2) (1989).

[30] *See* 17 CFR 200.30–3(a)(12) (1989).

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1989).

[3] *See* Article X, Section 1(c) of the Exchange Constitution.

[4] The fees charged by the Exchange to physical access members are measured largely by the average of the annual rentals payable under *bona fide* leases and are calculated monthly by taking the average of all arms-length leases (*i.e.* a lease in which there exists no relationship between the parties) during the prior six month period. Therefore, if there were 10 new arms-length leases worth $90,000 each over the last six month period, the average of these leases would equal $90,000 and the Electronic Access Membership fee would equal 70% of $90,000 or $56,000. *See* NYSE Constitution, § 1(b).

[5] The proposed rule change which set the Electronic Access Membership fee for 1990 at $63,642 became immediately effective on November 22, 1989. *See* Securities Exchange Act No. 27467 (November 22, 1989), 54 FR 49379 (File No. SR–NYSE–89–36).

[6] *See* n. 4, supra.

Exchange provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.[7]

It is equitable that the fee for an Electronic Access Membership remain proportionate in value to the alternative costs of access. Current market conditions play a major role in cost allocation of access to the Exchange and any attempt to equate supply and demand in the market will aid in providing an equitable access fee.

In addition, providing an equitable price for an Electronic Access Membership will foster the overall competitiveness of the Exchange, thereby satisfying the section 6(b)(5) requirement that the Exchange remove impediments to and perfect the mechanism of a free and open market.[8] Accordingly, the Commission finds it appropriate to approve the proposed rule change.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[9] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Dated: December 19, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-29982 Filed 12-26-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27554; File No. SR-NYSE-89-16]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Partially Approving Proposed Rule Change Relating to Amendments to the Exchange's Voting Rights Listing Standards and Listing Standards for Non-U.S. Companies as set forth in Sections 313.00 and 103.00 of the Exchange's Listed Company Manual

On July 10, 1989, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] a proposed rule change to amend the Exchange's voting rights listing standards for domestic companies as set forth in Paragraph 313.00 of the New York Stock Exchange Listed Company Manual ("Listed Company Manual") and proposed amendments to Paragraph 103.00,[3] concerning listing standards for non-U.S. companies.[4]

The proposed rule change was noticed in Securities Exchange Act Release No. 27077 (July 28, 1989), 54 FR 32407 (August 7, 1989). No comments were received on the proposed rule change.[5]

The Exchange proposes to modify Paragraph 313.00(A) of the Listed Company Manual to establish Rule 19c-4 ("Rule") under the Act [6] as the foundation of the Exchange's voting rights listing standards, and to include the substantive provisions of Rule 19c-4, without change of language, in a rule of the Exchange.[7] The text of the NYSE's proposed changes to Paragraph 313.00(A) is identical to the text of Rule 19c-4 as adopted by the Commission.

In addition, the Exchange proposes modifications to Paragraph 313.00(B) of the Listed Company Manual to permit the listing of the voting common stock of a company which also has outstanding a non-voting common stock, as well as the listing of non-voting common stock. The proposed new text of Paragraph 313.00(B) provides, however, that certain safeguards must be provided to holders of a listed non-voting common stock. First, non-voting common stock must meet all original listing requirements including compliance with Rule 19c-4. Second, the rights of holders of non-voting common stock must be substantially the same, except for voting rights, as those of holders of the company's voting common stock. Finally, holders of non-voting common stock must receive annual reports and other communications, including proxy materials, that are sent generally to holders of the voting securities of the listed companies.

The Exchange is also proposing to amend Paragraph 103 of the Listed Company Manual which currently permits the NYSE to waive or modify certain interim reporting requirements and corporate governance listing standards, including voting rights and interim reporting requirements, for foreign issuers. Under the proposed amendments, the NYSE would be permitted to grant such waivers if the foreign company's practice is not prohibited by the laws of its home country, rather than the current requirement that the foreign company's procedure must be based on the laws or practices of its home country. The proposal would also permit non-U.S. companies to adopt voting rights structures that are consistent with NYSE requirements for domestic companies. Accordingly, under NYSE rules the voting structure of a non-U.S. company could meet NYSE listing standards if it either complied with the requirements of Rule 19c-4, as set forth in Section 313 of the Listed Company Manual, or was not prohibited by the issuer's home country laws.

Finally, the Exchange also proposes to delete existing Paragraphs 313.00 (B), (C), and (D) of the Listed Company Manual because, according to the Exchange, these provisions are unnecessary or obsolete in light of Rule 19c-4 as the basis of its voting rights policy. These provisions currently prohibit the use of voting trusts or irrevocable proxies to restrict the voting rights of shareholders,[8] allow the Exchange to refuse to list a class of stock, or restrict the creation of a class of stock, which has unusual voting provisions which tend to nullify or restrict voting,[9] and directs that an

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[7] 15 U.S.C. 78f (1982).

[8] *Id.*

[9] 15 U.S.C. 78s(b)(2) (1982).

[10] 17 CFR 200.30-3(a)(12) (1989).

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 15 CFR 240.19b-4 (1989).

[3] The NYSE is also proposing to delete Paragraph 308.00 of the Listed Company Manual regarding issuer defensive tactics. The Commission staff is still reviewing this portion of the proposal. Accordingly, this order only discusses and grants approval to those portions of the filing pertaining to Paragraphs 313 and 103 of the Listed Company Manual.

[4] As originally proposed, the NYSE filing indicated several other provisions concerning minimum voting rights for preferred issues would be deleted. The NYSE has indicated that these provisions will not be deleted by the current proposal being considered by the Commission. The NYSE has stated, however, that it will continue to review what role, if any, the NYSE should have with respect to such rights. *See* letter to Richard G. Ketchum, Director, Division of Market Regulation, Commission, from James E. Buck, Secretary, NYSE, dated October 30, 1989.

[5] The Commission, however, received a comment on a similar proposal submitted by the American Stock Exchange, Inc. ("Amex") which would apply equally to the NYSE proposal. *See* letter to Jonathan G. Katz, Secretary, Commission, from Sullivan & Cromwell, submitted in connection with Amex File No. 89-23, dated November 29, 1989, ("Sullivan & Cromwell letter").

[6] On July 7, 1988, the Commission adopted Rule 19c-4, under the Act, regarding shareholder voting rights. The Rule prohibits national securities exchanges and associations from listing or quoting the common stock or other equity securities of a domestic company that has issued a class of securities or taken other corporate action that has the effect of nullifying, restricting or disparately reducing the per share voting rights of holders of an outstanding class of common stock. *See* Securities Exchange Act Release No. 25891 (July 7, 1988), 53 FR 26376.

[7] *See* letter to Richard G. Ketchum, Director, Division of Market Regulation, Commission, from David Domijan, Senior Vice President, New Listing & Corporate Liaison, NYSE, dated December 19, 1989.

[8] Paragraph 313.00 (B) of the Listed Company Manual.

[9] Paragraph 313.00 (C) of the Listed Company Manual.

allocation of voting power should bear a reasonable relationship to the equity interest of the class of stock.[10]

The changes proposed by the NYSE are the culmination of a five year review by the NYSE of the qualitative listing standards that apply to its listed companies. This review resulted in changes to its listing standards for foreign issuers, amendments to its shareholder approval policies, and a proposal to change its one share, one vote policy. The NYSE has decided to adopt the provisions of Rule 19c–4 as the framework for its voting rights listing standards, along with several other additional provisions regarding non-voting stock.[11]

After careful review the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular the requirements of sections 6(b)(5), 11A, and 14 of the Act. Specifically , as discussed in the release adopting Rule 19c–4,[12] the terms of Rule 19c–4, as expressly adopted in Paragraph 313.00(A), will protect shareholders from being disenfranchised while permitting companies flexibility to use disparate voting rights plans for capital raising purposes. Accordingly, the proposed rule change is directly related to the protection of investors and the public interest pursuant to Section 6(b)(5) of the Act.

The Commission believes that deletion of NYSE's current restrictions on listing non-voting common stock is consistent with Rule 19c–4 and the Act.[13] In this regard, we note that Rule 19c–4 does not treat issuances of non-voting common stock different from issuances of low vote stock. Rather the emphasis of the Rule is on issuances that disenfranchise shareholders. Specifically, the Rule prohibits national securities exchanges and associations from listing or quoting the common stock or other equity securities of a domestic company that has issued a class of securities or taken other corporate action that has the effect of nullifying, restricting or disparately reducing the per share voting rights of existing shareholders. In adopting the Rule, the Commission indicated that the fully disclosed sale of new non-voting stock did not always raise the same shareholder protection concerns as did the issuance of super voting stock, through exchange offers or otherwise, to reduce the per share voting rights of existing shareholders. Accordingly, the Commission has concluded that the NYSE's proposal to eliminate its per se restrictions on listing non-voting stock, in favor of applying the standards of Rule 19c–4 to such issuances, is consistent with the Act.

Furthermore, the Commission believes that the safeguards provided for in proposed Paragraph 313.00(B) for listing non-voting stocks, as discussed above, should ensure that non-voting stockholders, who have made an equity investment in a company, are informed of corporate developments and events and receive substantially the same rights as other holders.[14] The Commission believes that these safeguards, coupled with the protection afforded by Rule 19c–4, will protect adequately holders of a listed non-voting common stock.

For the same reasons, the Commission believes that NYSE's proposed deletion of its current prohibitions on listing stock subject to voting trusts or similar arrangements is permissible under Rule 19c–4 and the Act. The NYSE has stated that its existing restrictions on voting trusts is related to its prohibitions on listing non-voting stock.[15] In the Exchange's view, shareholders who deposited shares with a voting trust were essentially receiving non-voting stock. The Commission agrees with the NYSE's statement that voting trusts are not per se prohibited under Rule 19c–4. Accordingly, consistent with the deletion of the NYSE's non-voting stock listing restrictions, the Commission believes the application of Rule 19c–4 to voting trusts should ensure that shareholders are not disenfranchised by their use.

The Commission also believes that permitting the NYSE to waive certain listing standards for non-U.S. companies when a foreign company's procedure is not prohibited by the laws of its home country, rather than the current requirement that the procedure be based on the laws or practices of the home country, should help to simplify the administration and application of the rule. For example, it may be easier to show that a certain practice is not prohibited by the home country rather than show that it is a 'practice' in that country. This change will not jeopardize the purpose and benefits of the foreign company home waiver. In addition, we note that Rule 103 will continue to require foreign companies to furnish the Exchange with an opinion from independent counsel that the non-complying practice of the issuer is not prohibited by the laws of its home country.[16]

Finally, we believe that the other conforming changes discussed above, are appropriate in light of the NYSE's adoption of Rule 19c–4 as the foundation of its voting rights listing standard. We note that the protection to shareholders provided by these rules will still exist through the application of Rule 19c–4. For example, in applying Rule 19c–4 the NYSE will continue to examine equity investment as currently required under existing Paragraph 313.00(D), which states that an allocation of voting power should have a reasonable relationship to the equity investment. Accordingly, we believe it is permissible for the NYSE to decide that existing Paragraphs 313.00 (C) and (D), concerning voting rights, should be deleted as a result of the adoption of Rule 19c–4.

In summary, the Commission believes that NYSE's adoption of Rule 19c–4 as the basis of its voting rights policies,

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[10] Paragraph 313.00 (D) of the Listed Company Manual.

[11] We note that Rule 19c–4, which sets forth a minimum voting rights standard, automatically became a rule of the national securities exchanges and associations, including the NYSE, when adopted by the Commission in July, 1988. At the time of adoption of the Rule, however, the Commission recognized that the markets would be reviewing their existing voting rights policies in light of Rule 19c–4.

[12] *See* note 6, *supra*.

[13] At the time of adoption of Rule 19c–4, the National Association of Securities Dealers ("NASD") had no voting rights listing standards and did not prohibit the listing of non-voting common stock. Since the adoption of Rule 19c–4, the NASD permits the listing on non-voting stock if it is consistent with the Rule. We also note that the Amex has also proposed to delete its current restrictions on listing non-voting stock. *See* File No. SR–Amex–89–23, noticed for comment in Securities Exchange Act Release No. 27414 (November 1, 1989), 54 FR 47000.

[14] As noted above, the Commission recently received a comment on the Amex proposal which applies equally to the NYSE proposal. *See* note 5, *supra*. The Sullivan & Cromwell letter suggests that the language requiring that the rights of holders of non-voting stock "be substantially the same as" the rights accorded holders of voting stock should be replaced with the words "no less favorable than" the rights of voting stock holders. The letter states that this change would permit companies to issue non-voting stock with higher dividends then voting stock. The Commission believes the change is not justified and that the "substantially" language should be retained. In particular, we note that issuances of no-vote stock with greater dividends could, depending on the other facts, involve a violative exchange offer under Rule 19c–4. In addition, the NYSE has indicated that the "substantially" language pertains to rights, other than dividends, such as call for redemptions. Based on this, we do not believe the comment letter justifies a change in language.

[15] *See* letter to Richard G. Ketchum, Director, Division of Market Regulation, Commission, for Linda Mills Simplicio, Vice President, Listed Company Compliance, NYSE, dated October 27, 1989.

[16] In addition, by allowing a foreign company to be listed if it complies with Rule 19c–4, the Exchange actually exceeds the minimum requirements set by Rule 19c–4 because Rule 19c–4, as adopted, only applies to domestic issuers.

consistent with section 6(b)(5) of the Act, will protect investors and the public interest. In this regard, we believe it is consistent with the Act for the NYSE to delete existing parts of their voting rights policy that were designed to provide protection similar to those that Rule 19c–4 currently provides to shareholders. Additionally, permitting the listing of non-voting common stock and stock subject to voting trusts, as long as these issuances comply with Rule 19c–4 and the additional safeguards in NYSE's rules, is reasonable in that the requirements of Rule 19c–4 and the NYSE rules will ensure that shareholders are adequately protected and not disenfranchised by such issuances.

It is Therefore Ordered, Pursuant to section 19(b)(2) of the Act,[17] that the portions of the proposed rule change discussed above are approved.

By the Commission.

Dated: December 20, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–29983 Filed 12–26–89; 8:45 am]

BILLING CODE 8010–01–M

[File No. 1–5171]

Issuer Delisting; Notice of Application To Withdraw from Listing and Registration; Super Food Services, Inc., Common Shares, $1.00 Par Value; Preferred Stock Purchase Rights

December 20, 1989.

Super Food Services, Inc. ("Company"), has filed an application with the Securities and Exchange Commission ("Commission") pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2–2(d) promulgated thereunder to withdraw the above specified security from listing and registration on the American Stock Exchange, Inc. ("AMEX").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

The Company's common stock recently was listed on the New York Stock Exchange, Inc. ("NYSE"). Trading in the Company's stock on the NYSE commenced on December 14, 1989. In making the decision to withdraw its common stock from listing on the AMEX, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its common stock on the NYSE and the AMEX. The Company does not see any particular advantage in the dual trading of its stock and believes that dual listing would fragment the market for its common stock.

Any interested person may, on or before January 12, 1990, submit by letter to the Secretary of the Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–29984 Filed 12–26–89; 8:45 am]

BILLING CODE 8010–01–M

[17] 15 U.S.C. 78s(b)(2) (1982).

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed 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.

DATE: Comments should be submitted on or before January 26, 1990. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: William Cline, Small Business Administration, 1441 L Street, NW., Room 200, Washington, DC 20416, Telephone (202) 653–8538.

OMB Reviewer: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Telephone: (202) 395–7340.

Title: SBA Health Benefits Survey.

Form Nos.: SBA Temp Form 1704.

Frequency: One time.

Description of Respondents: Small Business Owners.

Annual Responses: 3,920.

Annual Burden Hours: 1,556.

William Cline,

Chief, Administrative Information Branch.

[FR Doc. 89–29921 Filed 12–26–89; 8:45 am]

BILLING CODE 8025–01–M

National Women's Business Council; Public Meeting

The U.S. Small Business Administration's National Women's Business Council will hold a public meeting at 10:30 a.m., on Tuesday, January 23, 1990, at the U.S. Department of Commerce, 15th and Constitution Avenue, NW., Washington, DC 20230, room 1412 to discuss the gathering of data on women's business ownership.

For further information, write or call Lindsey Johnson, Director, Office of Women's Business Ownership, U.S. Small Business Administration, 1441 L Street, NW., room 414, Washington, DC 20416, (202) 653–8000.

Lindsey Johnson,

Director, Office of Women's Business Ownership.

[FR Doc. 89–29925 Filed 12–26–89; 8:45 am]

BILLING CODE 8025–01–M

[License No. 04/04–5251]

First Growth Capital, Inc., Issuance of a Small Business Investment Company License

On July 31, 1989, a notice was published in the **Federal Register** (Vol. 54, No. 145, Page 31608) stating that an application has been filed by First Growth Capital, Inc., Macon, Georgia, with the Small Business Administration (SBA) pursuant to the Regulations governing small business investment companies (13 CFR 107.102) (1989) for a license as a small business investment company.

Interested parties were given until close of business August 30, 1989, to submit comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(d) of the Small Business Investment Act of 1958, as amended,

after having considered the application and all other pertinent information, SBA issued License No. 04/04–5251 on November 16, 1989, to First Growth Capital, Inc. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.001, Small Business Investment Companies)

Dated: December 20, 1989.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 89–29924 Filed 12–26–89; 8:45 am]

BILLING CODE 8025–01–M

[Application No. 04/04–253]

Florida Capital Ventures, Ltd.; Application for License to Operate as a Small Business Investment Company

An application for a license to operate a limited partnership small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958, as amended (Act) (15 U.S.C. 661 *et seq.*) has been filed by Florida Capital Ventures, Ltd. (FCV), First Florida Tower, 26th Floor, 111 Madison Street, Tampa, FL 33602, with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1989).

The officers and directors of the Corporate General Partner/Manager of the Applicant are:

Name, address, and position	Percentage of ownership
Warren L. Miller, 107 South Beverly Ave. Tampa, FL 33609, President/ Director of Corporate General Partner	0
Noel E. Urben, Dibble Hill Road, West Cornwall, CT 06796, Director of Corporate General Partner	0
James W. Lavin, 65 Presidential Drive Abington, MA, Secretary/Director of Corporate General Partner	0

The proposed owners of the Applicant are:

Name, address and position	Percentage of ownership
Florida Venture Partners, Inc., First Florida Tower, 26th Floor, 111 Madison St., Corporate General Partnership	1
First Venture Partners, Inc., First Florida Tower, 111 Madison St. Tampa, FL 33602, Sole Limited Partner	99.0

First Venture Partners, Inc. is a wholly-owned subsidiary of First Florida Banks, Inc.

The Applicant will begin operations with a capitalization of $3,030,400 and will be a source of equity capital and long-term loan funds for qualified small business concerns. The Applicant intends to conduct its business in the Southeastern United States, although primarily in Florida. Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owner and management, and the probability of successful operations of the applicant under their management including profitability and financial soundness, in accordance with the Act and Regulations.

Notice is hereby given that any person may, no later than 30 days from the date of publication of this Notice, submit written comments on the proposed Applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, NW., Washington, DC 20416.

A copy of the Notice will be published in a newspaper of general circulation in Tampa, Florida.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: December 19, 1989.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 89–29922 Filed 12–26–89; 8:45 am]

BILLING CODE 8025–01–M

[Application No. 03/03–5191]

Continental SBIC; Application for License to Operate as a Small Business Investment Company

An application for a license to operate a small business investment company (SBIC) under the provisions of section 301(d) of the Small Business Investment Act of 1958, as amended (Act) (15 U.S.C. 661 *et seq.*) has been filed by Continental SBIC (Applicant), 4141 N. Henderson Road, Suite 8, Arlington, VA 22203 with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1989).

The proposed officers, directors, and owner of the Applicant are as follows:

Name, address, and position	Percentage of ownership
Arthur L. Walters, 4935 N. 30th Street, Arlington, VA 22207, Chairman/President	100
Lily Dhu Walters, 4935 N. 30th Street, Arlington, VA 22207, Secretary/Director	0
Mark W. Walters, 6615 Colchester Rd., Clifton, VA 22024, Vice President/Director	0
Thomas E. Goodfellow, 5262 Maris Ave., Alexandria, VA 22301, Treasurer	0

The Applicant will begin operations with a capitalization of $1,000,000 and will be a source of equity capital and long-term loan funds for qualified small business concerns.

The Applicant intends to conduct its business primarily in the State of Virginia.

As a small business investment company under Section 301(d) of the Act, the Applicant has been organized and chartered solely for the purpose of performing the functions and conducting the activities contemplated under the Act and will provide assistance solely to small concerns which will contribute to a well balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owner and management, and the probability of successful operations of the applicant under their management including profitability and financial soundness, in accordance with the Act and Regulations.

Notice is hereby given that any person may, no later than 30 days from the date of publication of this Notice, submit written comments on the proposed Applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, NW., Washington, DC 20416.

A copy of the Notice will be published in a newspaper of general circulation in the Arlington, Virginia area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: December 19, 1989.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 89–29923 Filed 12–26–89; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-89-47]

Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: January 16, 1990.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on December 19, 1989.

Denise Donohue Hall,

Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 21780.
Petitioner: Civil Air Patrol.
Sections of the FAR Affected: 14 CFR 61.118.
Description of Relief Sought: To extend Exemption No. 4042 that allows petitioner's members holding private pilot certificates to be reimbursed for fuel, oil, and maintenance expenses while serving on official Civil Air Patrol missions.

Docket No.: 26056.
Petitioner: Accelerated Ground Training, Inc.
Sections of the FAR Affected: 14 CFR 61.63(d)(2) and 61.157(d)(2).
Description of Relief Sought: To allow petitioner's trainees to complete the same practical test for the issuance of a type rating to be added to a pilot certificate, regardless of its grade, in an airplane simulator as is done by the trainees of part 121 operating certificate holders.

Docket No.: 25602.
Petitioner: Trans World Airlines, Inc.
Sections of the FAR Affected: 14 CFR 121.360.
Description of Relief Sought/Disposition: To allow petitioner to operate six Lockheed L-1011-385-1-15 airplanes for an indefinite period of time with a ground proximity warning system that utilizes the Civil Aviation Authority certification requirements instead of complying with the requirements of Technical Standard Order C92.

Grant, December 14, 1989, Exemption No. 5124

Docket No.: 25686.
Petitioner: Airline Management Services, Inc./Airline Software Inc. Consulting Services.
Sections of the FAR Affected: 14 CFR 121.547.
Description of Relief Sought/Disposition: To allow certain personnel of the petitioners to be admitted to the flight deck without a seat available in the cabin.

Denial, December 8, 1989, Exemption No. 5122

[FR Doc. 89-29965 Filed 12-26-89; 8:45 am]
BILLING CODE 4910-13-M

Precision Approach Landing Systems Policy

AGENCY: Federal Aviation Administration (FAA).

ACTION: Precision Approach Landing Systems Policy.

The FAA is transitioning from the Instrument Landing System (ILS) to the Microwave Landing System (MLS) for precision approach service in the National Airspace System (NAS). As a participant in the international implementation of MLS technology, the FAA will replace the nearly 50-year-old ILS technology in the NAS. Under international agreement, the United States must provide MLS service equivalent to ILS at all United States international runways by January 1, 1998. International ILS precision approach service is protected by international agreement through January 1, 1998, and may be retained optionally through January 1, 2000.

Precision approach guidance systems installed and operated at qualified locations are considered critical components of the NAS. The policy of the FAA is to install and operate MLS as the future primary precision approach guidance system in the NAS. Under some circumstances, alternative precision approach guidance systems (e.g., ILS) may be authorized. FAA may install ILS's to meet critical NAS requirements; replace systems that have exceeded their useful service life; and provide service at locations with critical safety needs; until ILS/MLS parity is reached and MLS transition begins.

MLS implementation shall minimize the need for users to install dual avionics. FAA ILS/MLS transition shall ensure that critical precision approach service is provided as needed, but shall not require user MLS avionic equipage until all Airway Planning Standard Number One (FAA Order 7031.2C) qualified runways are also equipped with MLS. Initially, most new MLS's will be collocated with an ILS. However, some MLS's will be sited at qualified locations that do not currently have precision approach service for purposes of satisfying aeronautical need.

This policy supersedes the FAA MLS transition policy dated May 16, 1987.

FOR FURTHER INFORMATION CONTACT: The Office of Aviation Policy and Plans (APO), 800 Independence Avenue, SW., Washington, DC 20591.

MLS Transition and Implementation

• The priority for implementation of MLS shall be as follows:

1. At locations to meet MLS Evaluation Program objectives,

2. On international runways to provide MLS precision approach service equivalent to ILS and satisfy the United States commitment to the International Civil Aviation Organization (ICAO), and

3. On qualified runways with existing ILS service to attain ILS/MLS parity; to transition to MLS; and to begin ILS decommissioning. These installations shall be prioritized by benefit-to-cost ratio with those locations with the

highest benefit-to-cost ratios installed first.

• The transition policy of the FAA is to install MLS, without decommissioning any ILS, until ILS/MLS parity is reached.

• When ILS/MLS parity is achieved, a fixed termination date and transition plan shall be established by the FAA for the decommissioning of all United States ILS's. The termination date shall be fixed with enough transition time to allow users adequate time to equip their aircraft with MLS avionics.

• In consultation with the Associate Administrator for Aviation Standards, the MLS program manager shall approve MLS locations for purposes of the MLS Economic and Operational Evaluation Program. This program is a series of nine projects to evaluate and demonstrate the operation and economic benefits of nationwide implementation. This evaluation has been recommended by Congress, GAO, and the Inspector General and directed by the Secretary.

ILS Transition and Implementation Policy

• Implementation of "new establish" ILS's should be limited to those locations that have an immediate and critical requirement for precision approach service that cannot be delayed until MLS is deployed; e.g., new runways, capacity enhancement at existing locations, an immediate and critical safety need, and those systems for which supply support can no longer be provided by the depot. These locations shall be approved by the Associate Administrator for Aviation Standards for locations that meet or exceed a benefit-to-cost ratio of 1.0 and by the Administrator for all other locations.

• Implementation of replacement systems shall be limited to those locations and systems that have a net economic benefit for such replacement (considering the time between the availability of the new systems and the likely availability of MLS systems). This shall include emergency replacement systems. These locations shall be approved by the Associate Administrator for Airway Facilities.

FAR Part 171 Systems

• Systems purchased under Part 171 of the Federal Aviation Regulations (14 CFR Part 171) may be transferred to the Federal Government for ownership and maintenance, if the systems meet the following eligibility criteria required for Federal systems:

1. The systems are identical to those in the FAA inventory and have remote maintenance monitoring (RMM) capability, and

2. The FAA agrees to accept such responsibility based upon the availability of technical manpower, repair parts, supplies, the role the facility plays in the NAS, etc.

Airport Improvement Fund (AIP) Systems [1]

• Precision approach systems purchased using AIP Funds (on a 75/25 sharing basis) shall only be eligible for maintenance by the Federal Government under a reimbursable agreement if the following criteria are met:

1. The systems are identical to those in the FAA inventory and have RMM capability, and

2. The FAA agrees to accept such responsibility based upon the availability of technical manpower, repair parts, supplies, the role the facility plays in the NAS, etc., and

3. A reimbursable agreement is completed for the purpose of maintenance through a Memorandum of Agreement prior to the time that the precision approach system is purchased by the sponsor.

Issued in Washington, DC, on December 6, 1989.

James B. Busey,

Administrator.

[FR Doc. 89-29964 Filed 12-26-89; 8:45 am]

BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

[Docket No. IP89-07; Notice 2]

Denial of Petition for Determination of Inconsequential Noncompliance; Lagusa, Inc.

This notice denies the petition by Lagusa, Inc. of Belcamp, Maryland, to be exempted from the notification and remedy requirement of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for an apparent noncompliance with 49 CFR 571.106, Federal Motor Vehicle Safety Standard No. 106 *Brake Hoses*. The basis of the petition was that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published on August 31, 1989, and an opportunity afforded for comment (54 FR 36091).

Sections S7.3.9 and S7.2.1(a) of Standard No. 106, respectively, require that "an air brake hose assembly shall not rupture when exposed to hydrostatic pressure of 800 psi", and that each air brake hose be labeled with the symbol DOT, constituting a certification by the hose manufacturer that the hose conforms to all applicable motor vehicle safety standards, Lagusa imported approximately 100 European built motorcoaches equipped with air hoses that do not comply with Sections S7.3.9 and S7.2.1(a) of Stardard No. 106.

Lagusa supports its petition for inconsequential noncompliance for the following reasons:

1. Noncompliance with S7.3.9 is inconsequential because the air brake hoses meet, in all respects, the Deutsche Industrie Norm (DIN) standard, a state-of-the-art standard which, for many years, has provided a high level of safety in European motor vehicles.

2. The National Highway Traffic Safety Administration recognizes the Deutsche Industrie Norm as a standardization organization for purposes of certain U.S. Motor Vehicle Safety Standards, and should so recognize the DIN Standard for air brake hoses.

3. In its 13 years of importing these motorcoaches, there has never been an accident or a proven incident relating to failure or nonperformance of air brake hoses. The absence of such accidents or proven incidents is indicative of the safety of these air brake hoses.

4. The maximum air pressure regulated in the motorcoach air system is 120 psi. A situation which would create pressure of 639 psi, the lowest pressure at which any of the hoses burst, is highly unlikely. There are two safety features inherent in the system, a governor on a compressor and a safety valve. When 120 psi is reached, the air is exhausted to the outside, precluding the hose from bursting.

5. In 1974, NHTSA reduced the burst strength value from 900 psi to 800 psi for purposes of the burst strength test set forth at S7.3.9. In explaining the reduction, the NHTSA stated that "the burst strength valve is reduced to 800 psi to accommodate nylon and thermoplastic tubing *while retaining a safety performance level five times that of normal operating conditions.*" (emphasis added)

6. The 800 psi standard, as an across-the board requirement, is unreasonable and fails to take into account different vehicle sizes and their attendant different braking system requirements, and is unrealistically high where, as in this case, there are duel backup controls.

7. Standard No. 121, *Air Brake Systems*, provides at S5.1.2.2 that air

[1] May require new legislation.

compressor service reservoirs be capable of withstanding "an internal hydrostatic pressure of five times the compressor cutout pressure of 500 psi, whichever is greater for 10 minutes." As the pressure in the system is constant, there is an inherent consistency in requiring the reservoir to meet a 500 psi standard and the air brake hoses to meet a 800 psi standard.

8. The universe of Lagusa's noncomplying vehicles is limited to 100 vehicles.

9. Steps have been taken to ensure that all motorcoaches currently imported into the United States fully meet the requirements of Standard No. 106.

10, If the NHTSA finds that noncompliance with S7.3.9 is inconsequential, it must also find noncompliance with the labeling requirements set forth at S7.2.1(a) is inconsequential. That standard merely requires that the hoses be labeled with the DOT symbol to indicate they conform to all applicable Motor Vehicle Safety Standards. Obviously, such labeling is and would be misleading if the hoses conformed to a standard other than the NHTSA's Motor Vehicle Safety Standard.

No comments were received on the petition.

None of the petitioner's arguments have persuaded the agency that the noncompliance is inconsequential. The statement that the brake hoses may comply with a DIN standard is irrelevant when it is not supported with arguments showing that such standard has a test equivalent to the hydrostatic pressure test of Standard No. 106.

With respect to the argument that the maximum air pressure of the coach (120 psi) is far less than the lowest pressure at which the hoses burst (639 psi), and that safety features preclude air pressure exceeding 120 psi, the agency notes that the standard specifies a higher minumum burst strength pressure for air brake hoses (800 psi) to compensate for the possibility of the regulator valve or other safety features failing, and for deterioration of the hose over time.

Further, NHTSA also considers the argument irrelevant that the standard fails to take into account different brake systems in vehicles of different sizes, and that the requirement is unusually high where, as here, there are backup controls. All air brake systems in operation are similar regardless of the size of the vehicle, and all sizes of hoses may be subject to extreme pressure conditions. NHTSA has no information on the backup controls in question, or whether they will reliably limit system pressure over the life of the vehicles.

Petitioner also argued that there is an inherent inconsistency in requiring the air compressor service reservoir to meet a 500 psi standard and the air brake hoses to meet an 800 psi requirement. The agency disagrees that the difference represents an "inconsistency". The difference is attributable to the fact that the reservoirs are metallic and maintain close to a constant strength through their life whereas brake hoses are composed of non-metallic materials that exhibit a much greater deterioration in strength as they age and are exposed to the elements.

The present compliance of buses is irrelevant to the safety issue of the noncompliance of the older buses under consideration. In addition, the question of inconsequentiality does not turn on the size of the noncompliant populations, but on the type of failure involved. The test failure under discussion is a failure to comply with a performance requirement of a Federal standard, and is therfore subject to greater scrutiny than failure to meet a minor labeling requirement of a standard.

Finally, the agency observes that the failure to label the brake hoses with the DOT symbol is not a labeling requirement failure *per se*, but a failure to fulfill the statutory obligation to certify compliance with all applicable Federal motor vehicle safety standards. As such, it is not subject to the notification and remedy provision although other labeling requirements are. The standard specifies the manner in which the statutory obligation is to be met.

For the reasons stated above, it is hereby found that the petitioner has failed to meet its burden of persuasion that the noncompliance herein described is inconsequential as it relates to motor vehicle safety, and its petition is denied.

(15 U.S.C. 1417): delegation of authority at 49 CFR 1.50 and 49 CFR 501.8.

Dated: December 20, 1989.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 89-29968 Filed 12-26-89; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. IP89-06, Notice 2]

Action on Petition for Determination of Inconsequential Noncompliance; Philips Lighting Co.

This notice grants in part and denies in part a petition by Philips Lighting Company of Somerset, NJ, to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for a noncompliance with 49 CFR 571.108, Federal Motor Vehicle Safety Standard No. 108, "Lamps, Reflective Devices, and Associated Equipment." The basis of the petition was that the noncompliance is inconsequential as it relats to motor vehicle safety.

Notice of receipt of the petition was published on August 24, 1989, and an opportunity afforded for comment (54 FR 35271).

Standard No. 108 requires that the base of each Type HB3 and HB4 light source be marked by its manufacturer or its importer with its HB Type Designation. In June 1989, Philips stamped approximately 28,800 bulbs with an HB3 designation when the proper Type designation for these bulbs was HB4. Of the 28,800 noncompliant bulbs, Philips Lighting Company recovered 13,800. The company sought exemption primarily for the 15,000 bulbs that were not recovered. However, it also sought exemption for the remaining unused 13,800 bulbs and any unshipped units that were similarly marked with the wrong HB number.

Philips supported its petition for inconsequential noncompliance with the following reasons:

1. The "HB" type is not generally used by vehicle owners to identify the proper headlamp bulb, and no confusion by owners is expected to occur as a result of the wrong HB number marking.

2. The number more likely to be used, *i.e.*, the 9005 designation, is correctly stamped on the base, the bulbs were installed in the correct lens and reflector assemblies, and no safety problems are anticipated.

3. Specific notice of the wrong HB number will be provided to any customer to whom Philips sells to insure that installations are correct.

No comments were received on the petition.

The agency did not find especially persuasive the petitioner's unsubstantiated argument that vehicle owners do not generally use the HB Type to identify the proper headlamp bulb. The argument that the trade number is more likely to be used would be true, of course, if no HB Type marking had been provided, rather than an erroneous one. Petitioner failed to make the most cogent safety argument of all, that the HB3 and HB4 Types are not interchangeable, and, as a consequence, no safety problem is presented by the mislabeling. Although the HB3 has a smaller base but can be

inserted in the HB4 socket (a loose fit), it cannot be connected to the electrical source because its connector does not match the source connector. With respect to the reverse situation, the HB4 bulb cannot be inserted into the HB3 socket because its base is larger than the socket opening. Thus neither bulb can be substituted for the other. For this reason, the agency finds that the noncompliance herein is inconsequential as it relates to motor vehicle safety, and the petition with respect to the 15,000 bulbs that were not recovered is granted.

The remaining unused 13,800 bulbs that it did recover, and the unshipped bulbs that were similarly marked with the wrong HB number, present a different situation. The effect of a grant of a petition for an inconsequentiality determination is to relieve the petitioner of the statutory obligation to notify purchasers and remedy a noncompliance once it has been deemed to exist. In the instant case, the obligation to notify and remedy with respect to these bulbs has been mooted by petitioner's recovery and retention of them; there is no one to notify, or to repurchase from. The agency construes its exemption authority as one applying retrospectively to vehicles and equipment that have left the control of the manufacturer, and not one that applies prospectively to vehicles and equipment still in its possession. The fact that the petitioner has violated the National Traffic and Motor Vehicle Safety Act by its manufacture and sale of nonconforming motor vehicle equipment is not excused by the grant of its petition with respect to the bulbs that it did not recover (although the gravity of that violation is reduced substantially by the grant, and, as a matter of policy, the agency virtually never imposes a civil penalty upon a manufacturer whose inconsequentiality petition has been granted). Future sales by the petitioner of the bulbs in its possession would constitute knowing and willful violations of the Act. Since to grant the petition with respect to these bulbs would be to countenance further violations of the Act, the agency would not take an action having this effect even if it construed its exemption authority to permit it to do so. Therefore, the petition with respect to the bulbs in the possession of the petitioner is denied.

Authority: 15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued on: December 20, 1989.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 89-29969 Filed 12-26-89; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review.

Dated: December 20, 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 2409, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Departmental Offices

OMB Number: 1505-0095.

Form Number: None.

Type of Review: Extension.

Title: Soviet Gold Coin Regulations.

Description: Submissions will provide the U.S. Government with information to be used in administering and enforcing prohibitions against importing Soviet gold coins.

Respondents: Individuals or households, Businesses or other for-profit.

Estimated Number of Respondents: 3.

Estimated Burden Hours Per Response: 1 hour.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 3 hours.

Clearance Officer: Dale A. Morgan, (202) 566-2693, Departmental Offices, room 2409, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

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. 89-29926 Filed 12-26-89; 8:45 am]

BILLING CODE 4810-25-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 247
Wednesday, December 27, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:30 a.m., Tuesday, January 23, 1990.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule enforcement review.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 89–30084 Filed 12–22–89; 11:18 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Tuesday, January 23, 1990.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 89–30085 Filed 12–22–89; 11:18 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:30 a.m., Thursday, January 4, 1990.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 89–30086 Filed 12–22–89; 11:18 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, January 23, 1990.

PLACE: 2033 K St., NW., Washington, DC, 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED: Application for contract designation submitted by the New York Mercantile Exchange to trade options on platinum futures.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 89–30087 Filed 12–22–89; 11:18 am]

BILLING CODE 6351–01–M

CONSUMER PRODUCT SAFETY COMMISSION

Agenda

TIME AND DATE: Thursday, December 21, 1989, 1:00 p.m., Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTERS TO BE CONSIDERED: Enforcement Matter OS# 4666.

The staff will brief the commission on enforcement matter OS# 4666.

The Commission decided by unanimous vote that agency business required holding this meeting without the usual seven day notice.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301–492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207, 301–492–6800.

Dated: December 21, 1989.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 89–30135 Filed 12–22–89; 1:23 pm]

BILLING CODE 6355–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Agenda

TIME AND DATE: 9:30 a.m. Wednesday, January 3, 1990.

PLACE: Board Room, Eighth Floor, 800 Independence Avenue, SW., Washington, DC 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Marine Accident Report: Ramming of Spanish Bulk Carrier URDULIZ by USS DWIGHT D. EISENHOWER, Hampton Roads, Virginia, August 29, 1988.

NEWS MEDIA PLEASE CONTACT BETTY SCOTT (202) 382–6600

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382–6525.

Dated: December 22, 1989.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 89–30148 Filed 12–22–89; 2:16 pm]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of December 25, 1989 and January 1, 8, and 15, 1990.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of December 25

There are no Commission meetings scheduled for the Week of December 25.

Week of January 1—Tentative

Thursday, January 4

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of January 8—Tentative

Tuesday, January 9

10:00 a.m.
Briefing on Status of Development of Updated Source Term (Public Meeting)

Thursday, January 11

2:00 p.m.
Periodic Briefing by Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of January 15—Tentative

Wednesday, January 17

10:00 a.m.
Briefing on Governors' Certification of Low Level Waste Sites (Public Meeting)

Thursday, January 18

2:00 p.m.
Briefing on Status of Proposed Rule on License Renewal (Public Meeting)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

ADDITIONAL INFORMATION: By a vote of 5–0 on December 21, the Commission determined pursuant to U.S.C. 552b(e)

and § 9.107(a) of the Commission's rules that "Classified Safeguards Briefing" (Closed—Ex. 1), scheduled for December 22, be held on less than one week's notice to the public. Briefing by Executive Branch (Closed—Ex. 1) scheduled for December 22, postponed.

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING)—(301) 492–0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492–1661.

Dated: December 21, 1989.

William M. Hill, Jr.

Office of the Secretary.

[FR Doc. 89–30079 Filed 12–22–89; 11:18 am]

BILLING CODE 7590-01-M

federal register

Wednesday
December 27, 1989

Part II

Department of Transportation

Federal Railroad Administration

49 CFR Parts 217, 219, and 225

Alcohol/Drug Regulations; Miscellaneous Amendments and Republication; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 217, 219, and 225

[FRA Docket No. RSOR-6, Notice No. 30]

RIN 2130-AA43

Alcohol/Drug Regulations; Miscellaneous Amendments and Republication

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Final rule.

SUMMARY: FRA issues a final rule making amendments to its regulations on Control of Alcohol and Drug Use in Railroad Operations and related provisions of other rules. These amendments are necessary to make improvements in the regulatory program in light of experience and prior public comment, to correct and clarify certain provisions, and to conform the original provisions of the alcohol/drug rule to the amendments issued with the random testing rule in November of 1988.

DATES: This final rule is effective January 26, 1990, except that the revised procedures for collection of specimens for post-accident testing, 49 CFR 219.205, 219.207(d) and appendix C to part 219, are mandatory June 1, 1990. Compliance with all portions of this rule is authorized immediately.

ADDRESSES: Any petition for reconsideration should be submitted in triplicate to the Docket Clerk, Office of the Chief Counsel (RCC-30), FRA, Room 8201, 400 7th Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Walter C. Rockey, Jr., Executive Assistant to the Associate Administrator for Safety (RRS-3), FRA, Washington, DC 20590 (Telephone: (202) 366-0897), Dr. Sam J. Holley, Alcohol & Drug Program Manager (RRS-10), Office of Safety Enforcement, FRA, Washington, DC 20590 (Telephone: (202) 366-0501) or Grady Cothen, Special Counsel (RCC-4), FRA, Washington, DC 20590 (Telephone: (202) 366-0767).

SUPPLEMENTARY INFORMATION: The following abbreviations are used in this notice:

AAR—Association of American Railroads
ASLRA—American Short Line Railroad Association
BAC—Blood alcohol concentration.
DOT Procedures—Transportation Workplace Drug Testing Procedures (49 CFR part 40; 54 FR 49854, Dec. 1, 1989).
MRO—Medical Review Officer.
NIDA—National Institute on Drug Abuse, Alcohol, Drug Abuse and Mental Health Administration (the unit within the Department of Health and Human Services responsible for urine drug testing standards and certification of laboratories for the Federal workplace).
NPRM—The Notice of Proposed Rulemaking in this proceeding.
NTSB—National Transportation Safety Board
RLEA—Railway Labor Executives' Association

On November 21, 1988, FRA published in the **Federal Register** a final rule (53 FR 47102) making certain amendments to its regulations on control of alcohol and drug use in railroad operations (49 CFR part 219). The amendments added to FRA's existing alcohol/drug regulations the following: (i) Requirements for random testing, (ii) a prohibition on non-medical use of controlled substances at any time (a "drug-free rule"), and (iii) new urine drug testing requirements incorporating the DOT Procedures.

In issuing the random testing rule and associated amendments, FRA indicated that further rulemaking would be required to conform the existing provisions of the alcohol/drug regulations to the new requirements. FRA also indicated that it intended to address a number of issues that had emerged during administration of the existing program, including issues identified through an informal safety inquiry designed to review first-year operations (*see* 52 FR 2118; Jan. 20, 1987). Accordingly, on September 27, 1989, FRA published in the **Federal Register** a Notice of Proposed Rulemaking (54 FR 39646). On October 3, 1989, FRA published a notice of public hearing on the NPRM (54 FR 40856). The public hearing was convened in Washington, DC on October 17, 1989. Written comments were due by October 27, 1989; and comments received by November 15 were considered in preparing the final rule.

The specific proposals contained in the NPRM are described in the section-by-section analysis that follows. In general, the NPRM sought to clarify, correct or refine certain rule provisions that have been in effect since 1986; to conform prior rule provisions to those contained in the random testing rule and the DOT Procedures; to adjust other rule provisions to reflect the issuance of the drug-free standard; and to address a variety of technical issues regarding body fluid testing that are outside the scope of the DOT Procedures.

Since issuance of the NPRM in this proceeding, DOT has issued a final rule in its proceeding on the Transportation Workplace Drug Testing Procedures, 49 CFR part 40 (the "DOT Procedures") (54 FR 49854; Dec. 1, 1989). FRA has considered the need for editorial and policy consistency with 49 CFR part 40 in preparing this final rule.

In view of the circumstances prompting this issuance, i.e., the need to update and fine-tune existing FRA program requirements, it is important to note that these regulations in some cases reflect the peculiar circumstances of the railroad industry. This rule also reflects FRA's decision to address certain issues by regulation rather than use the program approval process or rely on guidance material. As such, the approach taken to various issues in the final rule may not be applicable to other transportation industries where program implementation particularities differ.

General Summary of Public Comments

Comments were received from most of the major labor organizations through the Railway Labor Executives' Association and individual letter submissions. Both the Association of American Railroads and the American Short Line Railroad Association filed comments on behalf of their members. Five freight railroads, three commuter railroads, Amtrak, the National Transportation Safety Board, and the College of American Pathologists (CAP) also submitted comments, as did a representative of three companies that provide medical review services.

This was the third significant notice of proposed rulemaking issued by FRA in this docket. Accordingly, the NPRM addressed a wide variety of detailed topics rather than broad themes. Comments reflected this same pattern, with most commenters accepting for purposes of the proceeding the basic outlines of the alcohol/drug regulatory program.

In general, rail labor witnesses viewed favorably the proposals dealing with conditions and safeguards for body fluid tests, including notice provisions. Railroad commenters generally objected to the increasing complexity of the regulations, which they believed create problems of administration in the field and unduly expose the railroads to civil penalty liability for violations. They favored continuity, except with respect to those aspects of the existing regulations they found cumbersome or otherwise objectionable. In general, commuter railroads that are public employers were more sympathetic to proposals regarding post-test monitoring

of identified drug users than were private employers.

A number of issues were raised that were beyond the scope of the NPRM. The College of American Pathologists (CAP) asked that implementation of random drug testing be postponed (from January 16, 1990) and that CAP-accredited laboratories be recognized as "certified" for purposes of the regulations. CAP alleged lack of capacity in the laboratories certified by the Department of Health and Human Services/NIDA, but provided no detail. FRA believes that NIDA-certified laboratories have sufficient capacity to handle transportation employee specimens. This issue has been separately addressed by DOT in finalizing the DOT Procedures, and FRA sees no reason to depart from the rationale expressed in that final rule document.

Rail labor representatives indicated that supervisors should be included in mandatory alcohol/drug testing programs "as a matter of fairness and safety." FRA has previously indicated that it will not re-examine the coverage of the rule until all elements are in place and implemented with respect to those employees performing functions already covered.

Labor representatives also renewed their call for a recognized right of "mark-off" when an employee receives a short call but has recently consumed beverage alcohol. FRA has previously indicated that this issue should be handled through cooperative agreements on the properties. Mark-off rights can be provided without the likelihood of abuse (and without encouraging use of alcohol subject to call) only to the extent they are checked by the discipline of peer concern.

As further discussed below, labor representatives also urged that all body fluid testing be controlled by the Federal regulations and that duplicative tests be eliminated.

A group of medical review officers (MROs) sought various changes to regulations dealing with the MRO function. These were generally matters that have subsequently been addressed in the final rule on the DOT Procedures, and FRA finds no basis in the comments to reconsider its own rules on point. Unlike CAP, the MROs urged that random testing begin on schedule.

Section-by-Section Analysis

Editorial Amendments

Editorial, clarifying and conforming amendments were generally not addressed by the comments received (except to the extent noted below). These amendments have been adopted. The entire rule text as amended is republished for the convenience of the regulated industry.

Part 219

Subpart A—General

Section 219.3 Application

Small railroad exclusion:

Proposal rule. The rule as issued in 1985 excludes railroads employing 15 or fewer Hour of Service Act employees from the requirements for pre-employment testing and voluntary referral/co-worker report policies, and from the authority for reasonable cause testing. The 1988 random testing provisions exclude only those railroads that both meet the 15 and under test *and* that operate exclusively on their own lines (except as necessary for purposes of interchange). FRA proposed to conform the general exclusion to the random testing exclusion. Under the NPRM, small railroads could not operate on the tracks of another railroad and still qualify for the exclusion.

Comments. The American Short Line Railroad Association (ASLRA) opposed the amendment as unnecessary for safety and difficult to interpret and apply, but did not propose a more definite formulation. The National Transportation Safety Board (NTSB or "the Board") opposed any exclusion on the ground that hazardous materials or oversized loads could originate on any carrier and that an incident could go unreported. The Railway Labor Executives' Association approved the narrowing of the exclusion, but also favored deleting it altogether.

Final rule. The amendment is adopted as proposed. Legitimate safety concerns are presented where movements originating on small railroads traverse other portions of the national system. FRA intends the phrase "except as necessary for purposes of interchange" to be construed with appropriate emphasis on the adjective "necessary." Where interchange-related trackage rights are used for operating convenience of either carrier, the small railroad should comply with all relevant provisions of part 219.

FRA has previously explained in detail why the exclusion for small railroads is appropriate to limit regulatory burdens and why it is consistent with safety. FRA believes that small railroads should concentrate available resources on basic safety concerns such as track, equipment and proper training of personnel. The close supervision provided to the employees of very small railroads, together with lower operating speeds and traffic densities, make it much less likely that employee impairment will go undetected and cause a serious accident.

Rail carriers and other railroads:

Proposed rule. The NPRM included a proposed definition of "railroad" that was identical to that contained in section 202(e) of the Federal Railroad Safety Act, as amended by the Rail Safety Improvement Act of 1988. No changes were proposed with respect to applicability to non-carriers.

Comments. Commenters noted the possibility that the proposed rule might be construed to reach plant railroads and other non-carriers operating outside the general system of railroad transportation.

Final rule. FRA agrees with commenters that the applicability of the regulation could be altered by adoption of the subject definition. This is particularly true in light of amendments to the Hours of Service Act also contained in the 1988 legislation (Section 16, Pub. L. 100–342, amending 45 U.S.C. 61(b)(1)). Accordingly, FRA has provided an appropriate exclusion from applicability for plant railroads in § 219.3.

Section 219.5 Definitions

"Impact accident":

Proposed rule. FRA proposed to clarify the definition of impact accidents by excluding raking collisions caused by derailment of rolling stock or operation of equipment in violation of clearance limitations.

Comments. Railroads generally opposed the clarification on the ground it would needlessly complicate the rule. One commenter professed not to understand the concept of "raking collision," notwithstanding the use of the term in the accident/incident reporting system for many years.

Final rule. The impact accident criterion was established to focus attention on the operator or controller of moving equipment. In the three and one-half years that the regulation has been in effect, testing events have primarily consisted of head-on, rear-end, or side collisions, striking a bumping post or the collision of equipment during switching operations. This was the intent of the regulatory provision, and it has functioned as intended. The only significant problem was that some railroad supervisors did not realize that an impact accident was required to meet the minimum damage threshold; and FRA has further clarified this matter in this rulemaking.

However, FRA has been asked to make interpretations of the regulations over the years and has attempted to

keep those interpretations as clear as possible. The interpretation that raking collisions (including derailments that result in an impact, and striking of structures within clearance limitations) did not meet the impact testing requirement has been provided to railroads in response to inquiries and following actual events. The clarification was provided to continue FRA's focus on causal factors directly under the control of those involved, clarify a grey area, and appropriately limit testing events. It is more beneficial to provide this guidance in advance of a testing event, since otherwise specimens may be gathered that cannot be analyzed under this subpart. Accordingly, the clarification that these events do not qualify for testing is an appropriate administrative provision and is adopted as proposed.

"Independent":

Proposed rule. FRA proposed to amend this term as it applies to railroads and medical facilities under common control.

Comment. One commenter impliedly objected to the further clarification of the meaning of "independent" in relation to use of independent medical facilities for post-accident and reasonable cause testing. The commenter had previously obtained an opinion that the current rule does not bar use of the clinic of an affiliated entity where the arrangement did not offend the literal language of the regulation and there was evidently no issue concerning operational control of the facility by the railroad itself. This commenter wished assurance that the amendment would not alter the previously issued opinion. In view of the discussion of use of independent medical facilities elsewhere in this preamble, FRA believes that amendment of the definition at this time would be disruptive and imprudent. *See* discussion of independent medical facilities under post-accident and reasonable cause testing.

"Railroad":

Proposed rule. FRA proposed to define railroad as it is defined in the Rail Safety and Service Improvement Act of 1988.

Comments. As discussed further under § 219.3, above, some commenters were concerned that the new definition would sweep in additional regulated entities.

Final rule. Adopted as proposed. The applicability issue is addressed in § 219.3.

"Railroad property damage":

Proposed rule. The NPRM proposed to clarify the means of calculating damage to railroad property. The clarification of this concept included a provision to the effect that replacement of passenger equipment shall be calculated based on the cost of acquiring a new unit for comparable service.

Comments. Railroad commenters opposed the passenger equipment rule on the ground that much passenger equipment would never be replaced with a new unit. It was suggested that calculation of the cost of an "equivalent unit" would more clearly reflect economic loss. Amtrak suggested that a floor of $50,000 per passenger unit destroyed could be used to avoid serious underestimation of the severity of the accident. NTSB believed antiquated equipment should be a separate category and suggested that "insured value" be employed. On an issue not raised in the NPRM, NTSB recommended inclusion of lading in the property damage estimate.

Final rule. Resolution of the passenger equipment issue is particularly difficult because of the limited markets for various types of passenger equipment and the fact that certain antiquated equipment in excursion service would likely not be replaced at all if destroyed. The possibility thus exists that an accident with considerable physical damage might occur without the monetary threshold being met (e.g., for an impact train accident or major train accident); and such an accident has, indeed, occurred. This concern is mitigated somewhat by the fact that FRA is including passenger train accidents with injuries as a separate category of qualifying events; however, that provision provides latitude for the responding officer to exclude employees from testing. (See discussion under § 219.201, below.)

FRA believes that "new unit" is the appropriate standard for valuing passenger equipment in order to ensure testing where substantial physical damage occurs to passenger equipment. This standard is adopted exclusively for purposes of this subpart and does not affect reporting under 49 CFR part 225. (Railroad supervisors responding to the scene of an accident would have no way of knowing the "insured value" of equipment; and most historic equipment is likely not insured (except with respect to liability) in any event.)

FRA has repeatedly rejected suggestions that the cost of lading be included in computations of property damage for the purpose of post-accident testing. Railroad supervisors will not be able to readily determine cost of lading and may have an economic incentive to understate it. The extent of damage to railroad equipment and structures is, in any event, a much better indicator of the degree of risk posed to persons by the accident than the happenstance of whether a coal car or auto carrier was involved. The NTSB suggestion is, again, not adopted.

Section 219.9 Responsibility for Compliance

Paragraph (a) (penalty liability):

Proposed rule. FRA proposed to revise this paragraph, which deals with liability for civil penalties, in the same manner certain other FRA regulations were amended following enactment of the Rail Safety Improvement Act of 1988. *See* 53 FR 28594, July 28, 1988; 54 FR 33227, Aug. 14, 1989. Certain language from the existing section (the duty of due diligence owed by the railroad to prevent prohibited alcohol/drug use) was to be displaced to a new § 219.105. Other language that had the effect of limiting liability was proposed to be deleted.

Comments. The Railway Labor Executives' Association commented that it believed the proposed language would be difficult to enforce.

Final rule. The revised section is adopted. The language preserves a basic strict liability standard for railroads. The standard continues to be qualified by § 219.105 with respect to the company's responsibility for employee violations of §§ 219.101 and 219.102. To the extent the substantive regulatory provisions call for good faith determinations (§ 219.201(c)), liability attaches only when the particular standard of conduct is offended. The provision retains the language regarding individual liability for willful violations, incorporating the standard set by statute. However, nothing in the subject amendment dilutes the railroads' present responsibility for compliance or liability for civil penalties; indeed, in certain respects responsibility is strengthened. However, FRA has also added appropriate language to subparts C and D that clearly prohibits testing performed under those provisions without observance of the required conditions and safeguards.

Paragraph (b) (joint operations):

Proposed rule. FRA proposed to add a provision governing the responsibilities of railroads in the context of joint operations, particularly with respect to compliance with Subparts C and D of the rule (post-accident and reasonable cause testing). Host railroads would be primarily responsible for determining qualifying events and providing for testing.

Comments. In general, commenters supported or had no position on this issue. However, rail labor

representatives noted that it is often difficult to obtain cooperation of personnel from other railroads in the context of ensuing disciplinary proceedings.

Final rule. The amendment is adopted. FRA has also added language providing that where the host railroad has been involved in a testing event, it shall make necessary witnesses and records available to employees subject to a related investigation on a reasonable basis. FRA does not intend by this provision to require travel of witnesses where a telephone interview or other means would permit development of the facts.

Section 219.11 Consent Required; Implied

Section 219.11 addresses a wide variety of general issues concerning body fluid testing, providing general standards that apply to other subparts of the rule, as appropriate. Experience under the existing rule has indicated the need for various clarifications. In the final rule, the section is redesignated "Geneal conditions for chemical tests" to better reflect its subject matter.

Professional conduct of test procedures. Both existing regulations and the NPRM touched on issues of confidentiality with respect to the testing process. However, specific language of the discrete conduct of the breath or body fluid collection was not included. Labor representatives noted occasional, significant problems with the manner in which chemical tests are handled by railroad supervision; and proposed language addressing "confidentiality" was offered. The general concern expressed was that testing not be done in a manner that is accusatorial or unnecessarily embarrassing to the employee, particularly where it is necessary to use a medical facility where other members of the public may be present.

FRA agrees that discretion and good judgment should be used by employer representatives involved in the conduct of chemical tests. However, the precise issue at stake is not the "confidentiality" of the testing process. Although effort can be made to avoid unnecessary disclosure, it would be virtually impossible to keep the fact that a test was conducted "confidential," and existing regulations deal only with the confidentiality of test *results.*

Section 40.23(d)(1) of the Transportation Workplace Drug Testing Procedures (49 CFR part 40) provides that "Employer collection procedures and training shall clearly emphasize that the collection site person is responsible for . . . carefully ensuring the modesty and privacy of the employee, and is to avoid any conduct or remarks that might be construed as accusatorial or otherwise offensive or inappropriate." FRA believes that it is manifestly reasonable to require similar discretion on the part of supervisors involved in the testing process and encourages railroads to include similar cautions in their training programs for supervisors. However, given the wide variety of issues that could arise related to the discretion with which testing events are being handled and the difficulty of enforcing standards that relate to manner or content of expression, FRA does not believe that a clear regulatory standard could be fashioned for this purpose (or could be enforced equitably, should one be fashioned). The language proposed for this purpose by a commenter is not sufficiently precise to provide guidance or allow for sure enforcement, and the issue is arguably beyond the scope of the NPRM. Accordingly, FRA has not adopted regulatory language on this topic. However, FRA stresses that railroads should include appropriate cautions in their training programs for supervisory personnel.

Paragraph (b)(2) (Medical Treatment):

Proposed rule. FRA proposed to make explicit its policy that necessary medical treatment will be afforded priority over collection of body fluid samples following an injury-producing accident or incident. The provision would also expressly bar use of catherization to obtain a urine sample.

Comments. Commenters supported or had no position on the proposed amendment.

Final rule. Adopted as proposed.

Paragraphs (b) (3), (4) (Flight and Tampering as Refusals):

Proposed rule. FRA proposed to make explicit the judgment that failure to remain available as required after an accident, and donor tampering with a urine specimen, are acts that constitute a refusal to provide the required body fluid sample.

Comment. No objection was made to the clarifications. However, the AAR proposed that a refusal to sign a properly drafted consent form should also constitute a refusal.

Final rule. Paragraphs (b) (3) and (4) are adopted as proposed.

The question of whether a refusal to sign a form of consent required by the collection entity (e.g., a hospital or clinic) constitutes a refusal is a difficult one, since it is not possible to anticipate all forms of consent that may be presented for signature; and the employee will not have counsel present at the time of collection to provide advice. FRA has already provided in paragraph (d) of this section that the employee shall evidence consent to the collection, release of the specimens for analysis, and reporting of results to the railroad's MRO. Violation of that standard would provide a basis for enforcement action by FRA or could be used as further support for a railroad disciplinary action (e.g., for insubordination). However, depending on the circumstances, a 9-month disqualification (as is provided in the post-accident testing and random testing contexts) may not be appropriate. Accordingly, the subject paragraph has not been amended.

Paragraph (d) (Evidence of Consent; Waivers and Releases):

Proposed rule. FRA proposed to broaden and strengthen the requirement that consent to body fluid tests be evidenced, as necessary, by completion of a properly drawn form of consent. The proposal included new langauage making explicit the policy of the regulations that the employee is not required to waive rights in relation to the employer, and any such waiver is void. Related language in appendix C stated that the employee may not be required to waive rights the employee may have in the employment relationship or to release or hold harmless the medical facility with respect to negligence in the collection.

Comments. Employee representatives supported the language barring any requirement that employees waive rights or release liability. Railroad witnesses noted that restrictions on the content of consent forms could result in some medical facilities declining to conduct the collections. Amtrak suggested that employees be required to complete forms of consent, but that the language making void waivers as between the employer and employee be extended to the employee-collector relationship.

Final rule. The purpose of requiring completion of a consent form is exclusively to facilitate the body fluid collection by assuring the collection entity (other than the employer) that, as between the employee and the collector (or laboratory), there is a valid consent to the procedure. Completion of the consent form should not waive any legitimate rights that the employee may have, including the right to contest the basis of the test and to insist that the collection or analysis be done professionally and with reasonable care.

FRA can clearly provide that waivers of rights otherwise obtaining in the employment relationship are void, and does so in the final rule. There is, however, significant doubt whether FRA

could void a waiver, release, or undertaking to hold harmless or indemnify which is executed by the employee to the benefit of a non-regulated third party. It can be argued, therefore, that employee rights are adequately protected only if the employee exercises self-help at the collection site by declining to sign excessively broad forms of consent. On the other hand, it is likely that most of the more egregious examples of overbroad consent/waiver documents are void as against public policy under prevailing state law; and all citizens are accustomed to executing hospital admissions documents containing "fine print" as the price of obtaining care. Further, where a medical facility is used for collection, it is not reasonable to assume that the admission documents will be narrowly drawn for the purpose of employment-related body fluid collections; and a certain amount of surplusage related to consent to necessary medical care can be expected to appear thereon. Increasingly, as well, medical facilities are employing forms of consent that seek to apportion liability for negligence as between professional staff (which may be separately incorporated) and the institution. To the extent a responsible party is available to respond in damages for a negligent collection, this type of commerically reasonable provision should not be thrown up as a bar to body fluid testing under the rule.

FRA believes that, as a practical matter, the employee will be fully protected from possible harm by virtue of the employer's responsibility for selection of the collection entity and the provision of clear standards for acceptable collections. The final rule would make void any attempted waiver of rights the employee may have in the employment relationship. Nevertheless, FRA cannot require that employees sign away their rights against third parties. Accordingly, the final rule provision has been further edited to incorporate the basic standard included in the proposed Appendix C (Paragraph 2.12. note), with stylistic revisions to parallel the Transportation Workplace Drug Testing Procedures (49 CFR 40.25(f)(22)).

Paragraph (g) (Discretion of Railroad, Use of Specimens):

Proposed rule. FRA proposed to adopt general language stating that the rule does not restrict any discretion available to the railroad to conduct other alcohol/drug tests (in lieu of the current § 219.305(e)). FRA also proposed explicit language to the effect that no testing may be performed on urine or blood samples provided under this part.

Comments. Labor organizations urged that FRA should completely occupy the field of body fluid testing, so that the current patchwork of private and Federal programs would be integrated into a single program under FRA regulatory authority. It was urged that better safeguards for testing, and better remediation of problems that may arise in the testing process, could be achieved in this manner.

Final rule. Adopted as proposed. FRA understands the concerns raised by labor representatives regarding the lack of uniformity and lack of central control inherent in the current mixture of Federal and private body fluid testing programs. However, as a general rule FRA does not agree that the existence of separate railroad programs presents a safety issue warranting regulation under the Federal Railroad Safety Act of 1970. Railroad testing that goes beyond the Federal requirements, such as testing in connection with periodic or return-to-duty physical examinations, contributes to prevention of drug abuse by covered employees. For-cause testing programs that allow greater exercise of supervisory discretion to test may raise labor relations for negotiation or adjustment under the Railway Labor Act, but do not implicate Constitutional concerns so long as they are not conducted under color of Federal law. Total occupation of the field by FRA could very well lead to a "lowest common denominator" effect which could actually reduce safety. Despite the undeniable problems that the current mix of public and private action creates, current law also allows for innovation and adaptation to special circumstances. From the point of view of safety, no reason appears why FRA should intervene to restrict railroad discretion.

Section 219.19 Field Manual

This section is administrative in nature and was not the subject of any comment. The amendment has been adopted as proposed. FRA will update the Field Manual as soon as is practicable.

Section 219.23 Notice to Employees

Proposed rule. FRA proposed a new section to require that breath and body fluid testing events under the rule be accompanied by notice of two types of information. First, where the test is conducted under the authority of part 219, notice of this fact must be provided. Second, the employee must be informed of the basis of the test, i.e., whether conducted under the mandatory post-accident testing provisions, for reasonable cause (and, if so, whether for reasonable suspicion of impairment, violation of a specified operating rule, or based on a reasonable suspicion that the employee contributed to the cause or severity of a reportable accident/incident), based on random selection, or as a return-to-service or follow-up test under the new § 219.104.

Comments. Some objection was expressed by railroad representatives on the basis of regulatory burden and possible difficulty in providing forms of notice. This provision had originally been proposed by the rail labor organizations and apparently continues to have their support.

Final rule. Adopted with an amendment. The amendment clarifies the fact that the custody and control form may be used as the form of notice for both purposes, if properly annotated. The Transportation Workplace Drug Testing procedures provide sufficient flexibility to allow the addition of pre-printed check-offs of this information. Alternately, the block for "reason for test" can be hand-annotated with appropriate language (e.g., "FRA reasonable suspicion"). As a third alternative, the railroad may use a separate form of notice.

FRA believes this notice requirement is critical to achieving disciplined and responsible use of Federally-authorized or mandated testing authority. A breath or body fluid test under the rule is a Fourth Amendment search burdened by appropriate conditions and safeguards. Confusion of such search with a privately conceived and administered test may lead to significant adverse consequences, including future problems with respect to obtaining employee cooperation. Experience has taught that railroad supervisors sometimes confuse railroad and Federal testing programs and occasionally act under color of Federal law without observing the required safeguards. Requiring this notice will help to increase supervisor awareness of the sensitivity of the procedure, foster clear decision-making by requiring appropriate focus on the criteria for testing, and will clearly alert employees to the rights and remedies attendant to the test.

Subpart B—Prohibitions

Section 219.101 Alcohol and Drug use Prohibited

Proposed rule. Though not setting forth a regulatory amendment, FRA asked for comment on the current prohibition against an employee going or remaining on duty with a blood alcohol concentration (BAC) of .04% or greater.

Comments. The NTSB, two railroads and the American Short Line Railroad Association supported a "no alcohol" standard. A railroad commenter expressed concern that the current standard implies acceptance of some alcohol use prior to reporting and stated that some employee representatives have even used the .04% standard to oppose the traditional "no alcohol" standard of Rule G before one or more state legislatures. Rail labor representatives opposed reduction of the prohibited alcohol level, noting the possibility of trace alcohol from legitimate medications and other sources. A major western railroad supported retention of the .04% level on the ground no material impairment is shown below .04% and also expressed concern over alcohol in cough medicines and endogenous alcohol associated with non-disqualifying disease (e.g., diabetes). A major commuter railroad opposed adoption of a .00% standard, noting that an employee receiving a short call could not know whether trace alcohol remained in his system. The railroad indicated that it treated levels at or below .02% as not warranting action, while levels of .03% and above have been viewed as indicative of possible impairment. This commenter recommended that the prohibition be set at greater than .02% (i.e., .03%, or .01% below the current level). The College of American Pathologists (CAP) declined to recommend a prohibited level, but did note that for practical purposes a ".00%" standard would not be usable. CAP suggested that .02% would "allow for * * * methodological problems."

Rail labor representatives again asked for a Federally-specified right to "mark-off" without penalty where the employee has used beverage alcohol and receives an unexpectedly "short call". They cited cases where employees sought to mark-off but were told to report notwithstanding the fact that they reported being under the influence of alcohol.

Final rule. The NTSB and most railroad commenters have urged since the beginning of FRA regulatory efforts in 1983 that any detectable level of alcohol be prohibited. It is important to note that the current rule already forbids use of any alcohol on the job and working while impaired (regardless of blood alcohol concentration). A pre-duty abstinence period has not been specified, because of the unpredictability of many railroad assignments; however, railroad rules forbid use of alcohol while "subject to duty;" and those rules continue to be construed to bar reporting to work while having alcohol in the blood that results from voluntary ingestion. Results for reasonable cause breath tests may be used for disciplinary purposes and are deemed "positive" at or above .02%. Other results of scientifically valid body fluid analyses may also be used down to the established cutoff. Importantly, results of post-accident and other testing programs reflect the fact that the great majority of railroad employees are, in fact, abstaining from the use of any alcohol; and in those cases where alcohol is present in employees responsible for accident causation, levels are typically (though not always) well above .04%.

The precise issue presented is the level at which the *per se* prohibition of blood alcohol concentration should be set. Setting a level of .00% is unrealistic with respect to the available detection capability. Even if the detection capability existed, an absolute prohibition could penalize employees who had inadvertently ingested *de minimis* quantities of ethanol in various commonly used preparations. The true choice presented to the agency, therefore, would appear to be whether the proscribed level should be reduced from .04% to .03 or .02%. Nothing in the comments received adds significantly to the record already compiled on this issue in the above-captioned docket.

(It should be noted that the weight of scientific evidence continues to support the view that there is no mechanism for production of detectable levels of ethanol in the human subject. However, other volatiles may sometimes be present in specimens from diabetics; and insufficiently specific testing methodologies could confuse these compounds with ethanol.)

FRA further notes that the Secretary of Transportation is examining this issue in the context of an Advance Notice of Proposed Rulemaking on Alcohol Abuse Prevention (54 FR 46326; Nov. 2, 1989). Thus, in the absence of persuasive reason to make a change at this time, FRA believes that it is wise to leave the current prohibited level in place, without prejudice to the possibility of making a further adjustment at a later date.

For whatever benefit it may have, FRA restates its policy judgment that any use of alcohol is inconsistent with the responsible performance of safety-sensitive duties.

The issue of employee mark-offs is beyond the scope of this proceeding and has been addressed previously by FRA. FRA continues to encourage responsible labor-management agreements and cooperative programs that include limited mark-off rights with active peer prevention and intervention programs.

Section 219.103 Prescribed and Over-The-Counter Drugs

FRA proposed a clarifying amendment regarding prescriptions issued by more than one medical practitioner, which has been adopted as proposed.

A related comment by a major commuter railroad suggested that the determination required by this section be assigned to the MRO or railroad medical director, where the employee is receiving medications from more than one treating physician. FRA agrees that the railroad medical officer has an important role to play (see § 219.103(b)); however it is not clear that the number of treating physicians (as opposed to the number and types of medications) provides an appropriate basis to require railroad medical officer or MRO intervention; and representatives of other railroads have indicated in the past that prompt review of such information is not uniformly available across their rail systems. Evolution of the MRO system may permit later refinement of the rule, following notice and opportunity for comment on this issue.

Section 219.104 Responsive Action

Proposed rule. FRA proposed to add a new section addressing the action a railroad should take in the event of a positive result from a body fluid test conducted under part 219. The section included general removal and return-to-service language derived from § 219.605 (random drug tests) and hearing procedures derived from the current § 219.213 (post-accident testing materials). The NPRM proposed to require both alcohol and drug tests when an employee is returned to service after being evaluated and (as necessary) treated. FRA also inquired whether the Federal rule should specify a minimum period of disqualification for employees testing positive a second time.

Comments. AAR (supported by commenting railroads) viewed the section as unnecessary Federal interference with contractual agreements and railway labor relations. The Association specifically cited the return-to-service provisions of paragraph (c) as being unneeded and unsupported by FRA's rationale.

With respect to the hearing right, AAR noted that many railroads have agreements with their employees under which employees may waive hearing rights in exchange for reinstatement following substance abuse treatment. Other railroads treat initial positive

results as occasions for medical disqualification of employees; and it was represented that no hearing is necessary in this setting since such disqualificatons are not handled as disciplinary proceedings. One railroad described this procedure as "the law of the shop," and another noted that FRA had not cited abuses of this procedure. One commenting railroad recommended that FRA insert the current language of § 219.605(c)–(e) in lieu of the proposed provisions. Moreover, labor representatives supported the hearing requirements; and the Brotherhood of Locomotive Engineers specifically contended that medical disqualification procedures were being used to deny employees effective post-suspension hearings.

Two railroads believe the proposed paragraph (b) was ambiguous as to the time a hearing would be required. To the extent the provision might be retained, the commenters asked that it be made clear that any hearing right would obtain following removal from service, not before.

Amtrak believed the requirements for follow-up tests should be deleted or should allow on-site screening. Amtrak added that any follow-up testing requirements should be limited to follow-up of those testing positive under part 219 procedures. Several commenters noted the apparent logical inconsistency of requiring that employees be in duty status at the time of return-to-service testing, and one railroad saw the issue as one of compensation (while also expressing concern that this could lead to discipline of an employee who was abstinent but whose system had not yet cleared of drug metabolites). Labor representatives stated that a 5-year follow-up period was too long, believing that this should be left to the discretion of the railroad. New Jersey Transit (NJT), however, supported follow-up testing as an integral and necessary component of any rehabilitation program and advocated its incorporation in the regulations. NJT suggested that follow-up testing should be conducted with greater frequency immediately after return to service and with lesser frequency for an extended period thereafter.

The question of return-to-service and follow-up alcohol testing drew conflicting comments from the industry. The AAR took the position that prior drug use was not a good predictor of possible later problems with alcohol. A railroad medical director providing testimony at the public hearing indicated that the recovering drug abuser may turn to other psychoactive compounds. However, the medical director would make alcohol testing optional, given the difficult technical issues involved. A written statement signed by another medical director opposed follow-up alcohol testing on the ground that trace alcohol levels would prove difficult to interpret.

Railroad commenters also objected to waiting until the MRO verfication of a positive result before removing the employee from covered service. Contrary to logic, the literal language of the rule, and FRA's prior expressions of intent, some railroad commenters continued to contend that immediate removal of an employee on receipt of an unverified laboratory report was already authorized by the rule (citing § 219.707(d)). Implausibly, the railroads asked for confirmation that this was the case.

Union Pacific Railroad responded to FRA's query on disqualification of second offenders by stating that all second offenders must be dismissed.

Another commenter expressed concern that the railroad's medical officer was apparently excluded from decision-making in connection with follow-up.

Final rule. The comments on this section illustrate both the conceptual difficulty of dealing with employer response to detected alcohol and drug use and the resistance that is produced by perceived "Federalization" of that process. In FRA's judgment, the decision to require removal from service of those testing positive in random testing (§ 219.605), a decision that paralleled decisions made by other DOT modal administrations, inevitably required revisiting this issue in the context of other forms of Federal testing for alcohol and drugs.

The first basic issue is whether FRA should mandate removal from service where it is clear that an employee has violated § 219.101 or § 219.102, based on an MRO-declared positive test (e.g., finding alcohol at or above .04% or presence of controlled substances not used with medical authorization). FRA is convinced that the public safety should not be left to depend on voluntary action; and, indeed, compliance with the current § 219.9 (proposed § 219.105) would effectively require this action in any event. Rather than leave the matter unaddressed, FRA believes that basic minimum safeguards should be clearly stated. This is consistent with the decision previously made in the random testing context.

The second issue is whether Federal regulations must or should expressly preserve the right of a prompt and effective hearing incident to the mandated suspension action. This is a mixed issue of Constitutional, administrative, and labor relations law for which there is presently no clear answer. FRA believes that the issue should be viewed in a very practical way with appropriate focus on the subject matter and existing mechanisms for decision making. Certainly the employee's right to discuss with the MRO the positive test result includes important due process protections. As clarified in the recent revision to 49 CFR part 40 (54 FR 49854; Dec. 1, 1989), the MRO will be reviewing the chain-of-custody documentation as well as considering all relevant biomedical factors. Although MRO guidance for the Federal employee testing program bars consideration of claims of innocent ingestion, no such bar is imposed on the discretion of the MRO in the transportation industry context. In many important respects, this opportunity for a medical interview provides the most useful kind of hearing opportunity that could be provided, since the "fact finder" is specially qualified to deal with the subject matter. It is especially valuable because it occurs prior to any adverse action.

With respect to post-removal rights, existing regulations also provide for a retest of the specimen either at the same lab or another certified lab (§ 219.709). Random testing provisions preserve any further due process rights due the employee under the contract (§ 219.605).

Against this background, the railroads strongly contend that further Federal intervention is unnecessary and would only disturb existing dispute resolution procedures that are well-established, clearly understood, and tailored to the context of railway labor relations. Rail labor representatives suggest that attempts to handle employees through medical procedures may have the effect of cutting off procedural rights that would otherwise be available.

FRA agrees that where the positive is treated as a basis for disciplinary action, existing collective bargaining agreements very clearly do provide for prompt review; and the adjustment processes of section 3 of the Railway Labor Act (45 U.S.C. 153) provide an additional measure of protection for the employee. This "disciplinary model" is widely used to determine rights in the employment relationship. Two additional situations must be considered, however.

The use of medical disqualification to remove the employee from service presents a special case. Administration

of railroad medical standards has traditionally been entrusted to the discretion of the railroad; and, through agreement or established practice, medical dispute resolution is normally available to resolve any disagreements between the employee's personal physician and the company physician. Railroads have increasingly come to utilize a medical model for dealing with substance abuse problems. This model offers the benefits of confidentiality that is enforced by professional standards and features a positive and helpful approach to treatment of underlying substance abuse disorders—rather than application of measures that may be viewed as punitive. Because the entire course of handling is controlled by a medical officer (with assistance from employee assistance professionals), the potential for arbitrary or uninformed decision-making is greatly reduced. Railroads employing this model are naturally reluctant to have it compromised by automatic resort to adversary proceedings involving line railroad officers, collective bargaining representatives, stenographers, lawyers and arbitrators.

The medical model has some limitations, as well. Application of the model to the consequences of body fluid analysis for alcohol and drugs is less than a perfect fit, since disciplinary or quasi-disciplinary consequences will certainly obtain should the employee experience a relapse into substance abusing behavior. The approach is not well suited to the determination of non-medical facts. Such facts may relate to claimed error or fraud with respect to the collection of the specimen and resolution of claims of innocent ingestion (to the extent such resolution turns on the credibility of the subject employee or a third party).

It is arguable that the limitations of the medical model are more apparent than real. Drug testing procedures have been established to severely limit the possibility of error, and fraud is at worst a very remote possibility, as is any serious claim of innocent ingestion. Railroads using the medical model nevertheless must be on guard not to foreclose appropriate exploration of any such defenses.

To the foregoing discussion of the disciplinary and medical models must be added the model of employment outside the scope of a labor agreement. In the case of a railroad whose employees are not subject to a collective bargaining agreement, there is no provision in existing law for a prompt post-suspension hearing. Although the matter could be taken to the National Railroad Adjustment Board (NRAB), and part 219 would undoubtedly be treated as defining the terms and conditions of employment in that context, the NRAB cannot be expected to provide a prompt hearing in each case. The fact that a very small percentage of employees may not enjoy the same quality of protections already available to the great majority does not, of course, warrant disruption or replacing those available to the great majority; but neither may the minority be ignored.

After consideration of the comments and the background just described, FRA has determined that the proposed language should be retained but modified to more clearly recognize the appropriateness of medical model and non-adversary handling of the great majority of positive cases, while preserving the right of the employee who truly disputes the test result to waive medical handling and claim the hearing right that has historically attended disiplinary charges in the railroad industry. FRA appreciates that this may be inconvenient, and in some cases counterproductive to therapeuatic handling of an employee who needs help and may eventually be persuaded to enter the path toward recovery; but in FRA's view fundamental rights must be recognized nevertheless.

FRA believes that the issues of aftercare and follow-up testing will prove critical to the success of other alcohol and drug measures currently being implemented or which have been implemented in the past three and one-half years. It is clear from accident investigation records that relapses do occur among some employees who are treated for alcohol and drug abuse. It is also clear that follow-up after primary treatment is not uniformly thorough or of sufficient duration at the present time. FRA will endeavor to leave the railroads sufficient latitude to fashion their own aftercare and follow-up testing policies and to tailor requirements to individual cases based on the exercise of professional clinical judgment. However, FRA will insist that the effort be made and will closely review company programs to ascertain their success.

In this rulemaking, FRA proposed to extend aftercare and follow-up testing requirements to those employees found in violation of § 219.101 or § 219.102 based upon a post-accident or reasonable cause test, as well as a random test. Commenters have indicated no reason why FRA should distinguish other detected alcohol/drug use from drug use detected in the course of random testing, and the conforming amendment is thus adopted.

FRA also proposed that return-to-service and follow-up tests (the frequency and duration of which are left to the railroad within a 5-year window) include both alcohol and controlled substance testing, regardless of the impairing compound providing the basis for removal. FRA recognizes the complexity of the issues associated with alcohol testing. FRA also recognizes that alcoholics may be more likely to return to alcohol and marijuana users to marijuana. However, it is clearly the case that chemical dependency (or simple abuse of psychoactive substances) can and very often does manifest itself in misuse of a variety of mind and function-altering compounds. Monitoring use of the primary drug of choice may very well drive the abuser to another drug, if that avenue is left open, while closing off most attractive avenues to abuse may encourage continued recovery.

Nevertheless, it is clear that some railroads will resist what they view as interference by Federal regulations in their follow-up of recovering substance abusers. The measures proposed by FRA do not include clearly defined minimum numbers of tests or specify a minimum duration for follow-up testing. In this context, adding requirements for routine alcohol testing that railroads perceive not to be in their interest may result only in truncated follow-up. Accordingly, alcohol follow-up requirements are deleted, except that a one-time blood or breath alcohol test is required prior to return to service in the case of an employee removed from service for prohibited alcohol use. FRA believes this issue may benefit from the further study now under way in the Secretary's advance notice proceeding and reserves the right to propose additional requirements at a later date.

Comments in this rulemaking indicated continued acceptance of the proposition that second offenders under alcohol/drug rules should be dismissed from employment. There was no showing that a parallel Federal requirement is needed; and none is included in the final rule.

On the issue of physician involvement in follow-up raised by one commenter, FRA notes that the concept of the EAP counselor, as defined in § 219.5, includes medical personnel. Each railroad is free to define its evaluation, treatment and follow-up system to include appropriate involvement by representatives of the health care and allied professions who are necessarily involved. No confidentiality problem is presented by

medical participation in this process; indeed, such participation would normally be expected.

Section 219.105 (Railroads' Duty To Prevent Violations)

This section is adopted as proposed, except that in recognition of comments regarding the enforceability of the proposed rule the "actual knowledge" standard previously contained in § 219.9 is carried forward in the new section, in lieu of the "willful" standard proposed.

Subpart C—Post-Accident Toxicological Testing

Subpart C mandates blood and urine testing for alcohol and drugs following certain qualifying events, an average of approximately 175 per year. These events fall into the categories of "major train accidents," "impact train accidents," and "employee fatalities in train incidents." Full toxicology provides blood levels of drugs and metabolites detected, as well as urine data. This information is used in accident/incident investigations and also assists in identifying employees who present a risk, while adding to the overall deterrent effect of alcohol/drug countermeasures.

FRA received certain general comments on this subpart that did not specifically relate to proposed changes. Those items are discussed below.

Release of information concerning post-accident toxicology. The Railway Labor Executives' Association urged that FRA and NTSB should not announce the results of chemical tests until after an accident investigation is completed. FRA does withhold information regarding medical use of controlled substances except in those instances where it is clearly necessary to consider that information in relation to accident/incident causation. However, FRA makes available results of post-accident toxicology indicating alcohol use and prohibited drug use in the same manner other factual information is made public. Given the involvement of public and private parties in accident/incident investigations, this information would necessarily enter the public record prior to the publication of an accident/incident report in a significant number of cases, including most of those cases of sufficient public interest to result in wide publication of the information. This is particularly the case in those accidents selected for a full NTSB investigation using the party system.

FRA endeavors to ensure that information concerning toxicological analysis is provided in proper context and without inappropriate implications with respect to its significance. Obviously, FRA cannot dictate the manner in which the information is treated by news media and other third parties. FRA continues to believe that revelation of prohibited alcohol and drug use serves a very important service by keeping before the railroads and railroad employees the serious consequences that result from impairment of safety-sensitive employees. Heightened awareness of this safety risk has undoubtedly contributed to saving lives and preventing injuries over the past few years.

Independent medical facilities. FRA has required that samples for post-accident toxicology be collected at independent medical facilities—i.e., entities off railroad property that are staffed by medical professionals not in the employ or under the control of the railroad. Such entities could include public and private hospitals, clinics, and physicians' offices. This requirement ensures that samples are obtained in a professional manner; this is particularly important in this context because a blood sample must be drawn in each case. It also ensures that employees perceive that the process is fair.

Several railroad commenters strongly urged that the requirement specifying use of independent medical facilities for post-accident testing be modified. (The same issues arise with respect to comments on subpart D—Reasonable Cause Testing, but those issues are separately discussed below.) Amtrak urged deletion of the requirement; Amtrak prefers to use registered nurses employed in company clinics for this purpose, where available. The Union Pacific Railroad urged that the rule allow use of paramedic services under contract to the railroad. In some cases, these collections might also occur on company property. The American Short Line Railroad Association commented to a similar effect, noting the remote locations at which some rail operations are conducted. Another railroad indicated that "railroad affiliated" medical facilities be made available for this purpose.

A number of railroad comments cited difficulties with obtaining the cooperation of medical facilities in the testing process, indicating in effect that failure by FRA to encourage such participation or relax regulatory requirements could result in there being significant gaps in the geographic availability of suitable collection sites. This problem could be exacerbated by more complicated collection procedures.

FRA believes that use of independent medical facilities for post-accident collections has worked reasonably well, given the inherent difficulties involved and the natural reluctance of some health care providers to become entangled in ensuing disputes. However, FRA agrees that the situation must be watched closely and that all options for professionally responsible and forensically sound collections must be explored. In that regard, FRA notes that rapid growth of collection services for occupational drug testing. In many cases medical professionals are being employed as collectors. In other cases, laboratories and medical providers are offering separate collection services at their own facilities. These trends may warrant modification of current requirements. The onset of random testing will give employees the opportunity to witness fair and professional collections at sites other than medical facilities and will likely foster employee acceptance of a wider range of options in the future. Indeed, the Brotherhood of Locomotive Engineers filed comments in this proceeding in support of the Union Pacific proposal for use of contract paramedics in the context of reasonable cause collections. However, the deletion of the independent medical facility requirement under this subpart is not within the scope of the NPRM in this proceeding. FRA will therefore continue to work with railroads and service providers to weigh the need for further action.

Multiple tests. Rail labor representatives noted the frustration and confusion attendant to two or more body fluid collections in the aftermath of qualifying events. The current rule bars reasonable cause urinalysis under subpart D where a subpart C test is conducted. However, railroads have circumvented this limitation by conducting collections under their own managerial prerogative. They have done so largely in order to reduce the time required to receive results and restore employees to service. This is an understandable concern, but it is a concern that the railroads have brought on themselves. Holding out of service employees who are not otherwise subject to discipline is not required by the rule and has not been encouraged by FRA.

FRA has taken two actions that may affect this situation in a way responsive to employee concerns. First, FRA has emphasized reduction of laboratory turn-around time by its contract laboratory. Significant reductions in processing time have been achieved, particularly for crew assignments in which all employees test negative.

Second, in this final rule FRA makes abundantly clear that specimens taken for Federal testing may not be used for other testing that the railroad may wish to undertake. However, it is, of course, not inevitable that railroads will abandon duplicative testing; and the express restriction on subdivision of specimens may actually result in greater inconvenience and delay for employees if they do not.

This issue is also technically beyond the scope of the NPRM. FRA is greatly concerned that the employee-expressed concern is both valid on its own merits and addresses an issue integral to the integrity of the Federal post-accident collection. It is by no means surprising that busy medical facilities should balk at participation in body fluid testing where multiple employees, multiple specimen containers, and multiple chain of custody documents are involved; and the addition of this confusion may significantly affect the quality of both collections. FRA will also monitor this issue closely and may institute further rulemaking at a later date. In the interim, FRA strongly urges railroads to eliminate duplicative body fluid testing following accidents and incidents subject to this subpart.

Section 219.201 Events for Which Testing Is Required

FRA proposed limited amendments to the criteria under which qualifying events are determined.

Paragraph (a)(1)(ii) (Hazardous Material Landing):

Proposed rule. FRA proposed to limit hazardous materials releases giving rise to a requirement for testing to releases of lading from railroad equipment (as distinguished from wayside facilities).

Comments. One railroad supported the limitation because striking a wayside storage facility would likely be a "chance event," while others decried the unnecessary "complication" introduced into the rule by this and other clarifications. The NTSB opposed the change on the ground that improper loading of a freight car could result in non-hazardous lading striking a wayside hazardous materials storage facility.

Final rule. This clarification was proposed because of a relatively minor accident involving damage to a small propane tank along the right-of-way. FRA notes that in order to qualify for testing, a hazardous materials accident must result either in an evacuation or an injury from the hazardous product. On that basis, it would appear that the source of the release should not matter. On the other hand, "hazardous material" is a term defined for purposes of transportation by DOT regulations; and the railroad may not be able to immediately determine the nature of the chemical released from a facility it does not control, thereby subjecting employees to potentially arbitrary decisionmaking. Further, if the accident is sufficiently grave to single it out from among more common minor incidents, then the test will often be required under other criteria (e.g., fatality, $500,000 property damage).

On balance, FRA believes that the proposed clarification should be adopted.

Paragraph (a)(4):

Proposed rule. FRA proposed to add to the specification of major train accidents any passenger train accident involving a reportable injury. (See paragraph (a)(1)(iv) of the proposed rule.)

Comments. This proposal was supported by NTSB, which had included its concept in prior recommendations to FRA. Amtrak opposed the proposal as burdensome and unfair, because (i) it would apply only to passenger operations, (ii) determination of reportable injuries would be difficult, and (iii) it would cause certain impact events to be treated as major train accidents (for which no covered employee may be excused from testing). Amtrak suggested that, if the requirement were to be adopted, it should be treated as a non-major event, allowing non-involved employees to be excused. Amtrak would also require that the injured person be a passenger. AAR opposed the provision. Commuter authorities that would be affected did not comment.

Final rule. FRA and the commenters are agreed that a relatively small number of events could be affected by the requirement of testing after passenger train accidents with reportable injuries (4 or 5 per year on Amtrak and perhaps 6 or 7 on the commuter railroads, numbers that would be further reduced by viture of treatment as "non-major" events as further described below). Scenic and excursion operations in the general rail system could also be affected, but events would be rare.

FRA disagrees with the suggestion by a commenter that singling out passenger operations is unfair. While any rail carrier owes to the public a very high standard of care to prevent accidents and casualties, no carrier owes a higher standard than a common carrier of passengers. When accidents occur, it is particularly important to determine the cause and ensure against recurrence. Under present rules, a passenger train accident involving multiple serious injuries might not qualify for testing. This gap must be closed.

Undoubtedly, determination of reportable injuries may be difficult in the aftermath of a passenger train accident. However, the amendment asks no more here than it asks with respect to determination of other facts—only that the railroad representative make reasonable inquiry and a good faith judgment.

FRA agrees with Amtrak that a passenger train accident involving one or more injuries, but not involving a fatality or a large amount of damage to equipment, should be treated as a separate event category allowing the excuse of employees where it can be immediately determined that they were not involved. This is particularly appropriate given the number of covered employees on Amtrak and commuter trains and the fact that any given time several may not be in a position to contribute in any significant way to the cause or severity of the accident (except with respect to the immediate emergency response). Further, a significant proportion of the events that fall within the new criterion involve trains striking foreign objects that have been placed on track. Obviously, where it is clear that the engineer initiated a proper brake application as soon as the object came into view, there would be no reason to test any crew member in that situation; and the final rule provides the necessary latitude to make that judgment. However, FRA notes that the criteria for excuse are narrow.

FRA does not agree that the identity of the injured person should control the testing decision, if the railroad believes in good faith that a reportable injury has occurred and the minimal damage threshold has been met. The point is that a passenger train has been involved in accident; and the extensive precautions taken to prevent such an event have somehow failed.

Paragraph (b) (Exception for "Acts of God"):

Proposed rule. FRA proposed to except, from events otherwise qualified, those accidents resulting entirely from natural causes, such as tornadoes, floods/washouts, earthquakes and other natural disasters.

Comments. NTSB opposed the exception, noting that crew response to an unexpected hazard can sometimes affect the severity of the accident. Two railroads opposed the change, citing the difficulty of making the required determinations and the civil penalty exposure if an error is made. One railroad would make the exclusion permissive at the discretion of the

railroad. Rail labor representatives support the change.

Final rule. FRA proposed the change because of the patent unfairness associated with testing following the very rare events that do occur that are wholly beyond the control of the employees involved. Such accidents have occurred since issuance of the rule, and FRA agrees that testing should not be required.

FRA also understands the sensitivity of railroad supervisors to the task of making these kinds of determinations on the accident scene. In adopting the proposed exception, FRA therefore notes the fact that the reasonable inquiry/good faith judgment standard applies to determination of this exception (§ 219.201(c)).

FRA agrees that crew response can often affect the severity of an accident. However, the railroad is required to consider this factor in making the required evaluation. If there is any significant possibility that crew response affected severity, the policy of the regulation is to test.

Grade crossing accidents. NTSB also proposed that FRA add to the list of qualifying events any grade crossing accident involving a fatality that occurs at a crossing required to be flagged by crew members. This proposal is beyond the scope of the notice, and NTSB has not supported its suggestion with specific information establishing the need for the change.

Paragraph (c)(1):

Proposed rule. FRA proposed to (i) bar from the determination of qualifying events a railroad representative who is personally involved in the accident/incident, (ii) recognize the participation of railroad management not on the scene of the accident, but require that a decision-maker other than the individual responding to the scene make a memorandum of the decision within 24 hours, (iii) require that monetary estimates of damage made by persons not on the scene be supported by descriptions of actual physical damage, and (iv) allow the host railroad to rely on estimates of passenger equipment damage provided by the passenger operator.

Comments. NTSB supported disqualification of involved management personnel from making decisions with respect to testing.

AAR found "tenuous" FRA's concern that collaboration among officials by phone could result in confusion over responsibility for the decision. Railroad comments opposed the provision as requiring prompt production of a writing within a period already heavy with other demands and as further complicating the compliance structure to the detriment of true safety concerns. One railroad indicated that it would delete the provision or limit the requirement to a specific request by FRA.

Final rule. FRA's proposed amendments were not based on conjecture, but rather hard experience in rule administration. Sharing of responsibility for determination of qualifying events has sometimes led to reflexive decisions to test when the factual predicates were not present. Difficulty has thereafter been experienced in ascertaining who made the relevant decisions. In a notable case where no testing was performed, more than one individual claimed to have made the decision; in other cases, individual responsibility has been virtually impossible to fix.

Both to ensure that railroads clearly delineate responsibility within their organizations and to ensure that FRA is able promptly to investigate any determinations that are questionable, it is crucial to fix actual responsibility for decision-making. The proposed language was proposed for that purpose.

However, FRA recognizes that overbroad regulatory provisions designed to address isolated instances of non-compliance also burden regulated entities in the great majority of cases where compliance is unchallenged. FRA has therefore adopted the suggestion of the railroad commenter that writings be required only where the determination is in question. FRA notes that it remains critical for railroads to make pre-arrangements with respect to the types of consultations that may be required prior to the decision and the responsibility for final decision-making. FRA further notes that attempts to centralize decision-making may not be cited as justification for delays in sample collection. The rule has been written in a manner that can be administered by a responsible railroad supervisor responding to the scene; and further consultations should be of the kind that assist, expedite, and verify that appropriate criteria are being applied, rather than delay the decision whether to test.

Paragraph (c) (2)–(5):

Existing language in this paragraph states that a railroad is not in violation of the subpart if its representative errs in making a good faith judgment based on reasonable inquiry. FRA proposed to state expressly what is clearly the case under current law—i.e., that the reasonable inquiry/good faith standard does not excuse application of incorrect criteria. Ignorance of qualifying criteria has been the most common source of error in administration of post-accident tests. The proposal drew no comment and is adopted. In view of the amendment to § 219.9, the affirmative proposition is also stated, i.e., that an employee may not be tested where the rule does not require it.

FRA proposed to codify its policy that where the railroad has applied the qualifying criteria in good faith after reasonable inquiry, the event is qualifying for all purposes, even if later factfinding results in additional or different information (e.g., if a $600,000 damage estimate is later revised downward to $450,000). FRA also proposed to codify its practice of destroying sample material in any case where it has been submitted in respect of a non-qualifying event. These provisions drew no comment and are adopted as proposed, though the text is divided into two subparagraphs for clarity.

Section 219.203 Responsibility of Railroads and Employees

NTSB commented in response to proposed republication of this section that non-covered employees should not be excluded from testing. This issue is technically beyond the scope of the notice and addresses issues of coverage that have been reserved for consideration following full implementation of the regulatory program with respect to employees subject to the Hours of Service Act.

Paragraph (a)(3) (exclusion of employees from testing):

Proposed rule. FRA proposed to make more emphatic the existing policy of the regulation that employees involved in qualifying events other than major train accidents "shall" be excluded from testing if it can be immediately determined that they played no role in the cause or severity of the accident/incident.

Comments. Railroad commenters opposed the change, fearing exposure to civil penalties if determinations are made incorrectly.

Final rule. FRA has observed a lack of uniformity among the railroads with respect to application of the current exclusion language, with some railroads making effective use of the provision to appropriately limit testing burdens and others appearing not to be aware of the provision. The rule requires exclusion in only one case—where it is abundantly clear on the basis of specific information that is immediately available that the employee played no role. Where this is not the case, the railroad is expected to test. Where it is the case, as is often the

case in lesser-magnitude accidents (e.g., where rearend crewmembers can be excused in certain low-speed collision-type events), then the railroad is expected to act accordingly. FRA has both retained the provision and further clarified the duty of the responding officer to consider whether the requisite facts exist. FRA emphasizes that it expects exclusion only in clear cases, and among those clear cases only in those that appear to be so immediately following the accident/incident. The final rule also contains a conforming cross-reference to the new § 219.201(a)(4).

Paragraph (b)(4) (Retention/Recall of Employees):

Proposed rule. FRA proposed to expressly require that employees who may be subject to testing be retained in duty status until the qualifying event determination has been made and to provide that an employee may not be recalled once released by a railroad officer having actual or apparent authority to do so. Additional language would address subsequent testing of an employee who has failed to remain available as required.

Comments. NTSB opposed the bar to recall of employees released from duty status. The Board would condition any release on abstinence until FRA or the Board had concurred in the release. The AAR feared penalties against the railroad should an employee fail to remain available as required. A group of affiliated railroads desired assurance that recall of employees for testing would not be required in the case of a late-manifested injury.

Rail labor representatives generally agreed with the proposed bar to recall, but also agreed that situations may exist where the employees may be released from duty who are clearly implicated in the circumstances of the accident. In those cases, the subject employee could be recalled. Labor representatives also noted that, where an accident/incident response was complete and employees had returned to normal duties, release would customarily not require action by a railroad official, since tie-up procedures may not involve direct contact with supervision.

Final rule. FRA remains greatly troubled by the issue posed by employees who either complete their duty tours or are affirmatively released following an accident/incident, where it is later determined that they should be tested. The following scenarios are possible:

- Railroad fails to make timely determination of qualifying event; employees are released from duty; railroad later realizes testing should have occurred.
- Accident occurs just prior to the time an employee (e.g., train order operator or dispatcher) completes a normal duty tour. Employee leaves the work site without knowing that an accident has just occurred.
- Employee (e.g., likely an operator, dispatcher or signal maintainer) establishes unsafe conditions, goes off duty in the normal manner; accident occurs some hours later.

Although the third example may not qualify for testing in any event because the individual was not "contemporaneously" involved in the accident (§ 219.203(a)(2)), the other two examples present difficult choices and reflect actual cases. The possibility exists that important information could be lost if the employee is not recalled; and, in a rare case, a railroad supervisor seeking to avoid exploration of possible alcohol or drug use might seek to avoid testing by deliberately releasing the individuals.

Incidents have occurred under the current rule where employees have been recalled, only to test positive for beverage alcohol ingested following their release. Although these incidents involving alcohol have uniformly been treated as "negative" for regulatory and disciplinary purposes because the employees' explanation of subsequent use of alcohol was accepted, private off-duty conduct was discovered. On the other hand, similar incidents involving prohibited drugs would present different issues.

FRA believes that this issue must be addressed definitively so that employees and railroads will understand the ground rules. FRA believes that the comment by the labor representative provides the appropriate criterion. Although in an ordinary case no employee should be recalled, an exception should be made where it appears likely at the time the decision is made that the employee is responsible for the cause or severity of the accident/incident. This approach will normally be fair to the employee, since the employee will ordinarily be able to anticipate the possibility of recall and the need for recall is clear; it will ordinarily be fair to the railroad because the railroad is deemed to have effective supervisory control over its workforce and should be expected to follow-up any situation where any lapse occurs. However, to avoid inappropriate use of the recall mechanism, FRA is also providing that the accident/incident must have occurred during the employee's duty tour.

FRA is also adopting clarifying language with respect the manner in which employees are released.

Paragraph 219.203(c):

Proposed rule. FRA proposed to require pre-designation of facilities for post-accident testing in order to facilitate prompt and sound collections.

Comments. As noted elsewhere in this discussion, some railroads believed that sufficient independent medical facilities may not remain available for the specified purpose. The RLEA supported pre-designation.

Final rule. To the extent use of independent medical facilities is required (as will continue to be the case following these amendments), pre-designation is important to provide for prompt and proper collections. This will be especially important if availability is a problem. FRA is aware of cases where valuable time has been wasted seeking the assistance of facilities that do not provide this type of service when other suitable facilities were available in the same area. The provision is adopted as proposed. It should be noted that the requirement of pre-designation does not prohibit use of non-designated facilities as may be required to effect prompt testing (e.g., where an injured employee is transported to another facility for treatment).

Section 219.205 Sample Collection and Handling/Appendix C

Proposed rule. FRA proposed to revise procedures for blood and urine specimen collection by adopting a new Appendix C. The new procedures generally track those for collection of urine samples under 49 CFR part 40, but provision is made for collection of blood specimens. The process of upgrading the collection procedure involves the following:

- Development of new qualifying event data forms describing the accident/incident and listing the employees tested and the employer representative (Form 6180.73).
- Development of a new individual custody and control form for the blood and urine samples of each employee (Form 6180.74), paralleling documentation utilized under 49 CFR part 40.
- Upgrading of toxicology kit materials to provide assurance to employees that containers are fresh and uncontaminated, to facilitate orderly collection and securing of specimens and the shipping kit, and to protect against loss of biological fluids during shipment.
- Provision of new instructions for collection and shipment of specimens.

A proposed regulatory amendment emphasized shipment by the medical facility, where reasonably possible, and documentation of any necessary handling of the sealed specimen container by railroad representatives.

Comments. Commenters generally approved the revised collection procedures in Appendix B. A United Transportation Union officer wrote to urge that toxicology kit materials be upgraded in the manner contemplated by FRA and that the presence of any preservatives in containers be explained. The UTU officer was also concerned that specimen containers not be reused. (They are not presently and would not be in the future.) Railroad commenters believed that the proposed revision to paragraph (d), providing for shipment by the medical facility "whenever possible," would place the burden for action on health care providers who have little incentive to provide for prompt shipment and who are not subject to FRA jurisdiction. Railroads also objected to the requirement that handling of the sealed toxicology kit be separately documented. Addressing language that FRA had not proposed to change, the railroads objected to the existing requirement that samples be transported to the "nearest" point of shipment, stating that in many cases this would not be the fastest or most efficient approach (e.g., because the nearest express service office was closed at the time).

Final rule. The procedures for specimen collection are adopted with minor changes reflecting the pattern set by amendments recently made to 49 CFR part 40. The final rule clarifies the respective obligations of the railroad and medical facility with respect to prompt shipment of the kit, providing a more flexible framework for action while still encouraging direct transfer from the medical facility to an express courier where significant delay will not ensue. Documentation of the railroad's handling of the kit is retained, since this is a matter of some sensitivity with respect to employee confidence in the system and is likely to be put at issue at a later time. The format of the documentation is left to the railroad (normally a one-paragraph writing stating that the supervisor accepted the kit from a designated person at the facility and had it in his/her personal possession and control until delivery to the express company on the same date, at a specified location, would suffice). It is intended that the documentation remain with the railroad for purposes of a subsequent disciplinary proceeding and for inspection and copying by FRA, if necessary. FRA will process samples upon receipt of the toxicology kit with the individual box security seal intact containing separately sealed specimens and chain-of-custody documentation executed by the collection site.

Section 219.211 Analysis and Follow-Up

Paragraph (a) (Analysis by Designated Laboratory):

FRA has clarified the scope of analysis of post-accident specimens. Testing is normally conducted for alcohol and designated controlled substances. Additional analysis for impairing compounds may be conducted as required for the particular accident investigation (e.g., where an employee reports use of a drug that may account for substandard performance, or where analysis for carbon monoxide exposure may be required following a fatal accident).

Paragraph (b), (c) (railroad MRO review of results):

Proposed rule. Paragraph (b) of the proposed rule provided that FRA would report test results to the employee and the employer's MRO. This provision is derived from § 219.711(c), which was scheduled to become effective on January 16, 1990. Through paragraph (c), FRA proposed to require that the railroad's MRO review the test result for employment-related purposes and also to require that information concerning claimed medical use be communicated back to FRA on a confidential basis.

Comments. Railroads opposed review by the railroad MRO as burdensome and particularly objected to the requirement that a report of the review be submitted to FRA. One railroad objected to FRA's reporting the laboratory result directly to the employee, since it was believed the employee might be given an opportunity to procure a back-dated prescription.

Final rule. FRA believes that its attempted explanation of the purpose of review by the railroad's MRO was not successful and that commenting railroads misunderstood the purpose of this proposal. At the time FRA authorizes its laboratory to report a positive result to the railroad MRO and the employee, that result will already have been analyzed with respect to the significance of any legitimate drug use the employee has claimed on Form 6180.74. As has been the practice in the past, the laboratory report will identify whether the analytes detected (and their concentrations) are consistent with the claimed use at therapeutic doses. However, in most cases it would not be possible for FRA's medical review consultant to verify that the substance was, in fact, legitimately administered or prescribed. Further, approaching the issue in that manner would delay reporting of all results for that accident. Therefore, the railroad's MRO will be asked to verify that the employee used the drug under medical authorization (consistent with § 219.103) and to report the results of that review to FRA. The MRO would also report any subsequent claim of medical use and the results of that review. In the great majority of cases where there is no claim of medical use that could explain the presence of the compounds detected, no review or report would be required. The laboratory report will be used to identify those few instances where the railroad MRO is asked to respond; and the MRO will also need to be on guard to report to FRA any extraordinary case where subsequently offered explanations render an analytically positive result "negative." In the past, FRA has worked with railroad medical officers on issues of this kind. They have been most cooperative, and employee rights have been protected. The final rule merely formalizes this process and has been revised to clearly limit the number of occasions that would require a report back to FRA.

Paragraph (d) (FRA Handling of Medical Information):

This provision merely codifies FRA practice and did not elicit comment.

Paragraph (e) (Employee Response):

FRA proposed to clarify the means by which an employee may respond to FRA with respect to significance of detected alcohol/drug use in the context of an accident investigation. The only comment received was from a railroad that wished to receive a copy of the employee's letter. The provision is adopted as proposed. FRA can provide the railroad with a copy of the letter to the extent it requires specific consideration in the accident investigation or the railroad requests it.

Paragraph (h) (Sample Retention):

FRA proposed to reduce the retention time for negative samples from six months to three months and to increase the retention time for positive samples from six months to two years. Apparently believing that this requirement would burden laboratories at large, CAP objected to the retention time of two years for positives. Obviously, FRA compensates its contract laboratory for long-term storage of specimens. The provision is adopted as proposed.

Language relating to use of samples in litigation was to be deleted, since it has been misunderstood in the past and

since samples have not been required for collateral purposes. Since there was no comment, the amendment is adopted as proposed.

Paragraph (i) (Retest):

FRA proposed to codify and clarify its practice of allowing retests. The language drew no comment and is adopted substantially as proposed.

Section 219.213 Unlawful Refusals; Consequences

FRA proposed to amend paragraph (a) by adding language that would incorporate the return-to-service restrictions of § 219.104. This language is adopted with revisions to reflect amendments to the language incorporated in § 219.104.

Subpart D—Authorization to Test for Cause

This subpart authorizes a railroad to conduct a breath alcohol test, urine test, or both, where an employee (i) is reasonably suspected of being impaired, (ii) has been involved in a reportable accident/incident and a supervisory employee has a reasonable suspicion that the employee's acts or omissions contributed to the occurrence or severity, or (iii) the employee has been directly involved in one of several enumerated rule violations. Most major railroads have adopted reasonable cause testing programs, either under part 219 or pursuant to management authority.

The purpose of current subpart D tests is exclusively to determine compliance with § 219.101, particularly with respect to on-the-job use or impairment of alcohol or drugs. Since urinalysis for drugs cannot determine current impairment, the rule sets out a urine impairment presumption and blood test option intended to work tandem to provide adequate information without requiring blood testing of employees who have not used drugs. The proposed rule (and the final rule as adopted) would extend the purpose of urinalysis for drugs under Subpart D to include determining presence of controlled substances in violation of § 219.102 (i.e., not used under the limited exception of § 219.103).

Section 219.301 Testing for Reasonable Cause

Paragraph (b)(3) (Rule Violations):

Proposed rule. FRA proposed to clarify and amend the listing of rule violations that would give rise to the right to test. The amendments related to construction of flagging requirements, alignment of switches, and entering a crossover before both switches are aligned.

Comments. FRA received no comment on the proposed changes.

Final rule. The amendments are adopted as proposed. In addition FRA has added the clarifying phrase "as required" after "failure to secure a hand brake or failure to secure sufficient hand brakes."

Paragraph (f) (Time Limitation on Sample Collection):

Proposed rule. FRA proposed to amend the current 8-hour limitation on urine sample collection/breath testing in the following respects:

- Testing would be required to be conducted promptly following the observations or events upon which testing is based. For instance, employees could not be allowed to perform intervening service not necessary to protect life and property and then be required to be tested.
- Testing could be conducted up to 8 hours from the time a responsible supervisor receives notice.
- Recall to duty for testing of any employee released from duty would be barred.

Comments. A group of railroads asked that testing be allowed for 8 hours after the supervisor arrives on scene.

Most railroad commenters generally supported the 8-hours-from-notice concept. A western railroad noted that the 8-hour limitation furthers more timely and probative test results.

Although the rail labor organizations supported the current 8-hour limitation, they indicated that they would have no major difficulty with the proposed revision of the 8-hour concept and affirmatively supported the "no recall" provision. They also asked for clarifying language with respect to normal release procedures.

The AAR indicated that the rule should be satisfied if the employee has arrived at the collection site within the 8-hour limitation. A major eastern railroad would allow recall of employees where clear responsibility of the employee for the accident/incident is determined.

Final rule. The amendments are adopted as proposed, with clarifying further amendments. The intent of the regulations is to require prompt completion of the test procedures. FRA believes that it should be possible for tests to be conducted within 8 hours of notice to the railroad official, and most commenters appear to agree. FRA believes it is particularly critical that a pattern of prompt action be set with respect to alcohol analysis. In view of other decisions made with respect to this subpart (discussed below), time is a somewhat less critical factor with respect to drug urinalysis; however, allowing employees to perform non-essential intervening service suggests a lack of urgency and sincerity on the part of the railroad with respect to rules compliance.

FRA has therefore retained the requirement of prompt testing and the 8-hour-from-notice language. FRA has further clarified the rule to provide that, in the case of urinalysis, the 8-hour period is satisfied if arrangements have been made as promptly as feasible and the employee has been brought into the collection site (with collector present) within that time. FRA agrees that railroads cannot always control the immediate availability of collection personnel for these tests, which are by their nature unexpected.

Recall of employees for testing would be barred. This is necessary to avoid abuses, including testing long after an injury-producing event where the injury is not manifested until some hours later.

Other conforming changes are made to this section in light of the decision to discontinue urine alcohol analysis. This decision is discussed under § 219.307, below.

Section 219.303 Breath Test Procedures and Safeguards

FRA proposed to amend this rule to set out safeguards for optional blood alcohol tests. No specific comments were received, and the language is adopted substantially as proposed. The requirement that blood samples be drawn at independent medical facilities is retained in this context, since medical personnel will be required and the procedure is not as extensively regulated as that for urine collection under Subpart H. FRA has also clarified paragraph (a)(2) with respect to verification of breath instrument calibration using a breath alcohol simulator. (The current language appears to require calibration of the device when only verification of correct calibration is needed.)

Section 219.305 Urine Test Procedure and Safeguards

This section is being amended to bring it into conformity with standards for other urine drug testing included in FRA and other DOT modal administration regulations. The standards are drawn from the Department of Health and Human Services Guidelines for Federal Workplace Drug Testing Programs ("DHHS Guidelines") and have been adapted for transportation industry use (subpart H of part 219 and 49 CFR part 40).

The principal question faced by FRA in this rulemaking has been whether to

retain the current structure of reasonable cause urinalysis, which endeavors to determine impairment. In aid of this objective, the current rule includes an impairment presumption from a positive urine test, an optional blood test (in which case the presumption does not operate), notice of the presumption and a requirement that collection be conducted at an independent medical facility (where blood can be drawn). By contrast, FRA random testing provisions and anti-drug programs adopted by other DOT modal administrations entail testing for drug presence (at the cutoff), no blood test option, no attendant presumptions, and collection at any suitable site, on or off the railroad property.

Proposed rule. The proposed rule text included collection at an independent medical facility and retention of the blood test option, and the urine presumption was retained in the language of § 219.309. However, the NPRM preamble squarely placed these issues before commenters and preserved FRA's latitude to alter the existing provisions as warranted by comments received.

Comments. Labor representatives generally supported retention of the existing rule provisions. Blood testing was cited as a check on the quality of drug urinalysis, and it was indicated that the result of the blood test does have an impact on the sanctions imposed. It was noted that the impairment presumption should not be retained if the blood test option is deleted.

Railroad commenters generally supported deletion of the blood test option, impairment presumption and independent medical facility requirement. They indicated that impairment is not the relevant issue in view of the adoption of § 219.102 and in view of the policies of most railroads, which often handle cases (at least initially) under medical standards. Blood testing is therefore wasteful and misleading.

A major western railroad stated that a blood test option is indicated where blood alcohol is in question (e.g., where urine alcohol testing has been undertaken and that an impairment presumption would be useful in that context); but the railroad indicated that the both the blood option and presumption should be discarded in the context of urine drug testing. This railroad would allow collection on property by licensed paramedics employed by a contract collection service. Interestingly, the Brotherhood of Locomotive Engineers filed comments in support of allowing "independent professionals" to collect specimens on property in lieu of collection at independent medical facilities. It was suggested that this latitude be provided on a test or approval basis.

Several rail commenters stated that the blood test option "sends the wrong message" by suggesting that drug urinalysis is not reliable.

A commuter railroad also supported dropping the blood option and presumption, indicating concern over arbitrator reaction to the common case where the urine test is positive (indicating past use), but the blood test is negative (indicating no presence in the blood at or above the detection limit or cutoff at time of collection). This railroad also believed that competent collections could be performed on the railroad's property.

Several railroads indicated that the requirement for use of independent medical facilities actually reduces the competence of the collection in some cases, because medical facilities necesssarily give first priority to patient care. In some cases, medical facilities have not been cooperative. In-house medical departments were cited as available resources for competent collection, as were contract collection services.

Commenters also cited the lack of uniformity and precision attending analysis of blood for controlled substances, as well as the significant cost involved.

Amtrak would add the further latitude of on-site screening to the suggested changes.

Final rule. FRA recognizes that drug testing policy and the sophistication of service providers have now progressed far beyond the stage reflected by regulations first drafted for proposal in 1984. Implementation of lab certification under the DHHS Guidelines, the wide acceptance of the legitimacy of a drug-free policy for safety-sensitive employees in transportation, the growing use of the medical model to control re-entry of drug abusers into the workforce, and better employee understanding of the principles of drug testing have all created a significantly different context within which to regulate.

At the same time, experience has been gained under the existing rule. FRA agrees that laboratories have been less responsive with respect to blood analysis for controlled substances than with respect to urinalysis. Achieving sufficiently sensitive, reliable and precise blood analysis at reasonable cost is difficult. FRA has established good control of mandatory post-accident blood analysis and has found the resulting data useful in the accident investigation context. However, thorough regulation of blood analysis for controlled substances, involving multiple laboratories under private contract to railroads, would not presently be practical. Yet negative blood test results from these laboratories currently may give rise to inappropriate conclusions in some cases; and positive results inevitably present issues of interpretation, the resolution of which may obscure rather than guide needed remedial action. More fundamentally, focus on current impairment from acute effects may be particularly inappropriate in the case of stimulants such as cocaine, since the after- or withdrawal-effects of those drugs may be most damaging to fitness. Thus, absence of blood levels of parent drug may be very misleading.

FRA agrees that the retention of the blood test option would continue to be misunderstood by some employees and arbitrators. Although never conceived as a quality control check on urine testing, the blood option has been understood as such by many employees. This has led to clear distortions, as in the case of major railroads that have acceded to employee requests that blood tests be optional in connection with administration of their required random testing programs. In some cases, blood tests have been conducted under Subpart D even though they will have no impact whatsoever on the action taken and exclusively because of the rule requirements.

On the issue of independent medical facilities two major points should be noted. First, to the extent a blood test is not required, the need for resort to medical personnel is eliminated. Second, Subpart H and 49 CFR part 40 now contain important protections for the employee that were not previously available. Requirements with respect to security of the site and integrity of collection materials, protection of the specimen and shipping container with tamperproof seals, improved chain of custody procedures, and specification of collector qualifications (including a bar on use of co-workers and supervisors) all contribute importantly to the ends sought to be achieved by the independent medical facility requirement.

FRA is also mindful that the combination of the blood option and independent medical facility requirements have tended to drive railroads away from use of part 219 as the structure and authority for testing. FRA agrees with employee representatives that it is desirable for as

much testing of covered employees as possible to be conducted under the FRA rule and wishes to avoid unnecessary strictures that could work against that approach.

Accordingly, FRA is amending this section and § 219.309 to provide for collection and analysis of urine specimens in the same manner provided for random tests. The employee option for a blood test is deleted. Collection may occur at any location qualifying under 49 CFR part 40. The urine impairment presumption will be stricken, so that no implication can be drawn from the MRO-declared positive result other than prohibited presence of a controlled substance. Employees should take note that this should have the indirect effect of encouraging railroads to handle initial positive tests under procedures that emphasize abatement or treatment, rather than incident-related discipline. Arbitrators should note that a urine drug test, by itself, does not support an inference of impairment or influence at the time of collection within the meaning of traditional Rule G formulations (although it will normally be *prima facie* evidence of prohibited use).

As so amended, the reasonable cause drug testing provisions remain an important means of detecting and deterring drug use that can impair performance. Where behaviors are observed that clearly indicate lack of fitness (as in a reasonable suspicion test), the urine test may provide the remaining factual element needed to explain the observed behavior (whether resulting from acute or after-effects of drug use) and to prevent a recurrence. Although tests conducted following an accident, injury or rule violation may have less value with respect to specific explanation of the circumstances, the triggering events still represent important occasions to inquire into fitness; and the primary objectives of detection and deterrence will still be served. These objectives will be achieved with equal consideration for employee rights, without resort to physically invasive blood testing, and with greater efficiency.

Section 219.307 Standards for Urine Alcohol Assays (Proposed)

The test of the current § 219.307 is deleted consistent with the adoption of the more stringent DOT Procedures. The following discussion pertains to urine alcohol testing regulations contained in the NPRM.

When the reasonable cause testing provisions were adopted in 1985, they included authority for urine alcohol analysis, in addition to breath alcohol analysis. It was believed at that time that railroads would primarily use breath analysis for alcohol, and the rule established a bias in favor of breath testing where alcohol use was specifically suspected. Urine alcohol analysis was conceived as a supplementary tool to be employed as appropriate where the source of impairment was not evident and urine drug analysis was therefore contemplated. FRA's Field Manual included guidance providing for voiding of the bladder, use of the first sample for drug testing, observance of a waiting period, and collection of a second sample for alcohol analysis. It was indicated that through use of the second sample and application of a conversion factor (a divisor of 1.3 or 1.5), a reasonable estimate of blood alcohol concentration in the interval between the first and second voids could be obtained.

In actual experience, most railroads have been reluctant to employ the breath testing technology which they so urgently sought. Drug urine testing has become widespread, but few railroads have employed urine alcohol analysis. In the meantime, increasing emphasis has been put on laboratory certification as a mark of reliability in body fluid testing, but accrediting groups have not focused attention on urine alcohol analysis or formally certified laboratories for this purpose.

Proposed rule. Against this background, FRA proposed to upgrade the safeguards for urine alcohol testing by making certain guidance mandatory and by addressing the issue of collection procedures, laboratory analysis and specimen security in greater detail. In general, the proposed rule sought to achieve a level a quality control of the testing process that would roughly parallel that for drug urinalysis. Analysis of urine for alcohol would have remained optional—a tool that the railroads could use, as appropriate to the circumstances.

Comments. The AAR said that the proposed requirements were "so complex and burdensome, the railroads will either use breath analysis or rely in tradional Rule G enforcement." One railroad thought that urine alcohol screening should not be required and expressed concern with the probative value of the results in light of alcohol present due to medical conditions and therapies. A railroad that has used urine alcohol analysis under existing guidance believes that the procedure can be employed to provide information useful to the medical officer, but would prefer use of blood specimens for this purpose (citing the Supreme Court's characterization of blood testing as relatively unintrusive in *Skinner* v. *Railway Labor Executives' Association*, 109 S. Ct. 1402 (March 21, 1989)).

The College of American Pathologists (CAP), in comments principally stressing the importance of allowing use of CAP-accredited laboratories, attacked the two-sample procedure on several grounds. CAP believed that the initial void might be incomplete, that the nominal waiting period of 20 minutes would often be exceeded, and that any conversion factor would be "too controversial." CAP stated that "[i]t is well known in the forensic community that a urine alcohol cannot be converted with reliability to a BAC" and that most states have abandoned urine alcohol analysis for law enforcement purposes. CAP therefore advocated deletion of the second sample provision, though it appeared CAP laboratories would like to have any business should it be retained. CAP also recommended retention of the blood alcohol test option, should alcohol urinalysis be required.

A major commuter railroad believed the two-specimen alcohol method was not practical, since the employee fearing detection could claim an inability to provide a specimen for an extended time and then seek to bargain for use of a blood sample in lieu of urine. (By then, of course, the blood level might be very low.) The commenter would retain the two-sample authority but add a right to demand a blood sample (which the commenter already does in suspected Rule G cases).

CAP also indicated that urine alcohol screening should be done by enzyme oxidation, stating that there is no accepted immunological method. CAP disagreed with the two-column requirement where both screening and confirmation are by gas chromatography, indicating that replicate analyses on the same column should be sufficient.

Final rule. FRA believes the comments generally missed the mark because they were aiming at collateral targets. Through their association, the large railroads deplored the complexity of urine alcohol testing as presented by FRA, but did not suggest effective alternatives or seriously contend that any element of the safeguards is unnecessary. CAP found fault with the two sample collection procedure based on factors that are clearly pertinent, but that either were taken into consideration in design of the approach or that would be weighed by a railroad in determining whether to use the tool in a particular setting. CAP's reliance on

the "controversial" nature of applying the conversion factor, and the categorical statement that it is well known that urine alcohol cannot be converted with validity to BAC, were unsupported by citation to the literature, much of which FRA has reviewed. Most of the negative literature pertains to post mortem urines and analysis of single samples taken from live subjects. Though it is true that most states emphasize use of blood or breath samples as the best evidence of blood alcohol concentration for purposes of criminal law enforcement, other states continue to use urine (as an alternate or optional fluid) and have had success in the criminal arena, where the quantum of proof is quite high. FRA's recent review of statutes and case law indicated no adverse decisional law.

The specific comments aside, FRA recognizes that there is presently no "market" for solutions to the problem of detecting alcohol use by transportation employees through use of an appropriate variety of specimens. In the absence of significant interest in utilizing discretionary urine alcohol testing authority, regulatory decision-making will not be aided by vigorous and well-focused debate. There are other reasons to draw back from this issue at the present time:

- Railroads clearly need to re-evaluate the degree to which breath analysis technology is being utilized. Breath testing is the simplest and most effective approach to alcohol detection; and, supported by optional blood analysis, it is clearly accompanied by excellent safeguards. Maintaining urine alcohol testing authority at the present time may draw interest and attention away from this, more promising detection methodology.
- Urine alcohol analysis as currently conducted to determine current BAC, and as proposed, places significant emphasis on a somewhat complicated collection scenario and on proper analysis at the laboratory. Significant effort is required to ensure that both phases of this activity are handled correctly. Laboratory certification standards are not currently available.
- The Office of the Secretary of Transportation is currently conducting an advance notice proceeding on alcohol abuse prevention that includes consideration of chemical testing technologies. It appears unwise to expend considerable effort in adopting and implementing complex and apparently unwanted testing authorities when that proceeding may produce conclusions indicating contrary policy directions.

Clearly railroads cannot be authorized to test urine for alcohol without appropriate safeguards; and program experience has indicated the importance of maintaining uniform standards in all areas of regulation. Accordingly, in light of the foregoing, FRA is deleting the authority to test urine for alcohol from the reasonable cause testing provisions. This is without prejudice to revisiting this issue in the future should the safety need appear.

Section 219.309 Presumption of Impairment; Notice

Paragraph (a) (Presumption of Impairment):

This paragraph created a presumption that a positive urine drug test supported a conclusion that the employee was impaired at the time of collection, unless the employee had provided a blood sample. Commenters generally recognized that the presumption and the blood test option should meet a common fate. For the reasons discussed above, FRA is deleting the blood test option and the presumption.

Paragraph (b) (Notice):

The current paragraph (b) has required that a notice relating to the presumption be published to employees. That notice included a statement regarding what action the company would take under its policy with respect to a simple urine drug positive; and it was proposed that this be reworded to recognize the new applicability of § 219.102 (which became effective October 2, 1989). FRA believes that employees subject to reasonable cause testing under the FRA rule should have the same type of notice required to be provided for random testing under § 219.601(d). FRA has therefore preserved the notice requirement but has revised the regulatory language to allow flexibility in the manner notice is provided and to delete discussion of the presumption.

Subpart E—Identification of Troubled Employees

Proposed rule. FRA proposed only editorial amendments to this subpart, but did ask for comment as to whether return-to-service and follow-up testing should be required following a co-worker report that leads to a determination that the employee has violated the Federal prohibitions or a company rule (§ 219.405).

Comments. Two railroads supported mandatory follow-up testing in the case of a co-worker report, while another appeared to oppose any regulatory requirement.

One comment (beyond the scope of the notice) appeared to oppose any form of voluntary referral requirement.

Final rule. FRA believes that the right of a railroad to provide for return-to-service and follow-up testing in the co-worker report context should be preserved. Although pre-conditions should not be established that would discourage voluntary referrals (including referrals by other workers), the co-worker report or "bypass" provision involves a situation where the employee is clearly not fit on the job and the co-worker feels compelled to take action to avoid further safety risk to everyone concerned. This provision, which already allows the railroad to condition withholding of discipline on participation in aftercare for up to two years, is now revised to apply the same basic standards included in § 219.104 (see § 219.405 (d)(4) and (f) of the final rule), but allowing the railroad flexibility to address specific situations.

Subpart F—Pre-employment Drug Screens

Section 219.501 Pre-Employment Drug Screens

Paragraph (a) (when required):

Proposed rule. FRA proposed to require that current employees transferring from non-covered to covered service receive a drug test, in addition to the current requirement for final applicants for employment.

Comments. One commenter pointed out that transfer tests should be required only once, since many employees exercise seniority back and forth among covered and non-covered positions. Another commenter indicated that employees who were tested as new hires should not be required to be tested on transfer. A third suggested that a one-time test be required for employees moving from train to engine service. Finally the ASLRA would except Class II and III carriers from the transfer test requirement, indicating that many employees of smaller railroads perform a wide variety of duties.

Final rule. The proposed language is adopted with an amendment recognizing that transfer tests need occur only once, even if the employee moves back and forth among occupations with some frequency. FRA agrees that it may be useful to conduct a test on transfer from one type of covered service to another; but that issue is beyond the scope of the current notice. FRA believes that reliance on a prior pre-hire test under company policy is not appropriate where the employee is transferring to covered service for the first time.

Paragraph (c) (Drug Testing Standards):

This paragraph requires that pre-employment drug testing be performed under the standards set forth in Subpart H (incorporating 49 CFR part 40) and is adopted as proposed.

Paragraph (d) (Alcohol Testing Standards):

Paragraph (d) of the existing rule text is deleted as unnecessary in light of the adoption of Subpart H and the DOT Procedures.

Proposed rule. Current regulations allow railroads to test urine samples for alcohol in the pre-employment context, but do not require that they do so. FRA proposed to require that certain standards be met if a railroad elects to test for alcohol.

Comments. CAP contended that a DHHS/NIDA-certified laboratory cannot perform an alcohol test on the same urine sample used for drugs. (CAP confuses the latitude of a DHHS-NIDA-certified lab under the Federal employee testing program and its latitude with respect to dealing with other customers. No conflict would arise between the standards outlined in 49 CFR part 40 and part 219 so long as the DHHS-NIDA-certified lab handled the original specimen container properly and used a separate aliquot for alcohol analysis (as would be required technically in any case).)

The only railroad commenters, AAR and Amtrak, both objected to the proposed .10% urine alcohol cutoff. AAR objected "as a matter of principle" and Amtrak because it believed applicants would typically have advance notice that alcohol testing was to be conducted and could therefore abstain (although such notice is not required). Neither commenter explored in any detail how they would avoid inappropriately arbitrary hiring decisions where unwary applicants may have consumed small quantities of alcohol socially some hours prior to the pre-employment physical exam (which alcohol might be present in the urine, though not at detectable levels in the blood). FRA believes that this lack of forethought is indicative of the need either to tighten the current requirements or abandon pre-employment alcohol testing using urine until a broader and more enlightened consensus has developed.

In view of the decisions discussed above with respect to other forms of urine alcohol testing, FRA believes the wisest course is to set this matter aside as well, for the time being and ending completion of the Secretary's advance notice proceeding. Accordingly, the present language of paragraph (c) regarding testing for alcohol is deleted and the proposed changes to paragraph (d) are not adopted.

As proposed, the balance of the subpart is revised to conform to subpart H (incorporating the DOT Procedures) and to bar employment of an applicant who is using a controlled substance without medical authorization.

Subpart G—Random Drug Testing Program

FRA had proposed to make one clarifying amendment to this subpart and to move various provisions elsewhere in the part.

Section 219.601 Railroad Random Testing Programs

Proposed rule. FRA proposed to amend paragraph (b)(6), which states that an employee is subject to random testing only while on duty, to read as follows:

> An employee shall be subject to testing only while on duty *in covered service (including any duty tour during which the employee is assigned to perform functions that normally involve covered service, whether or not covered service is, in fact, performed during that particular duty tour.)* [Emphasis added to show amendatory language.]

FRA explained that the amendment was intended to address the issue of mixed service employees, who may work in covered positions part of the time. The concept was to provide for testing of these employees only when they were assigned to positions involving covered service. It has been noted that the proposed language would also have the effect of making it impossible to call an employee to duty exclusively for the purpose of conducting a random test.

Comments. The AAR objected to the language to the extent it was intended to provide FRA leverage with respect to disputes with railroads over coverage of the Hours of Service Act.

Amtrak believed that the language did not accomplish its intended result and that it created the potential for manipulation of those employees who will be tested in the context of random testing programs that select assignments rather than individuals. It may not be known prior to the beginning of a duty tour whether certain employees will perform covered service during that tour. An entire roster of employees may be subject to performing covered service, but only a few may actually do so on the day in question. Resolution of the issue must allow pre-planning. Amtrak suggested that the issue of mixed service employees be resolved explicitly either by providing that employees in positions that normally "may" involve covered service shall be subject to testing whenever they are on duty in the position or to specify that employees performing jobs only a very small portion of which represent covered service shall not be subject to testing. Amtrak indicated it was most important that the railroad program be clear and unambiguous. Amtrak also indicated that it would like to retain the ability to call employees exclusively for testing, if necessary.

A major commuter railroad vigorously opposed the proposed language, noting that it had already constructed its random testing program under different assumptions and that the actual performance of covered service among some crafts is not predictable.

Another railroad agreed with the need to address the mixed service issue, but not with the language proposed.

A labor representative saw a possible conflict between § 219.601(b)(4) and § 219.603(b) (refusals). The concern was expressed that an employee who "lays off on call" will be viewed as having refused the random test. (The employee could not be deemed to have refused a test, since he would not have been notified of the test at that point.)

Final rule. The fundamental problem presented by the proposal and comments is when an employee is a "covered employee." From a conceptual point of view, employees who work day after day in train or engine service or as dispatchers, train order or block operators, or signal maintainers, present little problem. They know they are "covered employees" while on duty and they know they will be judged as such with respect to relevant off-duty conduct (i.e., compliance with § 219.102). The positions that they occupy can be used as a basis for random selection, with the assurance that someone whose assigned functions include covered service will be occupying the position when the time arrives to notify the incumbent for testing.

Employees who sometimes perform covered service, but do not do so every day, present a more difficult problem. As pointed out by commenters, it often is not known until the day in question (indeed, perhaps not until well into the duty tour) whether a mixed service employee will perform covered service. If such service is performed, it may be relatively *de minimis* in nature or quite substantial; and the position in question is often not separately identified for any administrative purpose.

The most prevalent type of mixed service is maintenance of motive power. For example, electricians may be required to work on cab signal apparatus, which is critical to

maintaining train separation in high-density corridors; however, on certain days no units may require such attention or other employees may draw the assignment. Depending on the existing labor agreements, large numbers of motive power employees may be subject to being assigned to move locomotives within the servicing area. (Movement of locomotives "inside" is "hostling" service that is specifically included within the coverage of the Hours of Service Act.) However, only a relative few employees may actually move locomotives on a given day; and this may be unforeseeable as to the individual.

Lacking the jurisdiction to issue substantive regulations in this area, FRA has nevertheless sought to foster a uniform pattern of coverage under the Hours of Service Act through its interpretations and field compliance activities. Although the lines defining major covered functions are quite clear, issues of interpretation exist at the edges; and these issues are becoming more significant as rigid craft lines and "scope rules" of collective bargaining agreements erode. Railroads do not agree among themselves in this area, with some railroads seeking to sweep in large numbers of mixed service employees and others viewing expanded Hours of Service Act coverage as a sort of medieval plague, notwithstanding the fact that the subject employees generally work 8-hour shifts.

From the point of view of safety, which is the primary factor driving decisions on this issue, employees who perform mixed service should obviously be observing the prohibition against non-medical drug use; and to the extent they perform substantial covered service they should anticipate the possibility that they will be tested. At the same time, employees who work only a few days in covered service do not necessarily warrant the same level of effort per capita as those who work the entire year in such service. As commenters correctly point out, it is not necessarily possible to resolve this issue by having mixed service employees subject to testing only when they will perform covered service, since this will often not be known ahead of time and the logistics will not be feasible.

FRA believes that regulations on this point should provide adequate latitude for railroads to address the wide variety of situations that they confront within reasonable strictures. The regulations already require that covered employees receive prior notice that they will be subject to testing; and this notice requirement provides one check against precipitous, arbitrary action. It is intended that railroad random testing programs address means of selection, including the data bases from which the selections will be made. In reviewing these programs, FRA is considering whether this issue has been appropriately addressed.

FRA also believes that narrow definitional arguments should not obscure the right of railroads to conduct testing of employees who customarily perform covered service and who have been called to duty in the normal manner. Accordingly, FRA agrees that the addition of the phrase "in covered service" to the subject provision would be inappropriate.

Accordingly, the final rule has been clarified to read as follows:

(6) An employee shall be subject to testing only while on duty. Only employees who perform covered service for the railroad shall be subject to testing under this part. In the case of employees who during some duty tours perform covered service and during others do not, the railroad program shall specify the extent to which, and the circumstances under which they shall be subject to testing. To the extent practical within the limitations of thi spart and in the context of the railroad's operations, the railroad program shall provide that employees shall be subject to the possibility of random testing on any day they actually perform covered service.

Railroads that have already filed their random testing programs will have 30 days from the effective date of these amendments to submit any clarifying or corrective amendments that may be required.

Additional proposed editorial changes to subpart G are adopted, including movement of certain provisions to subparts B and H.

Subpart H—Procedures and Safeguards for Urine Drug Testing

FRA adopted subpart H and incorporated by reference 49 CFR part 40 at the time of final rule publication on November 21, 1988 (53 FR 47102). FRA had previously proposed use of the DHHS Guidelines and DHHS-certified laboratories in the random testing NPRM published on May 10, 1988 (53 FR 16640). The NPRM in the present rulemaking included only very minor editorial and clarifying changes to subpart H.

Notwithstanding prior opportunities to address the salient issues, some commenters in this proceeding sought to reopen such basic issues as use of DHHS-certified laboratories and on-site screening. These types of comments were not timely submitted (or are repetitive of comments previously reviewed) and are technically beyond the scope of the present notice. FRA has noted those comments, but finds no basis whatsoever to reopen decisions on those issues made months ago.

Section 219.701 Standards for Urine Drug Testing

FRA has included an appropriate reference to subpart B return-to-service and follow-up tests in this section.

Section 219.703 Collection

Paragraph (b) of this section has been revised to reference, rather than repeat verbatim, the criteria for collection site persons.

Paragraph (d) has been added to specify the conditions under which subsequent testing will be required when an employee fails to provide a specimen. This amendment is necessary in light of the recent amendment to 49 CFR 40.25 (the DOT Procedures). That amendment addresses the problem of the employee who either is unable to provide a specimen or claims such inability. The DOT Procedures now provide that, in the case of for-cause testing, the employee will be required to remain until the specimen is provided (up to 8 hours). However, in the case of other tests (e.g., random tests) the employer may elect to excuse the employee and conduct another collection at a later time. This may be necessary in the rail mode if the collection was commenced near the end of the allowed hours of service. These amendments to part 40 were necessary to provide clear and uniform guidance to transportation employers with respect to the problem of employees who fail to promptly provide samples.

The part 219 amendment completes the regulatory requirements by providing that any subsequent collection must be conducted either immediately upon completion of the required statutory rest (8 or 10 hours) or on an unannounced basis within the next 30 days. The reason for this requirement is to ensure that the test is meaningful as a means of detecting and deterring drug use. Completing the collection immediately after the statutory rest reduces the chance that any drug metabolities will have cleared the employee's system, but will not always be feasible. If the employee is rescheduled for a second collection attempt several days in advance, the employee who is using drugs may be able to abstain from drugs for the brief period prior to the collection; thus, any subsequent collection would have to be on an unannounced basis within a

sufficiently wide "window" to test the ability of the employee to abstain.

(The DOT Procedures now provide that where the employee has been given an extended period to provide a sample, or has been unable to provide a sample on a second occasion, the MRO will determine, after a medical evaluation, whether there is a legitimate medical reason for the inability or whether there has been a refusal.)

Section 219.707 Review by MRO

Paragraphs (a)-(c) (MRO Review of Positive Test Results):

FRA has added a sentence to paragraph (a) emphasizing that medical use of controlled substances is a legitimate explanation for a laboratory positive only to the extent use was consistent with § 219.103. This concept has been included in paragraph (c) of this section, but is added to paragraph (a) to ensure proper focus in the MRO review function.

Railroad commenters in this proceeding and the Department's proceeding on the interim final rule issuing Transportation Workplace Drug Testing Procedures were concerned that the MRO review process defined in this section and 49 CFR part 40 would lead to lengthy delays in removing from service employees who have used controlled substances in violation of the regulations. This situation was seen as a hazard to safety and as potentially creating employer liability for actions of the drug-abusing employee during the interval between the initial laboratory report and removal of the employee from service. Most railroad commenters believed that employees testing positive should be placed on medical or administrative leave pending completion of the review; and some indicated that they would be willing to accept language providing for lost wages in the rare case when the result would be reported as negative.

FRA is not willing to short-circuit the process of MRO review in a way that could lead to precipitous decision-making or stigmatize the employee who is legitimately using a controlled substance to address a medical condition. However, FRA very much agrees that unnecessary or inordinate delays should not be tolerated. The following sources of delays have been identified and are discussed in relation to regulatory changes and self-help measures that can be taken to limit or avoid those delays:

Reporting of the laboratory result to the MRO. The MRO may receive initial reports of test results by telecommunications media (so long as procedures are employed to ensure that results are not misdirected) and may begin the process of contacting the employee for an explanation. At the option of the employer, the laboratory could at the same time dispatch the hard copy final report by overnight express and simultaneously transmit same by facsimile.

MRO contact with the employee. The final custody and control form provides information the MRO may use to contact the employee. If the MRO (or approved MRO staff) is unable to reach the employee after reasonable effort, the recent amendment to the DOT Procedures (49 CFR 40.33(c)) permits the MRO to contact a designated employer representative for the sole purpose of getting in contact with the employee. The employee representative should be a key management official with authority to require the employee to contact the MRO and who is required to keep the nature of contact confidential. If, after making all reasonable efforts the management official is unable to contact the employee, the employee may be placed in temporary medically unqualified status or on medical leave.

Intervention through the employer (on a confidential basis) is necessary to avoid deliberate evasion of MRO contact by the employee who knows the test result will ultimately be positive.

FRA notes one further problem that may arise under this scenario. The MRO, upon discussing a claimed therapeutic positive with an employee, may require documentation of medical use; and it may take several days for the employee to arrange to have this information delivered. The rule does not contemplate that the employee would be held out of service during this interval. As a practical matter, an employee is unlikely to make a claim that cannot be verified as promised; and the employee will know that any fraud will be discovered with likely withholding of any earnings accrued under false pretence. Once having contacted the employee, the MRO should have adequate leverage to handle the matter on a reasonable basis. In the case where the employee plausibly claims medical use and promises documentation, the employee should be given the benefit of the doubt. Where the employee makes claims that are not credible, the MRO can follow up by immediately contacting the physician or institution claimed to have administered or prescribed the medication and can reasonably insist that the employee assist in obtaining release of the information. Absent immediate cooperation, the MRO can report the result as positive.

Delivery of the positive test result to the employee. The existing paragraph (c) requires that the employee be provided a copy of the MRO-reviewed positive test result (which will consist of a legible copy of the custody and control form properly completed, including MRO verification) within 48 hours of delivery to the designated railroad officer or immediately upon the railroad's first taking adverse action, whichever first occurs. This language was included because of regrettable failures by some railroads to promptly make available results of reasonable cause test results under existing provisions. However, in the preamble to the NPRM in this proceeding (54 FR 39646, 39656; Sept. 27, 1989) FRA requested comment on retention or amendment of the requirement in light of the practical difficulties that it presents with respect to effecting physical delivery over the territory of a large railroad. FRA has considered the comments received that urge revision of this provision and has amended paragraph (c) to require only that the verified laboratory result be provided to the employee or dispatched, by U.S. mail or suitable means providing prompt delivery, not later than 24 hours following any adverse action. MROs can meet this requirement by mailing the test result to the employee at the same time it is provided to the management official or when a notice of medical disqualification is issued. It should be noted that, where an employer elects to use a "split sample" procedure under the DOT Procedures, the employee would have 72 hours from actual notice of the positive to request a retest on the second portion of the specimen. Merely depositing the notice in the mail does not provide such notice until receipt.

Paragraph (d) (Negative Test Results):

FRA proposed no change to this paragraph, but has noted in reviewing random testing programs that an issue addressed in this paragraph should be clarified. The purpose of the paragraph is to ensure that there is no indirect disclosure of the fact of medical use of drugs by virtue of the manner in which negative tests are reported. However, the paragraph appears literally to require that all negative test results be individually reported to a designated railroad officer. Although responsible railroad officers will obviously need to know aggregate statistics with respect to tests completed as negative, there may be no need to provide for individualized reporting. In many cases, railroads will administer their random testing programs through their medical

departments; and neither positive nor negative test results will be provided to management on an individual basis (since employees testing positive will be medically disqualified without statement of the underlying reason). FRA does not wish to disturb this election by the railroad and in the final rule removes any possible implication that wider dissemination of test results is required.

FRA also proposed to remove from this paragraph language concerning the MOR's responsibility of confidentiality and to place it in instead in § 219.711(b). This editorial change is adopted, and the substantive issues associated with this language are discussed below under that section.

Section 219.709 Retest

Paragraph (d) is reworded to incorporate 49 CFR 40.29(i) by reference, rather than using different words to express the same concept.

Section 219.711 Confidentiality of Test Results

Paragraph (b) (Medical Information):

Proposed rule. The proposed paragraph consisted of language moved from § 219.707, with a clarification. It provided that an MRO may not disclose medically approved drug use or administration information obtained under this part to non-medical railroad personnel. It was also stated that nothing in this part bars use of such information in the context of an established medical qualifications program "insofar as it may indicate an underlying physical disorder that requires evaluation under the company's existing medical standards." Preamble language explained that this provision was not intended to authorize removal of an employee from service on medical grounds prior to review of a positive test result. 54 FR 39646, 39657; Sept. 27, 1989.

Comments. Ignoring FRA's prior public statements and preamble language, certain railroad commenters invited FRA to affirm that the regulatory language would permit removal of an employee from service on medical grounds after receipt of a laboratory report indicating presence of a controlled substance, but before completion of the MRO review process.

Final rule. FRA has further clarified the text of the rule to state expressly that the legitimate uses that a railroad medical department may make of medical information obtained during the testing process does not include removing the employee from service through medical disqualification prior to completion of the MRO review process, except under the conditions specified in the DOT Procedures. Those railroad commenters troubled by the length and complexity of the regulations should take note of the reason for this additional language.

Section 219.713 Reports; FRA Access to Records

This section was previously § 219.607 and is adopted as proposed.

Appendix A (Schedule of civil penalties) is revised to reflect the amendments made by this final rule.

Part 217

FRA proposed changes to the annual reporting requirements to conform the pre-existing requirements to those adopted in connection with the random testing program. FRA received one detailed comment objecting to the requirement of § 217.13(d)(6) that information on follow-up of employees testing positive in random tests be provided. This language is the same as proposed in May of 1988 and adopted in November of 1988, though the paragraph would be redesignated as (6) rather than (5). The recent comment indicated that providing this information would be an "administrative nightmare," but did not provide any alternative structure. FRA believes that, in the day of PC-based computer data bases, management of the required information is feasible; and the need for meaningful information is significant. Accordingly, these requirements will be continued as previously adopted; and FRA will monitor experience under the requirements to ensure that the information received is usable in the administration and evaluation of random drug testing programs.

Paragraph (d)(7) of § 217.13 is added to conform part 217 to § 40.33(g) of the DOT Procedures (requiring reporting of cases where tests are declared negative based on scientific insufficiency).

Part 225

FRA proposed to clarify in the regulatory text that alcohol/drug data will be provided for incidents (injuries) not involving damage to railroad equipment. This information is already provided under the accident/incident reporting system. No comment was received, and the clarification is adopted as proposed.

FRA also requested comment on the apparent tension between the confidentiality requirements of Subpart H and the railroads' obligations to provide case-specific data with respect to possible alcohol/drug involvement in accident/incidents. A commenting railroad saw no conflict, since FRA would be the receiving entity and could safeguard the information from inappropriate disclosure of data associated with an individual. (Accident/incident reports do not include employee names or other unique identifiers, though information on actions or fitness of those filling particular positions may be provided.) FRA agrees that any disclosure of information in a way that could harm an individual is speculative and continues to believe that development of good information concerning the involvement of alcohol and drugs in accident/incidents is important to safety. Accordingly, FRA will continue to require this information and will review and, as necessary, reinforce its internal review procedures protecting against inappropriate release of this information on a case-specific basis. However, FRA is also clarifying that the railroad should not report information concerning analytical positives that are deemed negative in MRO review or (in the case of railroad-administered testing) that are otherwise determined to have resulted from legitimate use. This information is particularly sensitive; and FRA or NTSB can separately request it in the very rare case where it is necessary to an accident investigation.

Regulatory Impact

This final rule has been evaluated in accordance with existing regulatory policies. It is not a "major" rule under Executive Order 12291, but it is deemed a "significant" rule as defined under DOT policies and procedures. FRA has considered the regulatory costs and benefits associated with the rule and has determined that the costs of the revisions are not significant. Therefore, no further regulatory evaluation is warranted. Benefits of the proosed rule would include increased efficiency of program administration and improved safety. Comments on ther NPRM did not directly address cost/benefit issues.

The regulations issued herein would not have substantial effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 12612, preparation of a Federalism Assessment is not warranted.

It is certified that the amendments will not have a significant economic impact on a substantial number of small entities under the provisions of the Regulatory Flexibility Act (5 U.S.C. 60 et seq.).

FRA has evaluated these proposed regulations in accordance with its procedures for insuring full consideration of the environmental impacts of FRA actions as required by the National Environmental Policy Act (45 U.S.C. 4321 et seq.), other environmental statutes, Executive Orders and DOT order 5610.1c. These proposed regulations meet the criteria that establish this as a non-major action for environmental purposes.

Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) applies to this final rule because it changes several currently approved collections of information and initiates several new information collection requirements. FRA has received no specific paperwork-related comments in response to the NPRM.

FRA is requesting OMB approval of the revised information collection requirements. FRA solicits comments on the accuracy of the estimates, the practical utility of the information, and alternative methods that might be less burdensome to obtain this information. Persons desiring to comment on this topic should submit their views in writing to Gloria D. Swanson, Federal Railroad Administration, 400 Seventh Street, SW., Washington, DC 20590, and to Ed Clark, Regulatory Policy Branch (OMB No. 2130–526), Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Washington, DC 20530. Copies of any such comments should also be submitted to the docket of this rulemaking at the address provided above.

A Federal Register notice will be published when Paperwork Reduction Act approval is obtained.

Therefore, in consideration of the foregoing, parts 217, 219, and 225, title 49, Code of Federal Regulations are amended as follows:

List of Subjects

49 CFR Part 217

Railroad safety, Railroad operating rules, Reporting and recordkeeping requirements.

49 CFR Part 219

Railroad safety, Control of alcohol and drug use, Reporting and recordkeeping requirements.

49 CFR Part 225

Railroad safety, Accident/Incident reporting, Reporting and recordkeeping requirements.

PART 219—[AMENDED]

1. The authority citation for part 219 continues to read as follows:

Authority: 45 U.S.C. 431, 437, and 438, as amended; Pub. L. 100–342; and 49 CFR 1.49(m).

2. Part 219 is revised to read as follows:

PART 219—CONTROL OF ALCOHOL AND DRUG USE

Subpart A—General

Sec.
219.1 Purpose and scope.
219.3 Application.
219.5 Definitions.
219.7 Waivers.
219.9 Responsibility for compliance.
219.11 General conditions for chemical tests.
219.13 Preemptive effect.
219.15 Alcohol concentrations in blood and breath.
219.17 Construction.
219.19 Field Manual.
219.21 Information collection.
219.23 Notice to employees.

Subpart B—Prohibitions

219.101 Alcohol and drug use prohibited.
219.102 Prohibition on abuse of controlled substances.
219.103 Prescribed and over-the-counter drugs.
219.104 Responsive action.
219.105 Railroad's duty to prevent violations.

Subpart C—Post-Accident Toxicological Testing

219.201 Events for which testing is required.
219.203 Responsibilities of railroads and employees.
219.205 Sample collection and handling.
219.207 Fatality.
219.209 Reports of tests and refusals.
219.211 Analysis and follow-up.
219.213 Unlawful refusals; consequences.

Subpart D—Authorization to Test for Cause

219.301 Testing for reasonable cause.
219.303 Breath test procedures and safeguards.
219.305 Urine test procedures and safeguards.
219.307 [Reserved]
219.309 Employee notice.

Subpart E—Identification of Troubled Employees

219.401 Requirement for policies.
219.403 Voluntary referral policy.
219.405 Co-worker report policy.
219.407 Alternate policies.

Subpart F—Pre-Employment Drug Screens

219.501 Pre-employment drug screens.
219.503 Notification; records.
219.505 Refusals; consequences of positive.

Subpart G—Random Drug Testing Program

219.601 Railroad random testing programs.
219.603 Participation in testing; refusals.
219.605 Positive test results; procedures.

Subpart H—Procedures and Safeguards for Urine Drug Testing

219.701 Standards for urine drug testing.
219.703 Collection.
219.705 Drugs tested.
219.707 Review by MRO.
219.709 Retest.
219.711 Confidentiality of test results.
219.713 Reports; FRA access to records.

Appendix A—Schedule of Civil Penalties

Appendix B—Designation of Laboratory for Post-Accident Toxicological Testing

Appendix C—Post-Accident Testing Sample Collection

Authority: 45 U.S.C. 431, 437, and 438, as amended; Pub. L. 100–342; and 49 CFR 1.49(m).

Subpart A—General

§ 219.1 Purpose and scope.

(a) The purpose of this part is to prevent accidents and casualties in railroad operations that result from impairment of employees by alcohol or drugs.

(b) This part prescribes minimum Federal safety standards for control of alcohol and drug use. This part does not restrict a railroad from adopting and enforcing additional or more stringent requirements not inconsistent with this part.

§ 219.3 Application.

(a) Except as provided in paragraph (b), this part applies to—

(1) Railroads that operate rolling equipment on standard gage track which is part of the general railroad system of transportation; and

(2) Railroads that provide commuter or other short-haul rail passenger service in a metropolitan or suburban area (as described by section 202(e) of the Federal Railroad Safety Act of 1970, as amended).

(b) (1) This part does not apply to a railroad that operates only on track inside an installation which is not part of the general railroad system of transportation.

(2) Subparts D, E, F and G do not apply to a railroad that employs not more than 15 employees covered by the Hours of Service Act (45 U.S.C. 61–64b) and that does not operate on tracks of another railroad (or otherwise engage in joint operations with another railroad) except as necessary for purposes of interchange.

(c) (1) Subpart G of this part shall not apply to any person for whom compliance with that subpart would violate the domestic laws or policies of another country.

(2) Subpart G is not effective until January 2, 1992, with respect to any employee whose place of reporting of point of departure ("home terminal") for rail transportation services is located outside the territory of the United States.

§ 219.5 Definitions.

As used in this part—

Alcohol means ethyl alcohol (ethanol). References to use or possession of alcohol include use or possession of any beverage, mixture or preparation containing ethyl alcohol.

Class I, "Class II," and *"Class III"* have the meaning assigned by regulations of the Interstate Commerce Commission (49 CFR Part 1201; General Instructions 1–1), as those regulations may be revised and applied by order of the Commission (including modifications in class thresholds based revenue deflator adjustments).

Controlled substance has the meaning assigned by 21 U.S.C. 802 and includes all substances listed on Schedules I through V as they may be revised from time to time (21 CFR parts 1301–1316).

Covered employee means a person who has been assigned to perform service subject to the Hours of Service Act (45 U.S.C. 61–64b) during a duty tour, whether or not the person has performed or is currently performing such service, and any person who performs such service. (An employee is not "covered" within the meaning of this part exclusively by reason of being an employee for purposes of section 2(a)(3) of the Hours of Service Act, as amended (45 U.S.C. 62(a)(3)).)

Covered service means service for a railroad that is subject to the Hours of Service Act (45 U.S.C. 61–64b), but does not include any period the employee is relieved of all responsibilities and is free to come and go without restriction.

Co-worker means another employee of the railroad, including a working supervisor directly associated with a yard or train crew, such as a conductor or yard foreman, but not including any other railroad supervisor, special agent or officer.

Drug means any substance (other than alcohol) that has known mind or function-altering effects on a human subject, specifically including any psychoactive substance and including, but not limited to, controlled substances.

EAP Counselor means a person or persons qualified by experience, education, or training to counsel persons affected by substance abuse problems and to evaluate their progress in recovering from or controlling such problems. An "EAP counselor" may be a qualified full-time salaried employee of the railroad, a qualified practitioner who contracts with the railroad on a fee-for-service or other basis, or a qualified physician designated by the railroad to perform functions in connection with alcohol or drug abuse evaluation or counseling. As used in these rules, an EAP Counselor owes a duty to the railroad to make an honest and fully informed evaluation of the condition and progress of the employee.

Field Manual refers to the document described in § 219.19 of this subpart.

FRA means the Federal Railroad Administration, U.S. Department of Transportation.

FRA representative means the Associate Administrator for Safety, FRA, the Associate Administrator's delegate (including a qualified State inspector acting under part 212 of this chapter), the Chief Counsel, FRA, or the Chief Counsel's delegate.

Hazardous material means a commodity designated as a hazardous material by part 172 of this title.

Impact accident means a train accident (i.e., a rail equipment accident involving damage in excess of the current reporting threshold, $5,700 in 1989 and 1990) consisting of a head-on collision, a rear-end collision, a side collision (including a collision at a railroad crossing at grade), a switching collision, or impact with a deliberately-placed obstruction such as a bumping post. The following are not impact accidents:

(1) An accident in which the derailment of equipment causes an impact with other rail equipment;

(2) Impact of rail equipment with obstructions such as fallen trees, rock or snow slides, livestock, etc.; and

(3) Raking collisions caused by derailment of rolling stock or operation of equipment in violation of clearance limitations.

"Independent" means not under the ownership or control of the railroad and not operated or staffed by a salaried officer or employee of the railroad. The fact that the railroad pays for services rendered by a medical facility or laboratory, selects that entity for performing tests under this part, or has a standing contractual relationship with that entity to perform tests under this part or perform other medical examinations or tests of railroad employees does not, by itself, remove the facility from this definition.

Medical facility means a hospital, clinic, physician's office, or laboratory where toxicological samples can be collected according to recognized professional standards.

Medical practitioner means a physician or dentist licensed or otherwise authorized to practice by the state.

Medical Review Officer or *MRO* refers to a licensed physician designated by the railroad who is responsible for receiving laboratory results generated by the railroad's drug testing program (including testing mandated or authorized by this part), who has knowledge of substance abuse disorders, and who has appropriate medical training to interpret and evaluate an individual's positive test result (as reported by the laboratory) together with his or her medical history and any other relevant biomedical information.

NTSB means the National Transportation Safety Board.

Passenger train means a train transporting persons (other than employees, contractors or persons riding equipment to observe or monitor railroad operations) in intercity passenger service, commuter or other short-haul service, or for excursion or recreational purposes.

Possess means to have on one's person or in one's personal effects or under one's control. However, the concept of possession as used in this part does not include control by virtue of presence in the employee's personal residence or other similar location off of railroad property.

Railroad means all forms of non-highway ground transportation that run on rails or electro-magnetic guideways, including:

(1) Commuter or other short-haul rail passenger service in a metropolitan or suburban area, as well as any commuter rail service which was operated by Consolidated Rail Corporation as of January 1, 1979, and

(2) High speed ground transportation systems that connect metropolitan areas, without regard to whether they use new technologies not associated with traditional railroads.

Such term does not include rapid transit operations within an urban area that are not connected to the general railroad system of transportation.

Railroad property damage or *damage to railroad property* refers to damage to railroad property, including railroad on-track equipment, signals, track, track structures (including bridges and tunnels), or roadbed, including labor costs and all other costs for repair or replacement in kind. Estimated cost for replacement of railroad property shall be calculated as described in the FRA Guide for Preparing Accident/Incident Reports. (See 49 CFR 225.21.) However, replacement of passenger equipment shall be calculated based on the cost of

acquiring a new unit for comparable service.

Reportable injury means an inury reportable under part 225 of this title.

Reporting threshold means the amount specified in § 225.19(c) of this title, as adjusted from time to time in accordance with appendix A to part 225 of this title (i.e., $5,700 in 1989 and 1990).

Supervisory employee means an officer, special agent, or other employee of the railroad who is not a co-worker and who is responsible for supervising or monitoring the conduct or performance of one or more employees.

Train, except as context requires, means a locomotive, or more than one locomotive coupled, with or without cars. (A locomotive is a self-propelled unit of equipment which can be used in train service.)

Train accident means a passenger, freight, or work train accident described in § 225.19(c) of this title (a "rail equipment accident" involving damage in excess of the current reporting threshold, $5,700 in 1989 and 1990), including an accident involving a switching movement.

Train incident means an event involving the movement of railroad on-track equipment that results in a casualty but in which railroad property damage does not exceed the reporting threshold.

§ 219.7 Waivers.

(a) A person subject to a requirement of this part may petition the Federal Railroad Administration for a waiver of compliance with such requirement.

(b) Each petition for waiver under this section must be filed in a manner and contain the information required by part 211 of this chapter.

(c) If the Administrator finds that waiver of compliance is in the public interest and is consistent with railroad safety, the Administrator may grant the waiver subject to any necessary conditions.

§ 219.9 Responsibility for compliance.

(a) Any person (including a railroad and any manager, supervisor, official, or other employee or agent of a railroad) who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least $250 and not more than $10,000 per violation, except that: Penalties may be assessed against individuals only for willful violations; where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury, or has caused death or injury, a penalty not to exceed $20,000 per violation may be assessed; and the standard of liability for a railroad will vary depending upon the requirement involved. *See*, e.g., § 219.105, which shall be construed to qualify the responsibility of a railroad for the unauthorized conduct of an employee that violates § 219.101 or § 219.102 (while imposing a duty of due diligence to prevent such conduct). Each day a violation continues shall constitute a separate offense. See Appendix A to this part for a statement of agency civil penalty policy.

(b)(1) In the case of joint operations, primary responsibility for compliance with this part with respect to determination of events qualifying for breath or body fluid testing under subparts C and D or this part shall rest with the host railroad, and all affected employees shall be responsive to direction from the host railroad consistent with this part. However, nothing in this paragraph shall restrict the ability of the railroads to provide for an appropriate assignment of responsibility for compliance with this part as among those railroads through a joint operating agreement or other binding contract. FRA reserves the right to bring an enforcement action for noncompliance with applicable portions of this part against the host railroad, the employing railroad, or both.

(2) Where an employee of one railroad is required to participate in breath or body fluid testing under subpart C or D and is subsequently subject to adverse action alleged to have arisen out of the required test (or alleged refusal thereof), necessary witnesses and documents available to the other railroad shall be made available to the employee on a reasonable basis.

§ 219.11 General conditions for chemical tests.

(a) Any employee who performs covered service for a railroad shall be deemed to have consented to testing as required in subparts B, C, D, and G of this part; and consent is implied by performance of such service.

(b) (1) Each such employee shall participate in such testing, as required under the conditions set forth in this part by a representative of the railroad.

(2) In any case where an employee has sustained a personal injury and is subject to alcohol or drug testing under this part, necessary medical treatment shall be accorded priority over provision of the breath or body fluid sample. No employee who is unable to urinate normally (based on the judgment of a medical professional that catheterization would be required) as a result of a personal injury or resulting medical treatment shall be required to provide a urine sample.

(3) Failure to remain available following an accident or casualty as required by company rules (i.e., being absent without leave) shall be considered a refusal to participate in testing, without regard to any subsequent provision of samples.

(4) Tampering with a sample in order to prevent a valid test (e.g., through substitution, dilution or adulteration) constitutes a refusal to provide a sample.

(c) A covered employee who is required to be tested under subpart C or D and who is taken to a medical facility for observation or treatment after an accident or incident shall be deemed to have consented to the release to FRA of the following:

(1) The remaining portion of any body fluid sample taken by the treating facility within 12 hours of the accident or incident that is not required for medical purposes, together with any normal medical facility record(s) pertaining to the taking of such sample;

(2) The results of any laboratory tests for alcohol or any drug conducted by or for the treating facility on such sample; and

(3) The identity, dosage, and time of administration of any drugs administered by the treating facility prior to the time samples were taken by the treating facility or prior to the time samples were taken in compliance with this part.

(d) An employee required to participate in body fluid testing under subpart C (post-accident toxicological testing) or testing subject to subpart H shall, if requested by the representative of the railroad or the medical facility (including under subpart H of this part, a non-medical contract collector), evidence consent to taking of samples, their release for toxicological analysis under pertinent provisions of this part, and release of the test results to the railroad's Medical Review Officer by promptly executing a consent form, if required by the medical facility. The employee is not required to execute any document or clause waiving rights that the employee would otherwise have against the employer, and any such waiver is void. The employee may not be required to waive liability with respect to negligence on the part of any person participating in the collection, handling or analysis of the specimen or to indemnify any person for the negligence of others. Any consent provided consistent with this section shall be construed to extend only to those actions specified herein.

(e) Nothing in this part shall be construed to authorize the use of physical coercion or any other deprivation of liberty in order to compel breath or body fluid testing.

(f) Any railroad employee who performs service for a railroad shall be deemed to have consented to removal of body fluid and/or tissue samples necessary for toxicological analysis from the remains of such employee, if such employee dies within 12 hours of an accident or incident described in subpart C as a result of such event. This consent is specifically required of employees not in covered service, as well as employees in covered service.

(g) Nothing in this subpart restricts any discretion available to the railroad to request or require that an employee cooperate in additional body fluid testing. However, no such testing may be performed on urine or blood samples provided under this part. For purposes of this paragraph, all urine from a void constitutes a single sample.

§ 219.13 Preemptive effect.

(a) Under section 205 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 434), issuance of these regulations preempts any State law, rule, regulation, order or standard covering the same subject matter, except a provision directed at a local hazard that is consistent with this part and that does not impose an undue burden on interstate commerce.

(b) FRA does not intend by issuance of these regulations to preempt provisions of State criminal law that impose sanctions for reckless conduct that leads to actual loss of life, injury or damage to property, whether such provisions apply specifically to railroad employees or generally to the public at large.

§ 219.15 Alcohol concentrations in blood and breath.

(a) In this part, blood alcohol concentration (BAC) is expressed as a "percentage" weight to volume. For example, a BAC of ".04 percent" means that there is .04 gram (four hundredths of one gram) of alcohol in 100 milliliters of whole blood. This is the same quantity as "40 milligrams percent" (40 milligrams in 100 milliliters).

(b) For the purpose of determining blood alcohol concentration through an analysis of the breath, the amount of alcohol in one part of blood shall be presumed to equal the amount of alcohol in 2100 parts of an expired breath sample (by volume).

§ 219.17 Construction.

Nothing in this part—

(a) Restricts the power of FRA to conduct investigations under section 208 of the Federal Railroad Safety Act of 1970, as amended; or

(b) Creates a private right of action on the part of any person for enforcement of the provisions of this part or for damages resulting from noncompliance with this part.

§ 219.19 Field Manual.

(a) Recommended practice standards for breath testing under subpart D of this part, and related materials designed to assist the railroads in establishing programs for control of alcohol and drug use are contained in the FRA Alcohol and Drug Field Manual, which is revised from time to time by the Office of Safety, FRA.

(b) The Field Manual may be inspected at the Office of the Associate Administrator for Safety, FRA, 400 Seventh Street, SW., Washington, DC 20590. The Field Manual may be purchased at the National Technical Information Service, Order Department, 5285 Port Royal Road, Springfield, Virginia 22161.

§ 219.21 Information collection.

(a) The information collection requirements of this part have been reviewed by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB control number 2130–0526.

(b) The information collection requirements are found in the following sections:

Section 219.7.
Section 219.23.
Section 219.104.
Section 219.201.
Section 219.203.
Section 219.205.
Section 219.207.
Section 219.209.
Section 219.211.
Section 219.213.
Section 219.303.
Section 219.307.
Section 219.309.
Section 219.401.
Section 219.403.
Section 219.405.
Section 219.407.
Section 219.501.
Section 219.503.
Section 219.601.
Section 219.605.
Section 219.701.
Section 219.703.
Section 219.705.
Section 219.707.
Section 219.709.
Section 219.711.
Section 219.713.

§ 219.23 Notice of employees.

(a) Whenever a breath or body fluid test is required of an employee under this part, the railroad shall provide clear and unequivocal written notice to the employee that the test is being required under Federal Railroad Administration regulations. Clear annotation of the drug testing custody and control form ("Reason for test") with the letters "FRA" prior to providing a copy to the employee satisfies the requirement of this paragraph. Rather than providing written notice for each individual test, a company that requires breath and/or body fluid tests only under the authority of this part for a clearly delineated portion of its employees may satisfy this requirement by publishing this fact in a manner that provides effective notice to each employee.

(b) Whenever a breath or body fluid test is required of an employee under this part, the railroad shall provide clear, unequivocal written notice of the basis or bases upon which the test is required (e.g., reasonable suspicion, violation of a specified operating/safety rule enumerated in subpart D, random selection, follow-up, etc.). Annotation of the urine custody and control form with the specific basis of the test (prior to providing a copy to the employee) satisfies the requirement of this paragraph.

(c) Use of approved forms for mandatory post-accident toxicological testing under subpart C of this part provides the notifications required under this section with respect to such tests. Use of those forms for any other test is prohibited.

Subpart B—Prohibitions

§ 219.101 Alcohol and drug use prohibited.

(a) *Prohibitions.* Except as provided in § 219.103—

(1) No employee may use or possess alcohol or any controlled substance while assigned by a railroad to perform covered service;

(2) No employee may report for covered service, or go or remain on duty in covered service while—

(i) Under the influence of or impaired by alcohol;

(ii) Having .04 percent or more alcohol in the blood; or

(iii) Under the influence of or impaired by any controlled substance.

(b) *Controlled substance.* "Controlled substance" is defined by § 219.5 of this part. Controlled substances are grouped as follows: Marijuana, narcotics (such as heroin and codeine), stimulants (such as cocaine and amphetamines),

depressants (such as barbiturates and minor tranquilizers), and hallucinogens (such as the drugs known as PCP and LSD). Controlled substances include illicit drugs (Schedule I), drugs that are required to be distributed only by a medical practitioner's prescription or other authorization (Schedules II through IV, and some drugs on Schedule V), and certain preparations for which distribution is through documented over the counter sales (Schedule V only).

(c) *Railroad rules.* Nothing in this section restricts a railroad form imposing an absolute prohibition on the presence of alcohol or any drug in the body fluids of persons in its employ, whether in furtherance of the purpose of this part or for other purposes.

(d) *Construction.* This section shall not be construed to prohibit the presence of an unopened container of an alcoholic beverage in a private motor vehicle that is not subject to use in the business of the railroad; nor shall it be construed to restrict a railroad from prohibiting such presence under its own rules.

§ 219.102 Prohibition on abuse of controlled substances.

On and after October 2, 1989, no employee who performs covered service may use a controlled substance at any time, whether on duty or off duty, except as permitted by § 219.103 of this subpart.

§ 219.103 Prescribed and over-the-counter drugs.

(a) This subpart does not prohibit the use of a controlled substance (on Schedule II through V of the controlled substance list) prescribed or authorized by a medical practitioner, or possession incident to such use, if—

(1) The treating medical practitioner or a physician designated by the railroad has made a good faith judgment, with notice of the employee's assigned duties and on the basis of the available medical history, that use of the substance by the employee at the prescribed or authorized dosage level is consistent with the safe performance of the employee's duties;

(2) The substance is used at the dosage prescribed or authorized; and

(3) In the event the employee is being treated by more than one medical practitioner, at least one treating medical practitioner has been informed of all medications authorized or prescribed and has determined that use of the medications is consistent with the safe performance of the employee's duties (and the employee has observed any restrictions imposed with respect to use of the medications in combination).

(b) This subpart does not restrict any discretion available to the railroad to require that employees notify the railroad of therapeutic drug use or obtain prior approval for such use.

§ 219.104 Responsive action.

(a) *Removal from covered service.* If the railroad determines that there is reason to believe that an employee has violated § 219.101 or 219.102 as evidenced by a positive test result reported by the railroad's Medical Review Officer for a test conducted under this subpart, subpart C, subpart D or subpart G of this part (or on the basis of a positive breath alcohol test for which the employee has not exercised the blood test option), the railroad shall immediately remove the employee from covered service.

(b) *Notice.* Prior to or upon withdrawing the employee from covered service under this section, the railroad shall provide notice of the reason for this action.

(c) *Hearing procedures.* (1) If the employee denies that the test result is valid evidence of alcohol or drug use prohibited by this subpart, the employee may demand and shall be provided an opportunity for a prompt post-suspension hearing before a presiding officer other than the charging official. This hearing may be consolidated with any disciplinary hearing arising from the same accident or incident (or conduct directly related thereto), but the presiding officer shall make separate findings as to compliance with §§ 219.101 and 219.102 of this part.

(2) The hearing shall be convened within the period specified in the applicable collective bargaining agreement. In the absence of an agreement provision, the employee may demand that the hearing be convened within 10 calendar days of the suspension or, in the case of an employee who is unavailable due to injury, illness, or other sufficient cause, within 10 days of the date the employee becomes available for hearing.

(3) A post-suspension proceeding conforming to the requirements of an applicable collective bargaining agreement, together with the provisions for adjustment of disputes under section 3 of the Railway Labor Act, shall be deemed to satisfy the procedural requirements of this paragraph.

(4) Nothing in this part shall be deemed to abridge any additional procedural rights or remedies not inconsistent with this part that are available to the employee under a collective bargaining agreement, the Railway Labor Act, or (with respect to employment at will) at common law with respect to the removal or other adverse action taken as a consequence of a positive test result in a test authorized or required by this part.

(5) Nothing in this part shall restrict the discretion of the railroad to treat an employee's denial of prohibited alcohol or drug use as a waiver of any privilege the employee would otherwise enjoy to have such prohibited alcohol or drug use treated as a non-disciplinary matter or to have discipline held in abeyance.

(d) *Return to covered service.* An employee who has been determined to have violated § 219.101 or § 219.102 of this part as a result of a positive test result described in paragraph (a) shall not be returned to covered service unless the employee has—

(1) Been evaluated by an EAP counselor to determine if the employee is affected by a psychological or physical dependence on alcohol or one or more controlled substances or by another identifiable and treatable mental or physical disorder involving abuse of alcohol or drugs as a primary manifestation;

(2) Successfully completed any program of counseling or treatment determined to be necessary by the EAP counselor prior to return to covered service; and

(3) Presented a urine sample for testing under subpart H of this part that tested negative for controlled substances assayed (in the case of an employee who had tested positive for a controlled substance) or has tested negative for alcohol under paragraph (e) of this section (in the case of an employee who had tested positive for alcohol).

An employee returned to service under the above-stated conditions shall continue in any program of counseling or treatment deemed necessary by the EAP counselor and, in the case of an employee who had tested positive for a controlled substance, shall be subject to a reasonable program of followup drug testing without prior notice for a period of not more than 60 months following return to service. Such tests shall be performed consistent with the requirements of subpart H of this part.

(e) *Return-to-service tests for alcohol.* Return-to-service alcohol tests required by paragraph (d) of this section shall consist of—

(1) Analysis of a breath specimen for alcohol under safeguards consistent with those specified for reasonable cause breath testing under subpart C of this part; or

(2) Analysis of a blood specimen for alcohol in the same manner as prescribed in § 219.303(c) of this part.

§ 219.105 Railroad's duty to prevent violations.

(a) A railroad may not, with actual knowledge, permit an employee to go or remain on duty in covered service in violation of the prohibitions of § 219.101 or § 219.102. As used in this section, the knowledge imputed to the railroad shall be limited to that of a railroad management employee (such as a supervisor deemed an "officer," whether or not such person is a corporate officer) or a supervisory employee in the offending employee's chain of command.

(b) A railroad must exercise due diligence to assure compliance with § 219.101 and § 219.102 by each covered employee.

Subpart C—Post-Accident Toxicological Testing

§ 219.201 Events for which testing is required.

(a) *List of events.* Except as provided in paragraph (b) of this section, post-accident toxicological tests shall be conducted after any event that involves one or more of the circumstances described in paragraphs (a) (1) through (4) of this section:

(1) *Major train accident.* Any train accident (i.e., a rail equipment accident involving damage in excess of the current reporting threshold, $5,700 in 1989 and 1990) that involves one or more of the following:

(i) A fatality;

(ii) Release of hazardous material lading from railroad equipment accompanied by—

(A) An evacuation; or

(B) A reportable injury resulting from the hazardous material release (*e.g.*, from fire, explosion, inhalation, or skin contact with the material); or

(iii) Damage to railroad property of $500,000 or more.

(2) *Impact accident.* An impact accident (i.e., a rail equipment accident defined as an "impact accident" in § 219.5 of this part that involves damage in excess of the current reporting threshold, $5,700 in 1989 and 1990) resulting in—

(i) A reportable injury; or

(ii) Damage to railroad property of $50,000 or more.

(3) *Fatal train incident.* Any train incident that involves a fatality to any on-duty railroad employee.

(4) *Passenger train accident.* Reportable injury to any person in a train accident (i.e., a rail equipment accident involving damage in excess of the current reporting threshold, $5,700 in 1989 and 1990) involving a passenger train.

(b) *Exceptions.* No test shall be required in the case of a collision between railroad rolling stock and a motor vehicle or other highway conveyance at a rail/highway grade crossing. No test shall be required in the case of an accident/incident the cause and severity of which are wholly attributable to a natural cause (e.g., flood, tornado or other natural disaster), as determined on the basis of objective and documented facts by the railroad representative responding to the scene.

(c) *Good faith determinations.* (1)(i) The railroad representative responding to the scene of the accident/incident shall determine whether the accident/incident falls within the requirements of paragraph (a) of this section or is within the exception described in paragraph (b) of this section. It is the duty of the railroad representative to make reasonable inquiry into the facts as necessary to make such determinations. In making such inquiry, the railroad representative shall consider the need to obtain samples as soon as practical in order to determine the presence or absence of impairing substances reasonably contemporaneous with the accident/incident. The railroad representative satisfies the requirement of this section if, after making reasonable inquiry, the representative exercises good faith judgement in making the required determinations.

(ii) The railroad representative making the determinations required by this section shall not be a person directly involved in the accident/incident. This section does not prohibit consultation between the responding railroad representative and higher level railroad officials; however, the responding railroad representative shall make the factual determinations required by this section.

(iii) Upon specific request made to the railroad by the Associate Administrator for Safety, FRA (or the Associate Administrator's delegate), the railroad shall provide a report describing any decision by a person other than the responding railroad representative with respect to whether an accident/incident qualifies for testing. This report shall be affirmed by the decision maker and shall be provided to FRA within 72 hours of the request. The report shall include the facts reported by the responding railroad representative, the basis upon which the testing decision was made, and the person making the decision.

(iv) Any estimates of railroad property damage made by persons not the scene shall be based on descriptions of specific physicial damage provided by the on-scene railroad representative.

(v) In the case of an accident involving passenger equipment, a host railroad may rely upon the the damage estimates provided by the passenger railroad (whether present on scene or not) in making the decision whether testing is required, subject to the same requirement that visible physical damage be specifically described.

(2) A railroad shall not require an employee to provide blood or urine specimens under the authority or procedures of this subject unless the railroad has made the determinations required by this section, based upon reasonable inquiry and good faith judgment. A railroad does not act in excess of its authority under this subpart if its representative has made such reasonable inquiry and exercised such good faith judgment, but it is later determined, after investigation, that one or more of the conditions thought to have required testing were not, in fact, present. However, this section does not excuse the railroad for any error arising from a mistake of law (e.g., application of testing criteria other than those contained in these regulations).

(3) A railroad is not in violation of this subpart if its representative has made such reasonable inquiry and exercised such good faith judgment but nevertheless errs in determining that post-accident testing is not required.

(4) An accident/incident with respect to which the railroad has made reasonable inquiry and exercised good faith judgment in determining the facts necessary to apply the criteria contained in paragraph (a) of this section is deemed a qualifying event for purposes of sample analysis, reporting, and other purposes.

(5) In the event samples are collected following an event determined by FRA not to be a qualifying event within the meaning of this paragraph, FRA directs its designated laboratory to destroy any sample material submitted and to refrain from disclosing to any person the results of any analysis conducted.

§ 219.203 Responsibilities of railroads and employees.

(a) *Employees tested.* (1) Following each accident and incident described in § 219.201, the railroad (or railroads) shall take all practicable steps to assure that all covered employees of the railroad directly involved in the accident or incident provide blood and urine samples for toxicological testing by FRA. Such employees shall cooperate in the provision of samples as described in this subpart and Appendix C.

(2) Such employees shall specifically include each and every operating

employee assigned as a crew member of any train involved in the accident or incident. In any case where an operator, dispatcher, signal maintainer or other covered employee is directly and contemporaneously involved in the circumstances of the accident/incident, those employees shall also be required to provide samples.

(3) An employee shall be excluded from testing under the following circumstances: In any case of an accident/incident for which testing is mandated only under § 219.201(a)(2) of this subpart (an "impact accident"), § 219.201(a)(3) ("fatal train incident"), or § 219.2012(a)(4) (a "passenger train accident with injury") if the railroad representative can immediately determine, on the basis of specific information, that the employee had no role in the cause(s) or severity of the accident/incident. The railroad representative shall consider any such information immediately available at the time the qualifying event determination is made under § 219.201 of this subpart.

(4) The following provisions govern accidents/incidents involving non-covered employees:

(i) Surviving non-covered employees are not subject to testing under this subpart.

(ii) Testing of the remains of non-covered employees who are fatally injured in train accidents and incidents is required.

(b) *Timely sample collection.* (1) The railroad shall make every reasonable effort to assure that samples are provided as soon as possible after the accident or incident.

(2) This paragraph shall not be construed to inhibit the employees required to be tested from performing, in the immediate aftermath of the accident or incident, any duties that may be necessary for the preservation of life or property. However, where practical, the railroad shall utilize other employees to perform such duties.

(3) In the case of a passenger train which is in proper condition to continue to the next station or its destination after an accident or incident, the railroad shall consider the safety and convenience of passengers in determining whether the crew is immediately available for testing. A relief crew shall be called to relieve the train crew as soon as possible.

(4) Covered employees who may be subject to testing under this subpart shall be retained in duty status for the period necessary to make the determinations required by § 219.201 and this section and (as appropriate) to complete the sample collection procedure. An employee may not be recalled for testing under this subpart if that employee has been released from duty under the normal procedures of the railroad, except that an employee shall be immediately recalled for testing if—

(i) The railroad's preliminary investigation (contemporaneous with the determination required by § 219.201 of this subpart) indicates a clear probability that the employee played a major role in the cause or severity of the accident; and

(ii) The accident/incident actually occurred during the employee's duty tour.

An employee who has been transported to receive medical care is not released from duty for purposes of this section. Nothing in this section prohibits the subsequent testing of an employee who has failed to remain available for testing as required (i.e., who is absent without leave); but subsequent testing does not excuse such refusal by the employee timely to provide the required specimens.

(c) *Place of sample collection.* (1) Employees shall be transported to an independent medical facility where the samples shall be obtained. The railroad shall pre-designate for such testing one or more such facilities in reasonable proximity to any location where the railroad conducts operations. Designation shall be made on the basis of the willingness of the facility to conduct sample collection and the ability of the facility to complete sample collection promptly, professionally, and in accordance with pertinent requirements of this part. In all cases blood shall be drawn only by a qualified medical professional or by a qualified technician subject to the supervision of a qualified medical professional

(2) In the case of an injured employee, the railroad shall request the treating medical facility to obtain the samples.

(d) *Obtaining cooperation of facility.* (1) In seeking the cooperation of a medical facility in obtaining a sample under this subpart, the railroad shall, as necessary, make specific reference to the requirements of this subpart.

(2) If an injured employee is unconscious or otherwise unable to evidence consent to the procedure and the treating medical facility declines to obtain a blood sample after having been acquainted with the requirements of this subpart, the railroad shall immediately notify FRA by toll free telephone (800–424–0201), stating the employee's name, the medical facility, its location, the name of the appropriate decisional authority at the medical facility, and the telephone number at which that person can be reached. FRA will then take appropriate measures to assist in obtaining the required sample.

(e) *Discretion of physician.* Nothing in this subpart shall be construed to limit the discretion of a physician to determine whether drawing a blood sample is consistent with the health of an injured employee or an employee afflicted by any other condition that may preclude drawing the specified quantity of blood.

§ 219.205 Sample collection and handling.

(a) *General.* Samples shall be obtained, marked, preserved, handled, and made available to FRA consistent with the requirements of this section and the technical specifications set forth in Appendix C to this part.

(b) *Information requirements.* In order to process samples, analyze the significance of laboratory findings, and notify the railroads and employees of test results, it is necessary to obtain basic information concerning the accident/incident and any treatment administered after the accident/incident. Accordingly, the railroad representative shall complete the information required by FRA Form 6180.73 (revised) for shipping with the samples. Each employee subject to testing shall cooperate in completion of the required information on FRA Form 6180.74 (revised) for inclusion in the shipping kit and processing of the samples. The railroad representative shall request an appropriate representative of the medical facility to complete the remaining portion of the information on each Form 6180.74 (revised). One Form 6180.73 (revised) shall be forwarded in the shipping kit with each group of samples. One Form 6180.74 (revised) shall be forwarded in the shipping kit for each employee who provides samples.

(c) *Shipping kit.* (1) FRA and the laboratory designated in Appendix B to this part make available for purchase a limited number of standard shipping kits for the purpose of routine handling of toxicological samples under this subpart. Whenever possible, samples shall be placed in the shipping kit prepared for shipment according to the instructions provided in the kit and Appendix C. Specifications for kits are contained in the Field Manual.

(2) Kits may be ordered directly from the laboratory designated in appendix B to this part.

(3) FRA maintains a limited number of kits at its field offices. A Class III railroad may utilize kits in FRA possession, rather than maintaining such kits on its property.

(d) *Shipment.* Samples shall be shipped as soon as possible by pre-paid air express or air freight (or other means adequate to ensure delivery within twenty-four (24) hours from time of shipment) to the laboratory designated in Appendix B to this part. Where express courier pickup is available, the railroad shall request the medical facility to transfer the sealed toxicology kit directly to the express courier for transportation. If courier pickup is not available at the medical facility where the samples are collected or for any other reason prompt transfer by the medical facility cannot be assured, the railroad shall promptly transport the sealed shipping kit holding the samples to the most expeditious point of shipment via air express, air freight or equivalent means. The railroad shall maintain and document secure chain of custody of the kit from release by the medical facility to delivery for transportation, as described in appendix C.

§ 219.207 Fatality.

(a) In the case of an employee fatality in an accident or incident described in § 219.201, body fluid and/or tissue samples shall be obtained from the remains of the employee for toxicological testing. To ensure that samples are timely collected, the railroad shall immediately notify the appropriate local authority (such as a coroner or medical examiner) of the fatality and the requirements of this subpart, making available the shipping kit and requesting the local authority to assist in obtaining the necessary body fluid or tissue samples. The railroad shall also seek the assistance of the custodian of the remains, if a person other than the local authority.

(b) If the local authority or custodian of the remains declines to cooperate in obtaining the necessary samples, the railroad shall immediately notify FRA by toll free telephone (800–424–0201) providing the following information:

(1) Date and location of the accident or incident;

(2) Railroad;

(3) Name of the deceased;

(4) Name and telephone number of custodian of the remains; and

(5) Name and telephone number of local authority contacted.

(c) A coroner, medical examiner, pathologist, Aviation Medical Examiner, or other qualified professional is authorized to remove the required body fluid and/or tissue samples from the remains on request of the railroad or FRA pursuant to this part; and, in so acting, such person is the delegate of the Administrator under section 208 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 437) (but not the agent of the Secretary for purposes of the Federal Tort Claims Act). Such qualified professional may rely upon the representations of the railroad or FRA representative with respect to the occurrence of the event requiring that toxicological tests be conducted and the coverage of the deceased employee under these rules.

(d) Appendix C to this part specifies body fluid and/or tissue samples required for toxicological analysis in the case of a fatality.

§ 219.209 Reports of tests and refusals.

(a)(1) A railroad that has experienced one or more events for which samples were obtained shall provide prompt telephonic notification summarizing such events. Notification shall be provided to the Office of Safety, FRA, at (202) 366–0501 (8:30 a.m. to 5:00 p.m. e.s.t. or e.d.t.) during the Federal work week.

(2) Each telephonic report shall contain:

(i) Name of railroad;

(ii) Name, title and telephone number of person making the report;

(iii) Time, date and location of the accident/incident;

(iv) Brief summary of the circumstances of the accident/incident, including basis for testing; and

(v) Number, names and occupations of employees tested.

(b) If the railroad is unable, as a result of non-cooperation of an employee or for any other reason, to obtain a sample and cause it to be provided to FRA as required by this subpart, the railroad shall make a concise narrative report of the reason for such failure and, if appropriate, any action taken in response to the cause of such failure. This report shall be appended to the report of the accident/incident required to be submitted under part 225 of this subchapter.

§ 219.211 Analysis and follow-up.

(a) The laboratory designated in Appendix B to this part undertakes prompt analysis of samples provided under this subpart, consistent with the need to develop all relevant information and produce a complete report. Samples are analyzed for alcohol and controlled substances specified by FRA. Samples may be analyzed for other impairing substances specified by FRA as necessary to the particular accident investigation.

(b) Results of post-accident toxicological testing under this subpart are reported to the railroad's Medical Review Officer and the employee. The MRO and the railroad shall treat the test results and any information concerning medical use or administration of drugs provided under this subpart in the same confidential manner as if subject to subpart H of this part, except where publicly disclosed by FRA or the National Transportation Safety Board.

(c) With respect to a surviving employee, a test reported as positive for alcohol or a controlled substance by the designated laboratory shall be reviewed by the railroad's Medical Review Officer with respect to any claim of use or administration of medications (consistent with § 219.103 of this part) that could account for the laboratory findings. The Medical Review Officer shall promptly report the results of each review to the Associate Administrator for Safety, FRA, Washington, DC 20590. Such report shall be in writing and shall reference the employing railroad, accident/incident date, and location; and the envelope shall be marked "ADMINISTRATIVELY CONFIDENTIAL: ATTENTION ALCOHOL/DRUG PROGRAM MANAGER." The report shall state whether the MRO reported the test result to the employing railroad as positive or negative and the basis of any determination that analytes detected by the laboratory derived from authorized use (including a statement of the compound prescribed, dosage/frequency, and any restrictions imposed by the authorized medical practitioner). Unless specifically requested by FRA in writing, the Medical Review Officer shall not disclose to FRA the underlying physical condition for which any medication was authorized or administered. Neither the Federal Railroad Administration nor the National Transportation Safety Board shall be bound by the railroad Medical Review Officer's determination, but that determination will be considered by FRA in relation to the accident/incident investigation and with respect to any enforcement action under consideration.

(d) To the extent permitted by law, FRA treats test results indicating medical use of controlled substances consistent with § 219.103 (and other information concerning medically authorized drug use or administration provided incident to such testing) as administratively confidential and withholds public disclosure, except where it is necessary to consider this information in an accident investigation in relation to determination of probable cause. (However, as further provided in this section, FRA may provide any result of testing under this subpart and

associated documents to the National Transportation Safety Board.)

(e) An employee may respond in writing to the results of the test prior to the preparation of any final investigation report concerning the accident or incident. An employee wishing to respond shall do so by letter addressed to the Alcohol/Drug Program Manager, Office of Safety, FRA, 400 Seventh Street, SW, Washington, DC 20590 within 45 days of receipt of the test results. Any such submission shall refer to the accident date, railroad and location, shall state the position occupied by the employee on the date of the accident/incident, and shall identify any information contained therein that the employee requests be withheld from public disclosure on grounds of personal privacy (but the decision whether to honor such request shall be made by the FRA on the basis of controlling law). Results of the toxicological analysis and any response from the employee are also promptly made available to the National Transportation Safety Board on request.

(f)(1) The toxicology report may contain a statement of pharmacological significance to assist FRA and other parties in understanding the data reported. No such statement may be construed as a finding of probable cause in the accident or incident.

(2) The toxicology report is a part of the report of the accident/incident and therefore subject to the limitation of section 4 of the Accident Reports Act (45 U.S.C. 41) (prohibiting use of the report for any purpose in any action for damages).

(g)(1) It is in the public interest to ensure that any railroad disciplinary actions that may result from accidents and incidents for which testing is required under this subpart are disposed of on the basis of the most complete and reliable information available so that responsive action will be appropriate. Therefore, during the interval between an accident or incident and the date that the railroad receives notification of the results of the toxicological analysis, any provision of collective bargaining agreements establishing maximum periods for charging employees with rule violations, or for holding an investigation, shall not be deemed to run as to any offense involving the accident or incident (*i.e.*, such periods shall be tolled).

(2) This provision shall not be construed to excuse the railroad from any obligation to timely charge an employee (or provide other actual notice) where the railroad obtains sufficient information relating to alcohol or drug use, impairment or possession or other rule violations prior to the receipt to toxicological analysis.

(3) This provision does not authorize holding any employee out of service pending receipt of toxicological analysis; nor does it restrict a railroad from taking such action in an appropriate case.

(h) Except as provided in § 219.201 (with respect to non-qualifying events), each sample provided under this subpart is retained for not less than three months following the date of the accident or incident (two years from the date of the accident or incident in the case of a sample testing positive for alcohol or a controlled substance) and may be made available to the National Transportation Safety Board (on request).

(i) An employee (donor) may, within 60 days of the date of the toxicology report, request that the employee's blood and/or urine sample be retested by the designated laboratory or by another laboratory certified by the Department of Health and Human Services under that Department's Guidelines for Federal Workplace Drug Testing Programs that has available an appropriate, validated assay for the fluid and compound declared positive. Since some analytes may deteriorate during storage, detected levels of the compound shall, as technically appropriate, be reported and considered corroborative of the original test result. Any request for a retest shall be in writing, specify the railroad, accident date and location, be signed by the employee/donor, be addressed to the Associate Administrator for Safety, FRA, Washington, DC 20590, and be designated "ADMINISTRATIVELY CONFIDENTIAL: ATTENTION ALCOHOL/DRUG PROGRAM MANAGER." The expense of any employee-requested retest at a laboratory other than the laboratory designated under this subpart shall be borne by the employee.

§ 219.213 Unlawful refusals; consequences.

(a) *Disqualification.* (1) An employee who refuses to cooperate in providing a blood or urine sample following an accident or incident specified in this subpart shall be withdrawn from covered service and shall be deemed disqualified for covered service for a period of nine (9) months.

(2) The disqualification required by this paragraph shall apply with respect to employment in covered service by any railroad with notice of such disqualification.

(3) The requirement of disqualification for nine (9) months does not limit any discretion on the part of the railroad to impose additional sanctions for the same or related conduct.

(4) Upon the expiration of the 9-month period described in this section, a railroad may permit the employee to return to covered service only under the same conditions specified in § 219.104 of this part, provided that return-to-service tests shall be conducted for both alcohol and designated controlled substances; and the employee shall be subject to follow-up drug tests as provided by that section.

(b) *Procedures.* (1) Prior to or upon withdrawing the employee from covered service under this section, the railroad shall provide notice of the reason for this action and an opportunity for hearing before a presiding officer other than the charging official. This hearing may be consolidated with any other disciplinary hearing arising from the same accident or incident (or conduct directly related thereto), but the presiding officer shall make separate findings as to the disqualification required by this section.

(2) The hearing shall be convened within the period specified in the applicable collective bargaining agreement. In the absence of an agreement provision, the employee may demand that the hearing be convened within 10 calendar days of the suspension or, in the case of an employee who is unavailable due to injury, illness, or other sufficient cause, within 10 days of the date the charged employee becomes available for hearing.

(3) A post-suspension proceeding conforming to the requirements of an applicable collective bargaining agreement, together with the provisions for adjustment of disputes under section 3 of the Railway Labor Act, shall be deemed to satisfy the procedural requirements of this paragraph.

(c) *Subject of hearing.* The hearing required by this section shall determine whether the employee refused to submit to testing, having been requested to submit, under authority of this subpart, by a representative of the railroad. In determining whether a disqualification is required, the hearing official shall, as appropriate, also consider the following:

(1) Whether the railroad made a good faith determination, based on reasonable inquiry, that the accident or incident was within the mandatory testing requirements of this subpart; and

(2) In a case where a blood test was refused on the ground it would be inconsistent with the employee's health, whether such refusal was made in good faith and based on medical advice.

Subpart D—Authorization To Test for Cause

§ 219.301 Testing for reasonable cause.

(a) *Authorization.* A railroad may, under the conditions specified in this subpart, require any covered employee, as a condition of employment in covered service, to cooperate in breath or urine testing, or both, to determine compliance with §§ 219.101 and 219.102 of this part or a railroad rule implementing the requirements of §§ 219.101 and 219.102. This authority is limited to testing after observations or events that occur during duty hours (including any period of overtime or emergency service). The provisions of this subpart apply only when, and to the extent that, the test in question is conducted in reliance upon the authority conferred by this section. Section 219.23 prescribes the notice to an employee that is required when an employee is required to provide a breath or body fluid sample under this part. A railroad may not require an employee to be tested under the authority of this subpart unless reasonable cause, as defined in this section, exists with respect to that employee.

(b) *Reasonable cause for breath tests.* The following circumstances constitute reasonable cause for the administration of breath alcohol tests under this section:

(1) *Reasonable suspicion.* A supervisory employee of the railroad has a reasonable suspicion that the employee is currently under the influence of or impaired by alcohol, or alcohol in combination with a controlled substance, based upon specific, personal observations that the supervisory employee can articulate concerning the appearance, behavior, speech or body odors of the employee;

(2) *Accident/incident.* The employee has been involved in an accident or incident reportable under part 225 of this title, and a supervisory employee of the railroad has a reasonable suspicion that the employee's acts or omissions contributed to the occurrence or severity of the accident or incident; or

(3) *Rule violation.* The employee has been directly involved in one of the following operating rule violations or errors:

(i) Noncompliance with a train order, track warrant, timetable, signal indication, special instruction or other direction with respect to movement of a train that involves—

(A) Occupancy of a block or other segment of track to which entry was not authorized;

(B) Failure to clear a track to permit opposing or following movement to pass;

(C) Moving across a railroad crossing at grade without authorization; or

(D) Passing an absolute restrictive signal or passing a restrictive signal without stopping (if required);

(ii) Failure to protect a train as required by a rule consistent with § 218.37 of this title (including failure to protect a train that is fouling an adjacent track, where required by the railroad's rules);

(iii) Operation of a train at a speed that exceeds the maximum authorized speed by at least ten (10) miles per hour or by fifty percent (50%) of such maximum authorized speed, whichever is less;

(iv) Alignment of a switch in violation of a railroad rule, failure to align a switch as required for movement, operation of a switch under a train, or unauthorized running through a switch;

(v) Failure to apply or stop short of derail as required;

(vi) Failure to secure a hand brake or failure to secure sufficient hand brakes, as required;

(vii) Entering a crossover before both switches are lined for movement; or

(viii) In the case of a person performing a dispatching function or block operator function, issuance of a train order or establishment of a route that fails to provide proper protection for a train.

(c) *Reasonable cause for urine test.* (1) *Accident/incident and rule violation.* Except as provided in paragraph (c)(2) of this section, each of the conditions set forth in paragraphs (b)(2) ("accident/incident") and (b)(3) ("rule violation") of this section as constituting reasonable cause for breath alcohol testing also constitutes reasonable cause with respect to urine drug testing.

(2) *Reasonable suspicion.* Reasonable cause also exists where a supervisory employee of the railroad has a reasonable suspicion that the employee is currently under the influence of or impaired by a controlled substance, or a controlled substance in combination with alcohol, based upon specific, personal observations that the supervisory employee can articulate concerning the appearance, behavior, speech, or body odors of the employee, subject to the following limitations:

(i) An employee may be required to submit to urine testing for reasonable suspicion only if the determination is made by at least two supervisory employees; and

(ii) If the determination to require urine testing is based upon a suspicion that the employee is under the influence of or impaired by a controlled substance, at least one supervisory employee responsible for the decision to require urine testing must have received at least three (3) hours of training in the signs of drug intoxication consistent with a program of instruction on file with FRA under part 217 of this title. Such program shall, at a minimum, provide information concerning the acute behavior and apparent physiological effects of the major drug groups on the controlled substances list (narcotics, depressants, stimulants, hallucinogens, and marijuana).

(d) [Reserved]

(e) *Limitation for Subpart C events.* The compulsory urine testing authority conferred by this section does not apply with respect to any event subject to post-accident toxicological testing as required by § 219.201 of this part. However, use of compulsory breath test authority is authorized in any case where breath test results can be obtained in a timely manner at the scene of the accident and conduct of such tests does not materially impede the collection of samples under subpart C.

(f) *Prompt sample collection; time limitation.* (1) Testing under this subpart may only be conducted promptly following the observations or events upon which the testing decision is based, consistent with the need to protect life and property.

(2) No employee shall be required to participate in breath alcohol or urine drug testing under this subsection after the expiration of an 8-hour period from——

(i) The time of the observations or other events described in this section; or

(ii) In the case of an accident/incident, the time a responsible railroad supervisor receives notice of the event providing reasonable cause for conduct of the test.

(3) An employee may not be tested under this subpart if that employee has been released from duty under the normal procedures of the railroad. An employee who has been transported to receive medical care is not released from duty for purposes of this section. Nothing in this section prohibits the subsequent testing of an employee who has failed to remain available for testing as required (i.e., who is absent without leave).

(4) As used in this section a "responsible raiload supervisor" means any responsible line supervisor (e.g., a trainmaster or road foreman to be tested.

(5) In the case of a urine drug test, the 8-hour requirement is satisfied if the employee has been delivered to the collection site (where the collector is present) and the request has been made

to commence collection of the urine specimen within that period.

(g) *Construction.* Nothing in this subpart requires a railroad to undertake breath testing as a requisite to any disciplinary action or restricts the discretion of a railroad to proceed based solely on evidence of behavior, personal observations, or other evidence customarily relied upon in such investigations or hearings.

§ 219.303 Breath test procedures and safeguards.

(a) Except as provided in paragraph (d), the following conditions apply to breath testing authorized by this subpart.

(1) Testing devices shall be selected from among those listed on the Conforming Products List of Evidential Breath Measurement Devices amended and published in the **Federal Register** from time to time by the National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

(2) Each device shall be properly maintained and shall be calibrated or verified as to correct calibration by use of a breath alcohol simulator (calibrating unit) listed on the NHTSA Conforming Products List of Calibrating Units for Breath Alcohol Testers (as amended and published) with sufficient frequency to ensure the accuracy of the device (within plus or minus .01 percent), but not less frequently than provided in the manufacturer's instructions.

(3) Tests shall be conducted by a trained and qualified operator. The operator shall have received training on the operational principles of the particular instrument employed and practical experience in the operation of the device and use of the breath alcohol calibrating unit. A copy of the training program shall be filed with FRA in conjunction with the filing required by § 217.11 of this title.

(4) Tests shall be conducted in accordance with procedures specified by the manufacturer of the testing device, consistent with sound technical judgment, and shall include appropriate restrictions on ambient air temperature.

(5) If an initial test is positive, the employee shall be tested again after the expiration of a period of not less than 15 minutes, in order to confirm that the test has properly measured the alcohol content of deep lung air.

(b) Because of the inherent limitations of the instrumentation, any indicated breath test result of less than .02 percent shall be deemed a negative test.

(c)(1) In any case where a breath test is intended for use in the railroad disciplinary process and the result is positive, the employee shall be given the prompt opportunity to provide a blood sample at an independent medical facility for analysis by a competent independent laboratory. The railroad shall provide the required transportation to facilitate the blood test.

(2) A blood test under this section shall conform to the following standards:

(i) The specimen shall be collected in a medically acceptable manner by a qualified medical professional or technician using a non-ethanol swab and shall be deposited into a single-use sterile vacuum tube containing at least one percent sodium fluoride (and an anticoagulant).

(ii) While the specimen remains in full view of the employee, the specimen shall be clearly labeled with the employee's name and/or a unique identifying number and shall be sealed with a tamperproof seal.

(iii) The sample shall be handled in accordance with chain of custody procedures from the point of collection through analysis and secure storage at the laboratory.

(iv) The sample shall be screened for alcohol only by a method reliable at a detection limit of not higher than .02 percent. Any presumptive positive shall be confirmed by gas chromatography with a suitable internal standard. The screening run shall include at least 10% quality control samples. The confirmation run shall include ethanol standards (including an ethanol standard certified against or traceable to a primary standard), at least one blank specimen, other appropriate volatiles (e.g., isopropanol), and at least one control purchased commercially or provided through an external quality control program. Results declared positive on confirmation shall be consistent with pre-established criteria for retention time of internal and external standards. Blood alcohol concentration shall be reported only at values of .02 percent or greater within the linear portion of the standard curve. Unconfirmed presumptive positive results and values below .02 percent shall be reported as negative. Any quantitations to the third digit shall be rounded downward to two digits (i.e., .238% to .23%).

(v) The remaining portion of any specimen testing positive shall be retained in secure frozen storage for at least one year, and the employee shall have the right to request a retest of the specimen at a competent independent laboratory within 60 days of the date of the laboratory report.

(vi) Test results shall be reported to the Medical Review Officer who shall review and act upon the results in the same manner provided for drug urine testing in subpart H of this part, except that fully quantitated results shall be made available to the employer representative.

(3) If the blood test under this section is reported as negative, the breath test shall be deemed negative for all purposes.

(d)(1) Under the circumstances set forth in § 219.301, a railroad may require an employee to participate in a breath alcohol screening test solely for the purpose of determining whether the conduct of a test meeting the criteria of paragraph (a) is indicated. If the screening test is negative within the meaning of paragraph (b), the employee shall not be required to submit to further breath testing under this subpart. If the screening test is positive, no consequence shall attach except that the employee may be removed from covered service for the period necessary to conduct a breath test meeting the criteria of paragraph (a) of this section or a urine test meeting the requirements of §§ 219.305 and 219.307 of this subpart (consistent with § 219.301(d) of this subpart).

(2) Except as provided in paragraph (d)(2)(iii) of this section, the conduct of a screening test under paragraph (d)(1) of this section does not excuse full compliance with paragraph (a) of this section with respect to any breath test procedure which is then undertaken. If a screening test is positive, the following procedures govern:

(i) An initial breath test shall be conducted meeting the criteria of paragraph (a) of this section.

(ii) If that test is positive, a second breath test shall be conducted meeting the criteria of paragraph (a) of this section.

(iii) The second test meeting the criteria of section (a) of this section must be conducted at least 15 minutes after the positive screening test conducted under paragraph (d)(1) of this section. However, since a waiting period of 15 minutes is sufficient to permit the disposition of any alcohol in the mouth, the requirement of paragraph (a)(5) of this section that there be a period of at least 15 minutes between the two tests meeting the criteria of paragraph (a) of this section does not apply.

§ 219.305 Urine test procedures and safeguards.

The conduct of urine drug testing under this subpart is governed by subpart H of this part and (to the extent

not inconsistent with this part) part 40 of Subtitle A of this title.

§ 219.307 [Reserved]

§ 219.309 Employee notice.

A railroad utilizing the reasonable cause testing authority provided by this part shall provide prior effective notice to covered employees of the circumstances under which they will be subject to testing, shall describe the consequences of a determination that the employee has violated § 219.101, § 219.102, or any applicable railroad rule, and shall inform the employee of the employee's rights under subpart E of this part. This notice may be combined with the notice required by § 219.601 of this part.

Subpart E—Identification of Troubled Employees

§ 219.401 Requirement for policies.

(a) The purpose of this subpart is to prevent the use of alcohol and drugs in connection with covered service.

(b) Each railroad shall adopt, publish and implement—

(1) A policy designed to encourage and facilitate the identification of those covered employees who abuse alcohol or drugs as a part of a treatable condition and to ensure that such employees are provided the opportunity to obtain counseling or treatment before those problems manifest themselves in detected violations of this part (hereafter "voluntary referral policy"); and

(2) A policy designed to foster employee participation in preventing violations of this subpart and encourage co-worker participation in the direct enforcement of this part (hereafter "co-worker report policy").

(c) A railroad may comply with this subpart by adopting, publishing and implementing policies meeting the specific requirements of §§ 219.403 and 219.405 of this subpart or by complying with § 219.407.

(d) If a railroad complies with this part by adopting, publishing and implementing policies consistent with §§ 219.403 and 219.405, the railroad shall make such policies, and publications announcing such policies, available for inspection and copying by FRA.

(e) Nothing in this subpart shall be construed to—

(1) Require payment of compensation for any period an employee is out of service under a voluntary referral or co-worker report policy;

(2) Require a railroad to adhere to a voluntary referral or co-worker report policy in a case where the referral or report is made for the purpose, or with the effect, of anticipating the imminent and probable detection of a rule violation by a supervising employee; or

(3) Limit the discretion of a railroad to dismiss or otherwise discipline an employee for specific rule violations or criminal offenses, except as specifically provided by this subpart.

§ 219.403 Voluntary referral policy.

(a) *Scope.* This section prescribes minimum standards for voluntary referral policies. Nothing in this section restricts a railroad from adopting, publishing and implementing a voluntary referral policy that affords more favorable conditions to employees troubled by alcohol or drug abuse problems, consistent with the railroad's responsibility to prevent violations of § 219.101 and § 219.102.

(b) *Required provisions.* A voluntary referral policy shall include the following provisions:

(1) A covered employee who is affected by an alcohol or drug use problem may maintain an employment relationship with the railroad if, before the employee is charged with conduct deemed by the railroad sufficient to warrant dismissal, the employee seeks assistance through the railroad for the employee's alcohol or drug use problem or is referred for such assistance by another employee or by a representative of the employee's collective bargaining unit. The railroad shall specify whether, and under what circumstances, its policy provides for the acceptance of referrals from other sources, including (at the option of the railroad) supervisory employees.

(2) Except as may be provided under paragraph (c) of this part, the railroad treats the referral and subsequent handling, including counseling and treatment, as confidential.

(3) The railroad will, to the extent necessary for treatment and rehabilitation, grant the employee a leave of absence from the railroad for the period necessary to complete primary treatment and establish control over the employee's alcohol or drug problem. The policy must allow a leave of absence of not less than 45 days, if necessary for the purpose of meeting initial treatment needs.

(4) Except as may be provided under paragraph (c)(2) of this section, the employee will be returned to service on the recommendation of the EAP Counselor. Approval to return to service may not be unreasonably withheld.

(c) *Optional provisions.* A voluntary referral policy may include any of the following provisions, at the option of the railroad:

(1) The policy may provide that the rule of confidentiality is waived if—

(i) The employee at any time refuses to cooperate in a recommended course of counseling or treatment and/or;

(ii) The employee is later determined, after investigation, to have been involved in an alcohol or drug-related disciplinary offense growing out of subsequent conduct.

(2) The policy may require successful completion of a return-to-service medical examination as a further condition on reinstatement in covered service.

(3) The policy may provide that it does not apply to an employee who has previously been assisted by the railroad under a policy or program substantially consistent with this section or who has previously elected to waive investigation under § 219.405 of this section (co-worker report policy).

(4) The policy may provide that, in order to invoke its benefits, the employee must report to the contact designated by the railroad either:

(i) During non-duty hours (*i.e.*, at a time when the employee is off duty) or

(ii) While unimpaired and otherwise in compliance with the railroad's alcohol and drug rules consistent with this subpart.

§ 219.405 Co-worker report policy.

(a) *Scope.* This section prescribes minimum standards for co-worker report policies. Nothing in this section restricts a railroad from adopting, publishing and implementing a policy that affords more favorable conditions to employees troubled by alcohol or drug abuse problems, consistent with the railroad's responsibility to prevent violations of §§ 219.101 and 219.102.

(b) *Employment relationship.* A co-worker report policy shall provide that a covered employee may maintain an employment relationship with the railroad following an alleged first offense under these rules or the railroad's alcohol and drug rules, subject to the conditions and procedures contained in this section.

(c) *General conditions and procedures.* (1) The alleged violation must come to the attention of the railroad as a result of a report by a co-worker that the employee was apparently unsafe to work with or was, or appeared to be, in violation of this part or the railroad's alcohol and drug rules.

(2) If the railroad representative determines that the employee is in violation, the railroad may immediately remove the employee from service in

accordance with its existing policies and procedures.

(3) The employee must elect to waive investigation on the rule charge and must contact the EAP Counselor within a reasonable period specified by the policy.

(4) The EAP Counselor must schedule necessary interviews with the employee and complete an evaluation within 10 calendar days of the date on which the employee contacts the counselor with a request for evaluation under the policy, unless it becomes necessary to refer the employee for further evaluation. In each case, all necessary evaluations must be completed within 20 days of the date on which the employee contacts the counselor.

(d) *When treatment is required.* If the EAP Counselor determines that the employee is affected by psychological or chemical dependence on alcohol or a drug or by another identifiable and treatable mental or physical disorder involving the abuse of alcohol or drugs as a primary manifestation, the following conditions and procedures shall apply:

(1) The railroad must, to the extent necessary for treatment and rehabilitation, grant the employee a leave of absence from the railroad for the period necessary to complete primary treatment and establish control over the employee's alcohol or drug problem. The policy must allow a leave of absence of not less than 45 days, if necessary for the purpose of meeting initial treatment needs.

(2) The employee must agree to undertake and successfully complete a course of treatment deemed acceptable by the EAP Counselor.

(3) The railroad must promptly return the employee to service, on recommendation of the EAP Counselor, when the employee has established control over the substance abuse problem. Return to service may also be conditioned on successful completion of a return-to-service medical examination. Approval to return to service may not be unreasonably withheld.

(4) Following return to service, the employee, as a further condition on withholding of discipline, may, as necessary, be required to participate in a reasonable program of follow-up treatment for a period not to exceed 60 months from the date the employee was originally withdrawn from service.

(e) *When treatment is not required.* If the EAP Counselor determines that the employee is not affected by an identifiable and treatable mental or physical disorder—

(1) The railroad shall return the employee to service within 5 days after completion of the evaluation.

(2) During or following the out-of-service period, the railroad may require the employee to participate in a program of education and training concerning the effects of alcohol and drugs on occupational or transportation safety.

(f) *Follow-up tests.* A railroad may conduct return-to-service and/or follow-up tests (as described in § 219.104 of this part) of an employee who waives investigation and is determined to be ready to return to service under this section.

§ 219.407 Alternate policies.

(a) In lieu of a policy under § 219.403 (voluntary referral) or § 219.405 (co-worker report), or both, a railroad may adopt, publish and implement, with respect to a particular class or craft of covered employees, an alternate policy or policies having as their purpose the prevention of alcohol or drug use in railroad operations, if such policy or policies has the written concurrence of the recognized representatives of such employees.

(b) The concurrence of recognized employee representatives in an alternate policy may be evidenced by a collective bargaining agreement or any other document describing the class or craft of employees to which the alternate policy applies. The agreement or other document must make express reference to this part and to the intention of the railroad and employee representatives that the alternate policy shall apply in lieu of the policy required by § 219.403, § 219.405, or both.

(c) The railroad shall file the agreement or other document described in paragraph (b) with the Associate Administrator for Safety, FRA. If the alternate policy is amended or revoked, the railroad shall file a notice of such amendment or revocation at least 30 days prior to the effective date of such action.

(d) This section does not excuse a railroad from adopting, publishing and implementing the policies required by §§ 219.403 and 219.405 with respect to any group of covered employees not within the coverage of an appropriate alternate policy.

Subpart F—Pre-employment Drug Screens

§ 219.501 Pre-employment drug screens.

(a) Each applicant who is given favorable consideration for a position with a railroad that involves the performance of covered service shall be tested for the presence of drugs prior to being employed in covered service. This requirement shall apply to final applicants for employment and to employees seeking to transfer for the first time from non-covered service to duties involving covered service. The test shall be accomplished through analysis of a urine sample. Whenever feasible, the sample shall be obtained in connection with a pre-employment medical examination.

(b) Prior to collection of the urine sample, the applicant shall be notified that the sample will be tested for the presence of drugs. In the case of an applicant who declines to be tested and withdraws the application for employment, no record shall be maintained of the declination.

(c) The conduct of urine drug testing under this subpart is governed by subpart H of this part and (to the extent not inconsistent with this part) part 40 of subtitle A of this title. As used in subpart H with respect to a test required under this subpart, the term "employee" includes an applicant.

§ 219.503 Notification; records.

The railroad shall provide for medical review of laboratory test results and shall notify the applicant of the results of any test in the same manner as provided for employees in subpart H. Records shall be maintained confidentially and shall be retained in the same manner as required under Subpart H for employee test records, except that such records need not reflect the identity of an applicant whose application for employment in covered service was denied.

§ 219.505 Refusals; consequences of positive.

(a) An applicant who has refused to submit to pre-employment testing under this section shall not be employed in covered service based upon the application and examination with respect to which such refusal was made. This section does not create any right on the part of the applicant to have a subsequent application considered; nor does it restrict the discretion of the railroad to entertain a subsequent application for employment from the same person.

(b) An applicant who is using a controlled substance without medical authorization shall not be employed in covered service. This section shall not be construed to bar employment based on a subsequent application if the applicant no longer uses a controlled substance without medical authorization.

Subpart G—Random Drug Testing Program

§ 219.601 Railroad random testing programs.

(a) *Submission.* Each railroad shall submit for FRA approval a random testing program meeting the requirements of this subpart. A Class I railroad (including the National Railroad Passenger Corporation) or a railroad providing commuter passenger service shall submit such a program not later than October 2, 1989. A Class II railroad shall submit such a program not later than April 2, 1990. A Class III railroad (including a switching and terminal or other railroad not otherwise classified) shall submit such a program not later than July 2, 1990. A railroad commencing operations after the pertinent date specified in this paragraph shall submit such a program not later than 30 days prior to such commencement. The program shall be submitted to the Associate Administrator for Safety, FRA, for review and approval by the Administrator. If, after approval, a railroad desires to amend the random testing program implemented under this subpart, the railroad shall file with FRA a notice of such amendment at least 30 days prior to the intended effective date of such action. A program responsive to the requirements of this section or any amendment to the program shall not be implemented prior to approval.

(b) *Form of programs.* Random testing programs submitted by or on behalf of each railroad under this subpart shall meet the following criteria, and the railroad and its managers, supervisors, officials and other employees and agents shall conform to such criteria in implementing the program:

(1) Selection of covered employees for testing shall be made by a method employing objective, neutral criteria which ensure that every covered employee has a substantially equal statistical chance of being selected within a specified time frame. The method may not permit subjective factors to play a role in selection, *i.e.*, no employee may be selected as the result of the exercise of discretion by the railroad. The selection method shall be capable of verification with respect to the randomness of the selection process, and any records necessary to document random selection shall be retained for not less than 24 months from the date upon which the particular samples were collected.

(2) The program shall select for testing a sufficient number of employees so that, during the first 12 months—

(i) The random testing program is spread reasonably through the 12-month period;

(ii) The last test collection during the year is conducted at an annualized rate of 50 percent; and

(iii) The total number of tests conducted during the 12 months is equal to at least 25 percent of the number of covered employees.

During each subsequent 12-month period the program shall select for testing a sufficient number of employees so that the number of tests conducted will equal at least 50 percent of the number of covered employees. Annualized percentage rates shall be determined by reference to the total number of covered employees employed by the railroad at the beginning of the particular twelve-month period or by an alternate method specified in the plan approved by the Administrator.

(3) Railroad random testing programs shall ensure to the maximum extent practicable that each employee shall perceive the possibility that a random test may be required on any day the employee reports for work.

(4) Notice of an employee's selection shall not be provided until the duty tour in which testing is to be conducted, and then only so far in advance as is reasonably necessary to ensure the employee's presence at the time and place set for testing.

(5) The program shall include testing procedures and safeguards, and procedures for action based on positive test results, consistent with this part.

(6) An employee shall be subject to testing only while on duty. Only employees who perform covered service for the railroad shall be subject to testing under this part. In the case of employees who during some duty tours perform covered service and during others do not, the railroad program shall specify the extent to which, and the circumstances under which they shall be subject to testing. To the extent practical within the limitations of this part and in the context of the railroad's operations, the railroad program shall provide that employees shall be subject to the possibility of random testing on any day they actually perform covered service.

(7) Each time an employee is selected for random testing the employee will be informed that selection was made on a random basis. The program shall provide that the employee will be permitted to retain a copy of a writing to that effect (e.g., a drug testing custody and control form with this information set forth).

(c) *Approval.* The Administrator will notify the railroad in writing whether the program is approved as consistent with the criteria set forth in this part. If the Administrator determines that the program does not conform to those criteria, the Administrator will inform the railroad of any matters preventing approval of the program, with specific explanation as to necessary revisions. The railroad shall resubmit its program with the required revisions within 30 days of such notice. Failure to resubmit the program with the necessary revisions will be considered a failure to implement a program under this subpart.

(d) *Implementation.* (1) No later than 45 days prior to commencement of random testing, the railroad shall publish to each of its covered employees, individually, a written notice that they will be subject to random drug testing under this part. Such notice shall state the date for commencement of the program, shall state that the selection of employees for testing will be on a strictly random basis, shall describe the consequences of a determination that the employee has violated § 219.102 or any applicable railroad rule, and shall inform the employee of the employee's rights under subpart E of this part. A copy of the notice shall be provided to each new covered employee on or before the employee's initial date of service. Since knowledge of Federal law is presumed, nothing in this paragraph creates a defense to a violation of § 219.102 of this part.

(2) Each Class I railroad (including the National Railroad Passenger Corporation) and each railroad providing commuter passenger service shall implement its approved random testing program not later than January 16, 1990. Each Class II railroad shall implement its approved random testing program not later than July 2, 1990. Each Class III railroad (including a switching and terminal or other railroad not otherwise classified) shall implement its approved random testing program not later than November 1, 1990. In the case of a railroad commencing operations after the pertinent date set forth in paragraph (a) of this section for filing of a program, the railroad shall implement its approved random testing program not later than the expiration of 60 days from approval by the Administrator or by the pertinent date set forth in this paragraph, whichever is later.

§ 219.603 Participation in testing; refusals.

(a) *Participation.* A railroad shall, under the conditions specified in this subpart and Subpart H, require a covered employee selected through the

random testing program to cooperate in urine testing to determine compliance with § 210.102, and the employee shall provide the required sample and complete the required paperwork and certifications. Compliance by the employee shall be excused only in the case of a documented medical or family emergency.

(b) *Refusals.* (1) An employee who, upon being notified of the requirement to provide a sample under this subpart, refuses to provide a sample shall be withdrawn from covered service and shall be deemed disqualified for a period of nine (9) months. The disqualification required by this paragraph shall apply with respect to employment in covered service by any railroad with notice of such refusal. The requirement of disqualification for nine (9) months does not limit any discretion on the part of the railroad to impose additional sanctions for the same or related conduct.

(2) Upon being withdrawn from service under this section, the employee shall be entitled to the same procedural protections as those set out in § 219.213(b) of this part with respect to refusal of post-accident testing. The purpose of the hearing shall be to determine whether the employee refused to provide a sample, having been notified of the requirement to do so, and whether the employee can establish a basis for being excused under the criteria stated by paragraph (a) of this section.

(c) Upon the expiration of the 9-month period described in this section, a railroad may permit the employee to return to covered service only under the same conditions specified in § 219.104 of this part, provided that return-to-service tests shall be conducted for both alcohol and designated controlled substances; and the employee shall be subject to follow-up drug tests as provided by that section.

§ 219.605 Positive test results; procedures.

(a) Medical review. The result of a test required under this subpart shall be deemed positive only after it has been properly confirmed as required in subpart H of this part and reviewed by a Medical Review Officer (MRO) as provided in subpart H to determine if it is evidence of prohibited drug use under § 219.102.

(b) Procedures for administrative handling by the railroad in the event a sample provided under this subpart is reported as positive by the MRO are set forth in § 219.104 of this part.

Subpart H—Procedures and Safeguards for Urine Drug Testing

§ 219.701 Standards for urine drug testing.

(a) Urine drug testing required or authorized by subparts B, D, F, and G of this part shall be conducted in the manner provided by this subpart and (to the extent not inconsistent with this part) part 40 of subtitle A of this title. Laboratories employed for these purposes must be certified by the Department of Health and Human Services under that Department's Mandatory Guidelines for Federal Workplace Drug Testing Programs.

(b) Each railroad's contract with a laboratory conducting testing subject to this subpart shall provide that the FRA and the railroad shall have the right to unannounced inspection during normal business hours through qualified personnel or designated contractors. Such inspecton rights shall, at minimum, include reasonable accompanied access to all records pertinent to testing under this part, quality control data incident thereto, samples submitted under this part, and equipment and personnel related to analysis of those samples.

(c) Each such contract shall also require that the laboratory comply with all applicable provisions of this part and 49 CFR part 40, including requirements for employee access to specified laboratory records and any applicable conditions imposed upon approvals issued under this subpart or 49 CFR part 40.

§ 219.703 Collection.

(a) Urine samples shall be collected and handled as required in 49 CFR part 40 and this section.

(b) The collection site person (collector) shall meet the requirements of 49 CFR part 40.

(c) A person with management or supervisory responsibility over the employee to be tested, or a co-worker of the employee to be tested, may not serve as a collector. For purposes of this paragraph, "co-worker" means a person with whom the person to be tested is assigned or could be assigned in a crew or other working unit to perform normal transportation duties on the railroad.

(d) If an employee fails to provide a urine specimen within a reasonable time and is to be given a subsequent opportunity to provide a specimen under the conditions described in 49 CFR 40.25, the subsequent collection shall be conducted either—

(1) Immediately upon the expiration of the employee's required off-duty period under the Hours of Service Act (45 U.S.C. 62–64b); or

(2) On an unannounced basis within the next 30 days.

§ 219.705 Drugs tested.

(a) Urine samples shall be analyzed for the presence of controlled substances designated in paragraph (b) of this section and may be analyzed by procedures reasonably incident to analysis of the specimen for controlled substances (e.g., determination of pH or tests for specific gravity, creatinine concentration, or presence of adulterants).

(b) Each sample submitted shall be analyzed for marijuana, cocaine, phencylidine (PCP), opiates (morphine and codeine), and amphetamines (amphetamine and methamphetamine).

(c) As part of the reasonable cause testing program established by subpart D of this part, a railroad may test for additional controlled substances in addition to those specified in this section only with approval granted by FRA and for substances for which the Department of Health and Human Services has established an approved testing protocol and positive threshold.

§ 219.707 Review by MRO.

(a) Test results reported positive by the laboratory as provided in 49 CFR part 40 shall not be deemed positive or disseminated to any person (other than to the employee tested in a medical interview, if conducted) until they are reviewed by a Medical Review Officer (MRO) of the railroad as required by 49 CFR part 40 and this section. For purposes of this part, medical use of controlled substances by a covered employee is a legitimate medical explanation for presence of a controlled substance (i.e., a basis for declaring the result "negative") only to the extent such use was consistent with § 219.103 of this part.

(b) The MRO shall complete review of test results within not more than 10 regular working days of receipt of the laboratory report or they shall be declared negative, unless any portion of the delay shall result from the unwillingness or inability of the employee to appear for an interview or provide documentation of prescription or other authorized use of medications. If the employee is responsible for such delay, the 10-day period may be extended by a period equal to the period attributed to the employee's delay. This paragraph shall not be read to bar reporting of a positive result if the employee, without a reasonable basis, fails to respond to an opportunity to provide supplementary information.

(c) After the MRO has reviewed the pertinent information and the laboratory assessment is verified as indicating presence of controlled substances without medical authorization consistent with § 219.103 of this part (and the review required by paragraph (b) of this section is completed), the MRO shall report the results to a designated railroad officer for action in keeping with the requirements of this part (or take appropriate action under the railroad's medical standards). The employee shall be provided a copy of the approved test results, or such results shall be dispatched by U.S. mail or other suitable means providing prompt delivery, not later than 24 hours following any adverse action.

(d) Test results reported as negative by the laboratory shall also be communicated through the MRO. The MRO shall promptly transmit the negative finding to the employee. If the MRO provides the railroad with negative test results in a nonaggregated manner, all such negative test results, including results involving medical use or administration of controlled substances or insufficiency of laboratory data, shall be transmitted to the designated railroad officer over the MRO's signature in a manner that does not disclose medical use of drugs which is permitted under § 219.103 of this part.

§ 219.709 Retest.

(a) Samples that yield positive results on confirmation shall be retained by the laboratory in properly secured, long-term, frozen storage for at least 365 days, as required by Part 40 of this title. Within this 365-day period, the employee or his representative, the railroad, or the FRA may request that the laboratory retain the sample for an additional period. If, within the 365-day period, the laboratory has not received a proper written request to retain the sample for a further reasonable period specified in the request, the sample may be discarded following the end of the 365-day period.

(b) In the case of a test declared positive by the MRO, the original sample shall be retested if the employee makes a written request to the Medical Review Officer for retesting within 60 days. The employee may specify retesting by the original laboratory or by a second laboratory that is certified by the Department of Health and Human Services as described in 49 CFR part 40. The railroad may require the employee to advance the cost of shipment (if any) and reanalysis of the sample, but the employee shall be reimbursed for such expense if the retest is negative.

(c) If the employee specifies retesting by a second laboratory, the original laboratory shall follow approved chain-of-custody procedures in transferring a portion of the sample.

(d) Any retest of a sample is subject to 49 CFR 40.29(i) (quantitation for retest not subject to cutoff requirement due to deterioration or loss of analytes).

§ 219.711 Confidentiality of test results.

(a) A laboratory reporting results of tests conducted under this subpart shall report those results only to the designated Medical Review Officer of the railroad. The results shall not be disclosed by the laboratory to any other person, except that the laboratory may affirm the test result to the employee to whom the sample was identified. This paragraph shall not be read to bar normal access to analytical data for laboratory accreditation or certification processes.

(b) The MRO may not disclose medically approved drug use or administration information obtained under this part (whether ascertained through testing or reported by the employee or the employee's medical practitioner at the employee's request) to non-medical railroad personnel or any third party; however, nothing in this part bars use of such information by the railroad's medical officer in the context of an established medical qualifications program. This paragraph shall not be construed to permit medical disqualification of an employee based upon a laboratory report indicating presence of a controlled substance prior to completion of the MRO review, nor to limit the discretion of the railroad under § 40.33(c) of this chapter.

(c) No record of tests conducted subject to this subpart or information drawn therefrom shall be used or disseminated by the railroad or within the railroad for any purpose other than providing for compliance with this part (and railroad rules consistent herewith), unless with the voluntary written consent of the employee. Such written consent shall specify the person to whom the information may be provided. Each railroad shall adopt and implement procedures to guard this information against unauthorized disclosure both within and external to the railroad company.

§ 219.713 Reports; FRA access to records.

(a) Each railroad shall retain for at least 2 years from the date of sample collection all records of each test conducted under this subpart that is reported as positive by the Medical Review Officer, including drug testing custody and control forms, laboratory reports, and certification statements. Records of negative tests shall be retained for at least 1 year.

(b) Each railroad shall maintain for at least 5 years summary records of employee alcohol and drug test results conducted under this part (including subpart C) and rehabilitation (including primary treatment, aftercare, and follow-up alcohol/drug testing) for each covered employee.

(c) Records required to be kept shall be made available to FRA as provided by section 208 of the Federal Railroad Safety Act of 1970.

APPENDIX A—SCHEDULE OF CIVIL PENALTIES [1]

Section	Violation	Willful Violation
Subpart A—General		
219.11 General Conditions for Chemical Tests (b)(1), (3), or (4) Employee unlawfully refuses to participate in testing	(—)	$5,000
(b)(2) Failure to give necessary medical treatment priority, or improperly requiring urine sample	$3,000	8,000
219.23 Notice to employees:		
(a) Failure to give notice of FRA test	1,000	4,000
(b) Failure to give notice of basis for FRA test	500	2,000
(c) Use of Subpart C forms for other types of tests	500	1,000
Subpart B—Prohibitions		
219.101 Alcohol and drug use: Employee violates prohibition	(—)	10,000
219.104 Responsive action:		
(a) Failure to remove from service immediately	3,000	8,000
(b) Failure to provide notice	1,000	4,000
(c) Failure to provide prompt post-suspension hearing	2,000	7,000
(d) Unlawful return to service	2,000	7,000
(e) Improper alcohol test	1,000	4,000
219.105 Railroad's duty to prevent violations:		
(a) Permitting employee to go or remain on duty in violation of prohibitions	7,000	10,000
(b) Failure to exercise due diligence to assure compliance with prohibition	2,500	5,000

APPENDIX A—SCHEDULE OF CIVIL PENALTIES [1]—Continued

Section	Violation	Willful Violation
Subpart—C: Post-Accident Testing		
219.201 Events for which testing is required:		
(i) Failure to facilitate conduct of required post-accident toxicological test by making reasonable inquiry and good faith judgments with respect to circumstances of accident/incident; by failing to take all practicable steps to require employee participation; or by otherwise failing to comply with Subpart C such that test cannot be conducted (each employee not tested is a violation	5,000	7,500
(ii) Required employee to provide samples under authority of Subpart C where one or more testing criteria not present, due either to mistake of law or failure to make reasonable inquiry or exercise good faith judgment	5,000	10,000
(iii) Failure to promptly provide FRA with report describing decision on whether event qualified for testing	1,000	3,000
219.203 Responsibilities of Railroads and Employees:		
(a) Failure to exclude employee from impact of fatal train incident testing where appropriate	2,500	5,000
(b)(1) Delay in obtaining samples account failure to make every reasonable effort	2,500	5,000
(b)(4) Improper release of or failure to recall employee subject to testing, or improper recall to duty	4,000	7,500
(c) Place of sample collection; by whom	2,500	5,000
(d) Failure to notify FRA of an employee injury requiring FRA intervention	2,500	5,000
219.205 Sample collection and handling:		
(a) Failure to observe requirements with respect to sample collection, marking and handling	2,500	5,000
(b) Failure to provide properly prepared information sheets with samples	1,000	2,000
(d) Failure to promptly forward samples	2,500	5,000
219.207 Fatality:		
(a) Failure to contact custodian and request assistance	2,500	5,000
(b) Failure to notify FRA where intervention needed	2,500	5,000
219.209 Reports of tests and refusals:		
(a) Failure to provide telephonic report	1,000	2,000
(b) Failure to provide written report (samples not provided)	1,000	2,000
219.213 Unlawful refusals, consequences:		
(a) Failure to take action against employee who refuses to provide samples, or permitting employee to return without meeting conditions	2,500	5,000
(b), (c) Failure to provide timely notice and proper hearing	2,500	5,000
Subpart D—Authorization to test for casue		
219.301 Testing for reasonable cause:		
(a) Employee required, under authority of this subpart, to submit to testing without reasonable cause	5,000	7,500
(f)(2) Employee required to participate in testing after expiration of 8 hours	2,000	4,000
(f)(4) Employee tested after release from duty	1,500	3,000
219.303 Breath testing procedures and safeguards (incl. optional blood test)	2,000	4,000
219.305 Urine test: failure to comply with Subpart H procedures and safeguards	2,000	4,000
219.309 Employee notice	1,000	4,000
Subpart E—Identification of troubled employees		
219.401 Requirements for policies:		
(i) Failure to adopt or publish or wholesale failure to implement policy required by Subpart E	5,000	7,500
(ii) Failure to implement as to individual employee	2,500	5,000
219.407 Alternate policies: Failure to file agreement or other document or provide timely notice of revocation	1,000	2,000
Subpart F—Pre-Employment Drug Screen		
219.501 Pre-employment drug screens:		
(a) Failure to perform preemployment drug screen prior to employing applicant in covered service	2,500	5,000
(b)(i) Failure to provide prior notice of drug screen	2,000	4,000
(ii) Maintaining record of declination of test	500	1,000
(c) Failure to comply with Subpart H—Procedures and safeguards	2,000	4,000
219.503 Notification records: Failure to notify applicant of test results or to properly maintain or retain records	2,000	4,000
219.505 Refusals; consequences of positive:		
(a) Employing one who has refused test in covered service	2,500	5,000
(b) Employing applicant who has tested positive in covered service	3,000	6,000
Subpart G—Random Drug Testing		
219.601 Programs:		
(a) Failure to submit to FRA on a timely basis a random testing program that satisfies requirements of this subpart and subpart H	5,000	7,500
(b)(1) Required employee to provide sample in reliance on this subpart based on other than random selection	5,000	10,000
(b)(2) through (b)(7) Fail to conform to approved criteria in implementing program	2,000	4,000
(d)(1) Failure to provide timely notice to each employee	1,000	4,000
(d)(2) Failure to implement program on timely basis	5,000	7,500
219.603 Participation in testing; refusals:		
(a) Failure to require a selected employee to cooperate in random testing	2,500	5,000
(b)(1) Failure to take action against employee who refuses to provide sample	2,500	5,000
(b)(2) Failure to provide timely notice and proper hearing	2,500	5,000
(c) Permitting employee to return without meeting conditions	2,500	5,000
219.605 Positive test results: (a) Test deemed positive without following Subpart H procedures	2,000	4,000
Subpart H—Procedures and Safeguards For Urine Drug Testing		
219.701 Standards for urine drug testing: use of uncertified lab or absence of required provisions in lab contract	5,000	7,500
219.703 Collection	2,000	4,000
219.705 Drugs tested	2,000	4,000
219.707 Review by MRO	2,000	4,000
219.709 Retest	2,000	4,000
219.711 Confidentiality	3,000	6,000
219.713 Reports; FRA access	500	2,000

[1] A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $20,000 for any violation where circumstances warrant. See 49 CFR part 209, Appendix A.

Appendix B—Designation of Laboratory for Post-Accident Toxicological Testing

The following laboratory is currently designated to conduct post-accident toxicological analysis under subpart C of this part:

CompuChem Laboratories—Western Division, Attention: Clinical Department, 600W North Market Boulevard, Sacramento, California 95834. Telephone No. (916) 023–0840. Outside normal business hours contact (916) 782–3921.

Appendix C—Post-Accident Testing Sample Collection

1.0 General.

This appendix prescribes procedures for collection of samples for mandatory post-accident testing pursuant to subpart C of this part. Collection of blood and urine specimens is required to be conducted at an independent medical facility.

(Surviving Employees)

2.0 Surviving Employees.

This unit 2 provides detailed procedures for collecting post-accident toxicological samples from surviving employees involved in train accidents and train incidents, as required by 49 CFR part 219, subpart C. Subpart C specifies qualifying events and employees required to be tested.

2.1 Collection Procedures; General.

All forms and supplies necessary for collection and transfer of blood and urine specimens for five surviving employees can be found in the FRA post-accident toxicology kit, which is made available to the collection site by the railroad representative. Each kit contains supplies for blood/urine collections from five individuals, including instructions and necessary forms. The railroad is responsible for ensuring that kit materials are fresh, complete and meet FRA requirements.

2.1.1 Responsibility of the Railroad Representative.

In the event of an accident/incident for which testing is required under subpart C, the railroad representative shall, upon arrival at the independent medical facility, promptly make available to the medical facility representative a toxicology kit or kits and shall identify to the medical facility representative the instructions contained in the kit for conduct of the collection. (Each kit contains supplies to collect samples from five employees.) The railroad representative shall request the medical facility representative to review the instructions provided (Exhibit C–1) and, through qualified medical personnel, to provide for collection of the specimens according to the procedure set out.

The railroad representative shall undertake the following additional responsibilities—

- Complete Form 6180.73 (revised) describing the testing event and identifying the employees whose samples are to be deposited in the toxicology kit.
- As necessary to verify the identity of individual employees, affirm the identity of each employee to the medical facility personnel.
- To the extent consistent with the policy of the medical facility and the privacy of the employee, follow the progress of the collection procedure.

Warnings: The railroad representative shall not observe urination or otherwise disturb the privacy of urine donation. The railroad representative shall not handle sample containers.

2.1.2 Employee Responsibility.

An employee who is identified for post-accident toxicological testing shall cooperate in testing as required by the railroad and personnel of the independent medical facility. Such cooperation will normally consist of the following, to be performed as requested:

- Provide a blood sample, which a qualified medical professional or technician will draw using a single-use sterile syringe. The employee should be seated for this procedure.
- Provide, in the privacy of an enclosure, a urine sample into a single-use cup or the specimen bottle. The urine sample shall be presented to the medical facility personnel.
- Monitor the collection to ensure that the blood and urine samples are properly identified and sealed before they leave your sight. Verify the sample and seal by placing your initials on the seal.
- Complete the employee portions of the Blood/Urine Custody and Control Form (FRA Form 6180.74 (revised)) when requested.
- If required by the medical facility, complete a separate consent form for taking of the samples and their release to FRA for analysis under the FRA rule.

Note: The employee may not be required to complete any form that contains any waiver of rights the employee may have in the employment relationship or that releases or holds harmless the medical facility with respect to negligence in the collection.

2.2 The Collection.

Exhibit C–1 contains instructions for collection of samples for post-accident toxicology from surviving employees. These instructions shall be observed for each collection. Instructions shall be contained in each collection kit and shall be provided to medical facility personnel involved in the collection and/or packaging of specimens for shipment.

(Post Mortem Collection)

3.0 Fatality.

This unit 3 provides procedures for collecting post-accident body fluid/tissue samples from the remains of employees killed in train accidents and train incidents, as required by 49 CFR part 219, subpart C. Subpart C specifies qualifying events and employees required to be tested.

3.1 Collection.

In the event of a fatality for which testing is required under Subpart C, the railroad shall promptly make available to the custodian of the remains a copy of Exhibit C–2 to this Appendix and a toxicology kit. The railroad representative shall request the custodian to review the instructions contained in Exhibit C–2 and, through qualified medical personnel, to provide the specimens as indicated.

(Surviving Employees and Fatalities)

4.0 Shipment.

The railroad is responsible for arranging overnight transportation of the sealed toxicology kit containing the specimens. When possible without incurring delay, the kit should be delivered directly from the medical personnel providing the specimens to an overnight express service courier. If it becomes necessary for the railroad to transport the kit from point of collection to point of shipment, then—

1. Individual specimen boxes and the large shipping kit shall be sealed by the medical personnel providing the specimens before the kit is turned over to the railroad representative;
2. The railroad shall limit the number of persons handling the kit to the minimum necessary to provide for transportation;
3. If the kit cannot immediately be delivered to the express carrier for transportation, it shall be maintained in secure temporary storage; and
4. The railroad representatives handling the kit shall document chain of custody of the kit and shall make available such documentation to FRA on request.

Exhibit C–1—Instructions for Collection of Blood and Urine Specimens: Mandatory Post-Accident Toxicological Testing

A. Purpose

These instructions are for the use of personnel of medical facilities conducting collection of blood and urine samples from surviving railroad employees following railroad accidents and casualties that qualify for mandatory alcohol/drug testing. The Federal Railroad Administration appreciates the participation of medical facilities in this important public safety program.

B. Prepare for Collection

Railroad employees have consented to provision of samples for analysis by the Federal Railroad Administration as a condition of employment (49 CFR 219.11).

A private, controlled area should be designated for collection of specimens and completion of paperwork.

Only one specimen should be collected at a time, with each employee's blood draw or urine collection having the complete attention of the collector until the specific sample has been labeled, sealed and documented.

Please remember two critical rules for the collections:

All labeling and sealing must be done in the sight of the donor, with the sample never having left the donor's presence until the sample has been labeled, sealed and initialed by the donor.

Continuous custody and control of blood and urine samples must be maintained and documented on the forms provided. In order to do this it is important for the paperwork and the specimens to stay together.

To the extent practical, blood collection should take priority over urine collection. To limit steps in the chain of custody, it is best if a single medical professional or technician handles both collections from a given employee.

You will use a single Post-Accident Testing Blood/Urine Custody and Control Form (FRA Form 6108.74 (revised)), consisting of six Steps to complete the collection for each employee. We will refer to it as the Control Form.

C. Identify the Donor

The employee donor must provide photo identification to each collector, or lacking this, be identified by the railroad representative.

The donor should remove all unnecessary outergarments such as coats or jackets, but may retain valuables, including wallet. Donors should not be asked to disrobe, unless necessary for a separate physical examination required by the attending physician.

D. Draw Blood

Assemble the materials for collecting blood from each employee: two 10 ml grey-stoppered blood tubes, the Control Form and an indelible marker.

Ask the donor to complete STEP 1 on the Control Form.

With the donor seated, draw two (2) 10 ml tubes of blood using standard medical procedures (sterile, single-use syringe into evacuated gray-top tubes provided). CAUTION: Do not use alcohol or an alcohol-based swab to cleanse the venipuncture site.

Once both tubes are filled and the site of venipuncture is protected, immediately—

- Seal and label each tube by placing a numbered blood specimen label from the label set on the Control Form over the top of the tube and securing it down the sides.
- Ask the donor to initial each label. Please check to see that the initials match the employee name and note any discrepancy in the "Remarks" block of the Control Form.
- As collector, sign and date each blood tube label at the place provided.
- Skip to STEP 5 and initiate chain of custody for the blood tubes by filling out the first line of the block to show receipt of the blood samples from the donor.
- Complete STEP 2 on the form.
- Return the blood tubes into the sponge liner of the individual specimen kit. Keep the paperwork and specimens together. If another medical facility representative will be collecting the urine sample from this employee, transfer both the form and the individual box with blood tubes to that person, showing the transfer of the blood tubes on the second line of STEP 5 (the chain of custody block).

E. Collect Urine

The urine collector should assemble at his/her station the materials for collecting urine from each employee: one plastic collection cup (with protective seal intact), one 100 ml polyethylene specimen bottle (with protective seal intact), the Control Form, and an indelible marker. Blood samples already collected must remain in the collector's custody and control during this procedure.

After requiring the employee to wash his/her hands, the collector should escort the employee directly to the urine collection area. To the extent practical, all sources of water in the collection area should be secured and a bluing agent (provided in the toxicology kit) placed in any toilet bowl, tank, or other standing water.

The employee will be provided a private place in which to void. Urination will not be directly observed. If the enclosure contains a source of running water that cannot be secured or any material (soap, etc.) that could be used to adulterate the specimen, the collector should monitor the provision of the sample from outside the enclosure. Any unusual behavior or appearance should be noted in the remarks section of the Control Form or on the back of that form.

The collector should then proceed as follows:

Unwrap the collection cup in the employee's presence and hand it to the employee (or allow the employee to unwrap it).

Ask the employee to void at least 60 ml into the collection cup (at least to the line marked). Leave the private enclosure.

IF THERE IS A PROBLEM WITH URINATION OR SAMPLE QUANTITY, SEE THE "TROUBLE BOX" AT THE BACK OF THESE INSTRUCTIONS

Once the void is complete, the employee should exit the private enclosure and deliver the specimen to the collector. Both the collector and the employee must proceed immediately to the labeling/sealing area, with the specimen never leaving the sight of the employee before being sealed and labeled.

Upon receipt of the specimen, proceed as follows:

- In the full view of the employee, remove the wrapper from the urine specimen bottle.
- As you pour the specimen into the specimen bottle, please inspect for any unusual signs indicating possible adulteration or dilution. Carefully secure the top. Note any unusual signs under "remarks" at STEP 3 of the Control Form.
- Within 4 minutes after the void, measure the temperature of the urine by reading the strip on the bottle. Mark the result at STEP 3 of the Control Form.

IF THERE IS A PROBLEM WITH THE URINE SAMPLE, SEE THE TROUBLE BOX AT THE BACK OF THESE INSTRUCTIONS

- *Before* removing the numbered urine label from the Control Form, ask the employee to enter his/her social security or employee I.D. number on the numbered urine label.
- Remove the numbered urine specimen label from the Control Form, place it over the top of the bottle, and secure it to the sides.
- Ask the donor to initial the label. Please check to see that the initials match the employee name and note any discrepancy in the "Remarks" block of STEP 3.
- As collector, sign and date the urine label.
- Skip to STEP 5 and initiate chain-of-custody by showing receipt of the urine sample from the donor. (If you collected the blood, a check under "urine" will suffice. If someone else collected the blood, first make sure transfer of the blood to you is documented. Then, using the next available line, show "Provide specimen" under purpose, "Donor" under "released by," check under "urine" and place your name, signature and date in the space provided.)
- Complete the remainder of STEP 3 on the Control Form.
- Have the employee complete STEP 4 on the Control Form.
- Place the filled urine bottle in the foam liner of the individual employee box. Keep the paperwork and specimens together. If another medical facility representative will be collecting the blood sample from this employee, transfer both the form and the box to that person, showing the transfer of the urine specimen on the next available line of STEP 5 (the chain of custody block).

F. Seal the Individual Employee Box

The blood and urine specimens have now been collected for this employee. The blood/urine specimens will now be sealed into the individual employee box, while all paperwork will be retained for further completion. After rechecking to see that each specimen is properly labeled and initialled, close the plastic bag to contain any leakage in transportation, and apply the box security seal to the small individual box. As collector, sign and date the box seal.

Before collecting samples from the next employee, complete the next line on the chain-of-custody block showing release of the blood and urine by yourself for the purpose of "Shipment" and receipt by the courier service or railroad representative that will provide transportation of the toxicology kit, together with the date.

G. Complete Treatment Information

Complete STEP 6 of the Control Form.

H. Prepare the Kit for Shipment

Sealed individual employee boxes should be retained in secure storage if there will be a delay in preparation of the shipping kit. The shipping kit shall be prepared and sealed by a medical facility representative as follows:

- Inspect STEP 5 of each Control Form to ensure chain-of-custody is continuous and complete for each fluid (showing specimens released for shipment). Retain the medical facility copy of each Control Form and the Accident Information form for your records.
- Place sealed individual employee boxes in shipping kit. Place all forms in zip-lock bag and seal securely. Place bag with forms and unused supplies in kit, but keep the marker, green tape, and label instruction.
- Close kit around the closure with green tape provided.
- Affix label instruction provided to outside of kit.

I. Ship the Kit

The railroad must arrange to have the kit shipped overnight air express or (if express service is unavailable) by air freight, prepaid, to FRA's designated laboratory. Whenever possible without incurring delay, the medical facility collector should deliver the kit directly into the hands of the express courier or air freight representative.

Where courier pickup is not immediately available at the medical facility where the samples are taken, the railroad is required to transport the shipping kit for expeditious shipment by air express, air freight or equivalent means.

If railroad is given custody of kit to arrange shipment, please record name of railroad official taking custody on the copy of the Form 6180.73 (revised) ("Accident Information") retained by the collection site.

"TROUBLE BOX"

1. PROBLEM: The employee claims an inability to urinate, either because he/she has recently voided or because of anxiety concerning the collection.

ACTION: The employee may be offered moderate quantities of liquid to assist urination. If the employee continues to claim inability after 4 hours, the urine collection should be discontinued, but the blood samples should be forwarded and all other procedures followed. Please note in area provided for remarks what explanation was provided by the employee.

2. PROBLEM: The employee cannot provide approximately 60 ml. of specimen.

ACTION: The employee would remain at the medical facility until as much as possible of the required amount can be given (up to 4 hours). The employee should be offered moderate quantities of liquids to aid urination. The first bottle should be sealed and securely stored with the blood tubes and Control Form pending shipment and a second bottle should be used for the subsequent void (using a second Control Form with the words "SECOND VOID—FIRST SAMPLE INSUFFICIENT" in the remarks block and labels from that form).

3. PROBLEM: The urine temperature is outside the normal range of 32.5°–37.7 °C / 90.5°–99.8 °F, and is suitable medical explanation cannot be provided by an oral temperature or other means; or

4. PROBLEM: The collector observes conduct clearly and unequivocally indicating an attempt to substitute or adulterate the sample (e.g., substitute urine in plan view, blue dye in speciment presented, etc.) and a collection site supervisor or the railroad representative agrees that the circumstances indicate an attempt to tamper with the sample.

ACTION: Document the problem on the Control Form. If the collection site supervisor or railroad representative concur that the temperature of the specimen, or other clear and unequivocal evidence, indicates a possible attempt to substitute or alter the specimen, another void should be taken under direct observation by a collector of the same gender.

If a collector of the same sex is not available, do NOT proceed with this step.

If a collector of the same gender is available, proceed as follows: A new Control Form must be initiated for the second void. The original suspect specimen should be marked "Void 1" with the indelible marker and the follow-up void should be marked "Void 2," with both voids being sent to the laboratory and the incident clearly detailed on the Control Form.

Exhibit C–2—Instructions for Collection of Post Mortem Toxicology Samples: Employees Killed in a Railroad Accident-Incident

TO THE MEDICAL EXAMINER, CORONER, OR PATHOLOGIST:

In compliance with Federal safety regulations (49 CFR part 219), a railroad representative has requested that you obtain samples for toxicology from the remains of a railroad employee who was killed in a railroad accident or incident. The deceased consented to the talking of such samples, as a matter of Federal law, by performing service on the railroad (49 CFR 219.11(f)).

Your assistance is requested in carrying out this program of testing, which is important to the protection of the public safety and the safety of those who work on the railroads.

Materials:

The railroad will provide you a shipping kit that contains necessary supplies, including a pen that will write directly on all surfaces. If the kit is not immediately available, please proceed using supplies available to you that are suitable for forensic toxicology.

Samples requested, in order of preference:

(1) *Blood*—20 milliliters or more. Preferred sites: intact femoral vein or artery or peripheral vessels (up to 10 ml, as available) and intact heart (20 ml). Deposit blood in gray-stopper tubes individually by site and shake to mix specimen and preservative.

Note.—If uncontaminated blood is not available, bloody fluid or clots from body cavity may be useful for qualitative purposes; but do not label as blood. Please indicate source and identity of sample on label of tube.

(2) *Urine*—as much as 100 milliliters, if available. Deposit into plastic bottle provided.

(3) *Vitreous fluid*—all available, deposited into smallest available tube (e.g., 3 ml) with 1 percent sodium fluoride, or gray-stopper tube (provided). Shake to mix specimen and preservative.

(4) *If available at autopsy, organs*—50 to 100 grams each of two or more of the following in order preference, as available: liver, bile, brain, kidney, spleen, and/or lung. Specimens should be individually deposited into zip-lock bags or other clean, single use containers suitable for forensic toxicology specimens.

(5) *If vitreous or urine is not available,* please provide—

a. *Spinal fluid*—all available, in 8 ml container (if available) with sodium fluoride or in gray-stopper tube; or, if spinal fluid cannot be obtained,

b. *Gastric content*—up to 10 milliliters, as available, into plastic bottle.

Sample collection:

Sampling at time of autopsy is preferred so that percutaneous needle puncturing is not necessary. However, if autopsy will not be conducted or is delayed, please proceed with sampling. Blood samples should be taken by sterile syringe and deposited directly into evacuated tube, if possible, to avoid contamination of sample or dissipation of volatiles (ethyl alcohol).

Note.—If only cavity fluid is available, please open cavity to collect sample. Note condition of cavity.

Please use smallest tubes available to accommodate available quantity of fluid sample (with 1 percent sodium fluoride).

Sample identification, sealing:

As each sample is collected, seal each blood tube and the urine container using the identifier label from the set provided with the Post Accident Testing Blood/Urine Custody and Control Form (FRA Form 6180.74 (revised)). Make sure the unique identification number on the label matches the pre-printed number on the Control Form. Please label other specimens with name and sample set identification number. Secure with tamperproof seal.

Annotate each label with sample description and source (as appropriate) (e.g., blood, femoral vein).

Please provide copy of any written documentation regarding condition of body and/or toxicology sampling procedure that is available at the time samples are shipped.

Handling:

If samples cannot be shipped immediately as provided below, samples other than blood may be immediately frozen. Blood samples should be refrigerated, but not frozen.

All samples and documentation should be secured from unauthorized access pending delivery for transportation.

Information:

If the railroad has not already done so, please place the name of the subject at the top of the Control Form (STEP 1). You are requested to complete STEP 2 of the form, annotating it by writing the word "FATALITY," listing the specimens provided, providing any further information under "Remarks" or at the bottom of the form. If it is necessary to transfer custody of the specimens from the person taking the specimens prior to preparing the kit for shipment, please use the blocks provided in STEP 5 to document transfer of custody.

The railroad representative will provide FRA Form 6180.73 (revised).

Both forms should be placed in the shipping kit when completed; but you may retain the designated medical facility copy of each form for your records.

Packing the shipping kit:

Place urine bottle and blood tubes in sponge liner of individual box, close plastic bag locking feature and apply individual box seal provided. Use additional box for each tissue sample, being careful to identify specimen by tissue and name of deceased. Apply box security seals to individual boxes and sign/initial across seal.

Place all forms in zip-lock bag and seal securely. Place bag in kit.

Seal kit with green tape provided and sign and date across seal with indelible marker provided.

Affix label instruction provided to outside of kit.

If shipping by Federal Express, place strap inside the kit. Secure the top of the shipping kit with green vinyl tape provided.

Otherwise, secure strap around lid after taping.

Shipping the kit:

The railroad should arrange to have the kit shipped overnight air express or (if express service is unavailable) by air freight, prepaid, to FRA's designated laboratory. When possible without incurring delay, deliver the kit directly into the hands of the express courier or air freight representative.

Where courier pickup is not immediately available at the medical facility where the samples are taken, the railroad is required to transport the shipping kit to the nearest point of shipment via air express, air freight or equivalent means.

If railroad is given custody of kit to arrange shipment, please record name of railroad official taking custody.

Other toxicology:

FRA requests that the person taking the samples advise if additional toxicological analysis will be undertaken with respect to the fatality. FRA toxicology reports are available to the coroner or medical examiner on request.

PART 217—[AMENDED]

1. The authority citation for part 217 is revised to read as follows:

Authority: 45 U.S.C. 431, 437 and 438, as amended; Pub. L. 100–342; and 49 CFR 1.49(m).

2. Section 217.13 is amended by revising paragraph (d) to read as follows:

§ 217.13 Annual report.

* * * * *

(d) The number, type and result of each test and inspection related to enforcement of part 219 of this subchapter and the railroad's rule on alcohol and drug use ("Rule G"). This information shall be reported on Form FRA 6180.77, shall be provided separately for employees covered by the Hours of Service Act and other employees subject to the railroad's code of operating rules and operational testing program, and shall include the following:

(1) Total number of observations of individual employees (including observations for which breath, blood or urine tests were included and observations after accidents/incidents and rule violations) and total number of employees charged with violation of Rule G or a similar rule.

(2) Number of breath tests conducted under the authority of § 219.301 of this title and number of such tests that were positive; number of breath tests conducted under railroad authority for specific cause and not relying on § 219.301 and number that were positive.

(3) Number of urine tests conducted under the authority of § 219.301 of this title and number of such tests that were positive; number of urine tests conducted under railroad authority for specific cause and not relying on § 219.301 and number that were positive. For positive tests indicate number for alcohol and for each of the following controlled substance drug groups: marijuana, cocaine, phencyclidine, opiates, amphetamines, and other controlled substances.

(4) Number of employees who refused to cooperate in testing under § 219.301; number of employees who refused to cooperate in testing under railroad authority for specific cause and not relying on § 219.301.

(5) Number of blood tests demanded by employees in connection with such observations and results by substance (alcohol, controlled substance drug group) (separated as to blood tests demanded under subpart D of this part and blood tests conducted under railroad authority).

(6) Number and results of random drug tests conducted under the authority of § 219.601 of this chapter. For positive tests indicate the number for each controlled substance by drug group, and the following information: number and type of disciplinary actions taken, number of employees referred for evaluation, number of employees evaluated as not requiring formal treatment, number of employees evaluated as requiring outpatient treatment, number of employees evaluated as requiring inpatient treatment, number of employees failing to complete abatement or rehabilitation (as determined by clinical of employees who completed abatement or rehabilitation determined after investigation to have been involved in subsequent alcohol/drug disciplinary offenses, and number of follow-up tests and results by drug group (including refusals). Also indicate the number of refusals to cooperate in random testing and provide a summary of any negative test findings based upon scientific insufficiency (without personal identifying information).

(7) Number of test results reported by the laboratory as positive that are declared negative by the Medical Review Officer due to scientific insufficiency, as provided in 49 CFR 40.33.

PART 225—[AMENDED]

1. The authority citation for part 225 continues to read as follows:

Authority: 45 U.S.C. 38, 42, and 43, as amended; 45 U.S.C. 431, 437, and 438, as amended; Pub. L. 100–342; and 49 CFR 1.49(c) and (m).

2. Section 225.17 is amended by revising paragraph (d) to read as follows:

§ 225.17 Doubtful cases; alcohol or drug involvement.

* * * * *

(d) (1) In preparing a Rail Equipment Accident/Incident Report under this part, the railroad shall make such specific inquiry as may be reasonable under the circumstances into the possible involvement of alcohol or drug use or impairment in such accident or incident. If the railroad comes into possession of any information whatsoever, whether or not confirmed, concerning alleged alcohol or drug use or impairment by an employee who was involved in, or arguably could be said to have been involved in, the accident/incident, the railroad shall report such alleged use or impairment as provided in the current FRA Guide for Preparing Accident/Incident Reports. If the railroad is in possession of such information but does not believe that alcohol or drug impairment was the primary or contributing cause of the accident/incident, then the railroad shall include in the narrative statement of such report a brief explanation of the basis of such determination.

(2) For any train accident within the requirement for post-accident testing under § 219.201 of this title, the railroad shall append to the Rail Equipment Accident/Incident Report any report required by § 219.209(b) (pertaining to failure to obtain samples for post-accident toxicological testing).

(3) For any train or non-train incident, the railroad shall provide any available information concerning the possible involvement of alcohol or drug use or impairment in such accident or incident.

(4) In providing information required by this paragraph, a railroad shall not disclose any information concerning use of controlled substances determined by the railroad's Medical Review Officer to have been consistent with 49 CFR 219.103.

Issued in Washington, DC, on December 20, 1989.

Gilbert E. Carmichael,

Federal Railroad Administrator.

[FR Doc. 89–29910 Filed 12–21–89; 10:16 am]

BILLING CODE 4910–06–M

federal register

Wednesday
December 27, 1989

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 121

Anti-Drug Program for Personnel Engaged in Specified Aviation Activities; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. 25148; Admt. No. 121-210]

RIN 2120-AC33

Anti-Drug Program for Personnel Engaged in Specified Aviation Activities

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; extension of compliance date.

SUMMARY: The FAA announces a delay in the compliance date for drug testing, insofar as those regulations would require testing of persons located outside the territory of the United States. Under this final rule, employees located outside the territory of the United States must become subject to testing no later than January 2, 1992. This extension of compliance date is adopted in order to allow negotiation with foreign governments to continue in an orderly and effective fashion.

EFFECTIVE DATE: This final rule is effective December 27, 1989.

FOR FURTHER INFORMATION CONTACT: Ms. Heidi Mayer, Office of Aviation Medicine, Drug Abatement Branch (AAM-220), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3410.

SUPPLEMENTARY INFORMATION: On November 21, 1988, the FAA, along with other agencies of the Department of Transportation (DOT), adopted regulations requiring preemployment, post-accident, reasonable cause and random drug testing (53 FR 47024). Those individuals required under Federal law or regulation to have periodic medical examinations were also required to undergo a drug test at the same time. (The Federal Railroad Administration rule issued at that time governed only random testing; other forms of drug testing for covered railroad employees were already required by previously issued regulations. 49 CFR part 219; See 50 FR 31508, August 2, 1985.) On April 14, 1989, the FAA amended the drug testing regulation to extend certain compliance dates and make other minor revisions (54 FR 15148).

The drug testing required by the rule applies to employees performing sensitive safety- and security-related functions, including employees located outside the territory of the United States. However, the rules provided that they would not apply in any situation in which application of the rules violated local laws or policies.

At the same time, the FAA stated that the DOT and other elements of the government would enter into discussions with foreign governments to attempt to resolve any conflict between our rules and foreign government laws or policies. The final rule stated that if, as a result of those discussions, we found that amendments to the rule were necessary, action would be taken in a timely manner. Under the current schedule, drug testing of employees located outside the territory of the United States is scheduled to begin by January 1, 1991.

DOT has been conducting active discussions over the last year with representatives of the Canadian government, and has had a preliminary meeting with representatives of the nations of the European Economic Community. The Department has chosen to focus its attention first on discussions with Canada, because the rules of five different modal administrations could affect Canadian businesses. Unfortunately, the discussions with the Canadians have not yet been completed.

However, the Department has made progress in its discussions with the Canadians, and have found that there are a number of important issues on which we agree. The DOT and the FAA continue to believe that, with additional time, it will be possible to develop an approach to the problem of drugs in the transportation industry that will be mutually acceptable.

In order to allow that agreement to be reached in an orderly fashion, the OST has determined that additional time is necessary. An additional delay of approximately one year should enable an acceptable arrangement to be developed on drug deterrence with Canada and other countries. Accordingly, the FAA is postponing the date by which testing programs must commence for persons located outside the territory of the United States.

Availability of Final Rule

Any person may obtain a copy of this final rule by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attn: Public Inquiry Center (APA-230), 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Requests must include the amendment number identified in this final rule. Persons interested in being placed on a mailing list for future rulemaking actions should request a copy of Advisory Circular 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

Reason for No Notice

The amendment to the anti-drug rule merely extends for one year the compliance date specified in the rule for drug testing persons located outside the territory of the United States. This minor change reflects the commitment made in the preamble to the final rule to "delay the effective date further * * * if such delay is necessary to permit consultation with any foreign governments to be successfully completed" [November 21, 1988; 53 FR 47050]. The FAA does not believe that issuing a notice of proposed rulemaking would result in the receipt of significant comments. Accordingly, the FAA has determined that notice and public comment procedures are unnecessary and contrary to the public interest.

Economic Assessment

In accordance with the requirements of Executive Order 12291, the FAA reviewed the costs and the benefits of the final anti-drug rule issued on November 14, 1988. At that time, the FAA prepared a comprehensive Regulatory Impact Analysis of the final anti-drug rule. The FAA included that analysis in the public docket. The FAA also summarized and analyzed the comments submitted by interested persons on the economic issues in the final rulemaking document published in the Federal Register on November 21, 1988.

This final rule extends the compliance date of covered employees in foreign countries but does not change the basic regulatory structure and requirements promulgated in the final anti-drug rule. The FAA is taking this action to provide additional time to negotiate with foreign governments on implementation of drug testing outside the territory of the United States, and has determined that costs and benefits associated with this extension are minimal. A separate economic analysis for this final rule, therefore, is not warranted.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 requires a Federal agency to review any final rule to assess its impact on small business. The amendment contained in this final rule only extends a compliance date; consequently, the FAA has determined that this amendment to the final rule will not have a significant economic impact, positive or negative, on a substantial number of small entities.

International Trade Impact Statement

This final rule contains an amendment that extends the date by which an employer must ensure that employees outside the United States are in compliance with the final rule issued on November 14, 1988. The amendment provides that Appendix I to part 121 is not effective with respect to any employee located outside the territory of the United States until January 2, 1992. Thus, the FAA has determined that this final rule will not have an impact on trade opportunities for U.S. firms doing business overseas or on foreign firms doing business in the United States.

Paperwork Reduction Act Approval

The recordkeeping and reporting requirements of the final anti-drug rule, issued on November 14, 1988, previously were submitted to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1980. OMB approved those requirements on February 2, 1989. Because this final rule does not amend the recordkeeping and reporting requirements, it is not necessary to amend the prior approval received from OMB.

Federalism Implications

The final rule adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, the FAA has determined that this final rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Conclusion

This final rule extends the compliance date for drug testing of those persons located outside the territory of the United States. This rulemaking action is intended to improve administration of the final anti-drug rule.

Pursuant to the terms of the Regulatory Flexibility Act of 1980, the FAA certifies that the final rule will not have a significant economic impact, positive or negative, on a substantial number of small entities. In addition, the final rule will not result in an annual effect on the economy of $100 million or more and will not result in a significant increase in consumer prices; thus, the final rule is not a major rule pursuant to the criteria of Executive Order 12291. However, because the rule involves issues of substantial interest to the public, the FAA determined that the final rule is significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034; February 2, 1979).

List of Subjects in 14 CFR Part 121

Air carriers, Air transportation, Aircraft, Aircraft pilots, Airmen, Airplanes, Aviation safety, Drug abuse, Drugs, Narcotics, Pilots, Safety, Transportation.

The Amendments

Accordingly, the FAA amends part 121 of the Federal Aviation Regulations (14 CFR part 121) as follows:

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1356, 1357, 1401, 1421–1430, 1472, 1485, and 1502; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983).

Appendix I—[Amended]

2. By revising paragraph (B) of section XII of Appendix I to part 121 to read as follows:

* * * * *

B. This appendix shall not be effective with respect to any employee located outside the territory of the United States until January 2, 1992.

Issued in Washington, DC, on December 11, 1989.

James B. Busey,

Administrator.

[FR Doc. 89–30012 Filed 12–26–89; 8:45 am]

BILLING CODE 4910–13–M

Federal Register

Wednesday
December 27, 1989

Part IV

Department of Transportation

Coast Guard

46 CFR Part 16

Programs for Chemical Drug and Alcohol Testing of Commercial Vessel Personnel; Delay of Implementation Dates; Final Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 16

[CGD 86-067b]

RIN 2115—AC45

Programs for Chemical Drug and Alcohol Testing of Commercial Vessel Personnel; Delay of Implementation Dates

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard announces a delay in the effective date of regulations governing drug testing, insofar as those regulations would require testing of persons for whom a foreign government contends that application of these regulations is not compatible with that country's domestic laws or policies. Under this final rule, employees must become subject to testing no later than January 2, 1992. This delay of implementation is adopted in order to allow negotiation with foreign governments to continue in an orderly and effective fashion.

EFFECTIVE DATE: This rule is effective December 27, 1989.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander T.A. Murphy, Project Manager, Marine Investigation Division (G-MMI), Office of Marine Safety, Security and Environmental Protection, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC, 20593-0001, (202) 267-2215.

SUPPLEMENTARY INFORMATION: On November 21, 1988, the Coast Guard, along with other agencies of the Department of Transportation, adopted regulations requiring pre-employment, post-accident, reasonable cause and random drug testing. Those individuals required under Federal law or regulation to have periodic medical examinations were also required to undergo a drug test at the same time. The drug testing required by the rule applies to some persons located outside of the United States. However, the rules provided that they would not apply outside the United States in any situation in which application of the rules violated foreign local laws or policies.

At the same time, the Coast Guard stated that the Department of Transportation and other elements of the government would enter into discussions with foreign governments to attempt to resolve any conflict between our rules and foreign government laws or policies. We stated that if, as a result of those discussions, we found that amendments to the rule were necessary, we would issue the amendments by December 1, 1989. Under the current schedule, drug testing for foreign persons is scheduled to begin by January 1990. DOT has been conducting active discussions over the last year with representatives of the Canadian Government, and has had a preliminary meeting with representatives of the nations of the European Economic Community. The Department has chosen to focus its attention first on discussions with Canada, because the rules of five different modal administrations could affect Canadian businesses. Unfortunately, the discussions with the Canadians have not yet been completed.

However, the Department has made progress in its discussions with the Canadians, and have found that there are a number of important issues on which we agree. We therefore continue to believe that, with additional time, we will be able to develop an approach to the problem of drugs in the transportation industry that will be mutually acceptable.

In order to allow that agreement to be reached in an orderly fashion, we have determined that additional time is necessary. An additional delay of approximately two years will, we hope, enable us to achieve an acceptable arrangement on drug deterrence with Canada and other countries. Accordingly, we have determined to postpone the date by which testing programs must commence for persons for whom a foreign country contends that such testing would violate that country's domestic laws or policies to January 2, 1992. This schedule will apply to all such persons, whether or not the affected foreign government has formally notified us of conflicts with their laws and policies. Despite efforts to notify foreign governments of the need to notify us of any potential conflict with our rules, we believe that some governments may not have made a determination whether a conflict exists. This could place some carriers in an untenable position during the pendency of the inter-government discussions. Our action here does not postpone testing for any other person, including U.S.-based employees of American subsidiaries of foreign companies.

The change in this final rule will delay the applicability of the regulations where they may conflict with foreign law or policy so that the Department of Transportation and other elements of the government can complete discussions with foreign governments to attempt to resolve any conflict between our rules and foreign government laws or policies. Accordingly, the Coast Guard finds that good cause exists under 5 U.S.C. 553(b) to publish this rule without notice and comment and to make this rule effective less than 30 days after publication in the **Federal Register.**

Regulatory Assessment

This final rule modifies the effective date for compliance with regulations governing drug testing, insofar as those regulations would require testing of persons for whom a foreign government contends that application of these regulations is not compatible with that country's domestic laws or policies. It does not change the basic regulatory structure of that rule. The economic impact of these changes is so minimal that further evaluation is not necessary.

Regulatory Flexibility Determination

The amendment in this final rule pertains only to situations concerning foreign governments. Therefore, the Coast Guard certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This final rule does not amend the recordkeeping and reporting requirements of the final rule published on November 21, 1988.

Environmental Assessment

The Coast Guard has considered the environmental impact of this amendment to the rules promulgated on November 21, 1988, and concluded that, under section 2.B.2.1 of Commandant Instruction M16475.1B, they will have no significant environmental impact and are categorically excluded from further environmental documentation.

Federalism Implications

In accordance with Executive Order 12612, the Coast Guard has determined that this final rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

List of Subjects in 46 CFR Part 16

Seamen, Marine Safety, Navigation (Water), Alcohol and alcoholic beverages, Drugs.

Final Rule

For the reasons set forth in the preamble, title 46, chapter I, of the Code of Federal Regulations is amended as follows:

PART 16—[AMENDED]

1. The authority citation for part 16 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 7101, 7301 and 7701; 49 CFR 1.46.

* * * * *

2. Section 16.207 is amended by revising paragraph (b) to read as follows:

§ 16.207 Conflict with foreign laws.

* * * * *

(b) This part is not effective until January 2, 1992, with respect to any person for whom a foreign government contends that application of this part raises questions of compatibility with that country's domestic laws or policies. On or before December 1, 1991, the Commandant shall issue any necessary amendment resolving the applicability of this part to such person on and after January 2, 1992.

Dated: December 21, 1989.

M.J. Schiro,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 89-30011 Filed 12-26-89; 8:45 am]

BILLING CODE 4910-14-M

federal register

Wednesday
December 27, 1989

Part V

Department of Transportation

Research and Special Programs Administration

49 CFR Part 199

Control of Drug Use in Natural Gas, Liquefied Natural Gas, and Hazardous Liquid Pipeline Operations; Final Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 199

[Docket No. PS-102, Amdt. No. 199-3]

RIN 2137-AB54

Control of Drug Use in Natural Gas, Liquefied Natural Gas, and Hazardous Liquid Pipeline Operations

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Final rule; Modification of implementation date.

SUMMARY: The Research and Special Programs Administration (RSPA) announces a delay in the effective date of regulations governing drug testing, insofar as those regulations would require testing of persons for whom a foreign government contends that application of these regulations is not compatible with that country's domestic laws or policies. Under this final rule, these persons must become subject to testing no later than January 2, 1992. This delay of implementation is adopted in order to allow negotiation with foreign governments to continue in an orderly and effective fashion.

EFFECTIVE DATE: This rule is effective December 27, 1989.

FOR FURTHER INFORMATION CONTACT: Cesar De Leon, Assistant Director for Regulation, Office of Pipeline Safety, Research and Special Programs Administration (DPS-10), 400 7th Street SW., Washington, DC 20590, (202) 366-1640.

SUPPLEMENTARY INFORMATION: On November 21, 1988, RSPA, along with other agencies of the Department of Transportation, adopted regulations requiring pre-employment, post-accident, reasonable cause and random drug testing (53 FR 47084, 49 CFR part 199). The drug testing required by these rules applies to some persons located outside of the United States. However, the rules provided that they would not apply to any person for whom compliance would violate the domestic laws or policies of another country. The rules provided that 49 CFR part 199 would not be effective until January 1, 1990, with respect to any person for whom a foreign government contends that application of the rule raises questions of compatibility with that country's laws or policies.

At the same time, RSPA stated that the Department of Transportation and other elements of the government would enter into discussions with foreign governments to attempt to resolve any conflict between our rules and foreign government laws or policies. We stated that if, as a result of those discussions, we found that an amendment to the rules was necessary, we would issue the amendment by December 1, 1989. On April 13, 1989, RSPA published an amendment to part 199 (54 FR 14922) to provide that the rules would not be effective until January 1, 1991, with respect to such persons. The amendment clarified that RSPA had intended that the rules provide an additional year to initiate testing in order for government-to-government discussions to reach permanent resolution of this issue. DOT has been conducting active discussions over the last year with representatives of the Canadian government, and has had a preliminary meeting with representatives of the nations of the European Economic Community. The Department has chosen to focus its attention first on discussions with Canada, because the rules of five different modal administrations could affect Canadian businesses. Unfortunately, the discussions with the Canadians have not yet been completed. Moreover, since the Department had hoped to be able to use an agreement with Canada as the basis for discussions with other countries, it follows that we have not yet been able to make substantial progress with them.

However, the Department has made progress in its discussions with the Canadians, and has found that there are a number of important issues on which we agree. We therefore continue to believe that, with additional time, we will be able to develop an approach to the problem of drugs in the transportation industry that will be mutually acceptable.

In order to allow that agreement to be reached in an orderly fashion, we have determined that additional time is necessary. An additional delay of 1 year will, we hope, enable us to achieve an acceptable arrangement on drug deterrence with Canada and other countries. Accordingly, we have determined to postpone the date by which testing programs must commence for persons for whom a foreign country contends that such testing would violate that country's domestic laws or policies to January 2, 1992. This schedule will apply to all such persons, whether or not the affected foreign government has formally notified us of conflicts with their laws and policies. Despite efforts to notify foreign governments of the need to notify us of any potential conflict with our rules, we believe that some governments may not have made a determination whether a conflict exists. This could place some employers in an untenable position during the pendency of the inter-government discussions. Our action here does not postpone testing for any other person, including U.S.-based employees of American subsidiaries of foreign companies.

This final rule delays the applicability of the part 199 regulations where they may conflict with foreign law or policy. Accordingly, RSPA finds that good cause exists under 5 U.S.C. 553(b) and 553(d) to publish this final rule without notice and comment, and to make it effective less than 30 days after publication in the **Federal Register**

Regulatory Assessment

This final rule modifies one of the compliance provisions contained in the final rule published on November 21, 1988, as modified on April 13, 1989. It does not change the basic regulatory structure of that rule. The economic impact of these changes is so minimal that further evaluation is not necessary.

Regulatory Flexibility Determination

This final rule modifies the effective date of part 199 only with respect to certain persons for whom a foreign country contends that drug testing would violate that country's laws or policies. Therefore, RSPA certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This final rule does not add to the recordkeeping and reporting burden of the final rule published on November 21, 1988.

Federalism Implications

In accordance with Executive Order 12612, RSPA has determined that this final rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 199

Pipeline safety, Drug testing.

In view of the foregoing, RSPA amends 49 CFR part 199 as follows:

PART 199—[AMENDED]

1. The authority citation for part 199 continues to read as follows:

Authority: 49 App. U.S.C. 1672, 1674a, 1681, 1804, 1808, 2002, and 2040; 49 CFR 1.53.

2. Section 199.1(d) is revised to read as follows:

§ 199.1 Scope and Compliance.

* * * * *

(d) This part is not effective until January 2, 1992, with respect to any person for whom a foreign government contends that application of this part raises questions of compatibility with that country's domestic laws or policies. On or before December 2, 1991, the Administrator will issue any necessary amendment resolving the applicability of this part to such person on and after January 2, 1992.

Issued in Washington, DC, on December 20, 1989.

Travis P. Dungan,

Administrator, Research and Special Programs Administration.

[FR Doc. 89-30014 Filed 12-26-89; 8:45 am]

BILLING CODE 4910-60-M

federal register

Wednesday
December 27, 1989

Part VI

Department of Transportation

Federal Highway Administration

49 CFR Part 391

Controlled Substances Testing; Compliance Date for Certain Foreign Drivers; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 391

[FHWA Docket No. MC-116]

RIN 2125-AC50

Controlled Substances Testing; Compliance Date for Certain Foreign Drivers

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule; deferred compliance.

SUMMARY: The Federal Highway Administration announces a delay in the compliance date of its regulation governing drug testing, insofar as the regulation would require testing of employees of carriers domiciled and located in a foreign country. Under this final rule, such employees must become subject to testing no later than January 2, 1992. This delay of compliance is adopted in order to allow negotiation with foreign governments to continue in an orderly and effective fashion.

DATES: Effective date December 27, 1989. Compliance with requirement to test foreign-based employees of foreign-domiciled carriers for drug use is deferred until January 2, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas P. Kozlowski, Office of Motor Carrier Standards, (202) 366-2981, or Mr. Thomas P. Holian, Office of Chief Counsel, (202) 366-1350, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: On November 21, 1988, the Federal Highway Administration (FHWA) along with other agencies of the Department of Transportation (DOT) adopted regulations requiring pre-employment/pre-use, periodic, post-accident, reasonable cause, and random drug testing. The drug testing required by the rule applies to some persons domiciled or working outside the United States. However, the rule provided that it would not apply in any situation in which a foreign government contended that application of the rule violated that country's laws or policies.

On September 27, 1989, the FHWA published a correction to its drug testing rule to indicate that January 1, 1991, would be the earliest date for testing of these persons.

The Department of Transportation and other elements of the Government have entered into discussions with foreign governments to identify and resolve any conflict between the FHWA drug testing rule (and that of other modal administrations of the DOT) and foreign government laws or policies. The DOT has been conducting active discussions over the last year with representatives of the Canadian government, and has had a preliminary meeting with representatives of the nations of the European Economic Community. The Department has chosen to focus its attention first on discussions with Canada, because the rules of five different modal administrations could affect Canadian businesses. Unfortunately, the discussions with the Canadians have not yet been completed.

However, the Department has made progress in its discussions with the Canadians, and has found that there are a number of important issues on which we agree. We therefore continue to believe that, with additional time, we will be able to develop an approach to the problem of drugs in the transportation industry that will be mutually acceptable.

In order to allow that agreement to be reached in an orderly fashion, we have determined that additional time is necessary. An additional delay of approximately one year will, we hope, enable us to achieve an acceptable arrangement on drug deterrence with Canada and other countries. Accordingly, we have determined to postpone until January 2, 1992 the date by which testing programs must commence for employees of foreign-domiciled carriers operating out of a base of operations located outside the U.S., whether or not the affected foreign government has formally notified us of conflicts with its laws and policies. Our action here does not postpone testing for any other person, including U.S.-based employees of American subsidiaries of foreign companies.

Regulatory Procedures

The FHWA has determined that this rule modifies a major rule under Executive Order 12291 and a significant regulation under the regulatory policies and procedures of the Department of Transportation. This document is considered significant because of its international impact but is not major in itself. The amendment merely defers implementation of the rule for a narrow class of drivers faced with an unusual situation which should be resolved by discussions among appropriate governments. In addition, for these reasons and because this amendment is being issued to clarify the existing rule, further public comment is considered unnecessary. Further notice and opportunity for comment are not required under the regulatory policies and procedures of the Department of Transportation because it is not anticipated that such action could result in the receipt of useful information. Therefore, the FHWA finds good cause to make the amendment final without notice and opportunity for comment and without a 30-day delay in effective date under the Administrative Procedure Act. Accordingly, this amendment is effective upon publication in the **Federal Register.**

This rulemaking document amends the FHWA's November 21, 1988, controlled substance testing final rule, as that rule was previously amended in September 27, 1989. The impacts of the provision addressed in today's document have already been considered in the impact documentation prepared for the November 21, 1988, final rule. The changes made to the final rule by this document do not appreciably affect the impact documentation already prepared.

The impact documentation prepared for the November 21, 1988, final rule includes: A Regulatory Impact analysis which is available for inspection in the headquarters office of the FHWA, 400 Seventh Street, SW., Washington, DC; a small entity impact analysis under the Regulatory Flexibility Act; and a Federalism Assessment under Executive Order 12612.

To the extent that any new economic impacts will result from this change, the amendment will lessen regulatory burdens by increasing the time available to comply with existing regulatory requirements. For this reason, a separate economic analysis has not been prepared for this amendment. For the same reason, and under the criteria of the Regulatory Flexibility Act, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities. This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 391

Controlled substances, Highways and roads, Highway safety, Motor carriers, Motor vehicle safety.

(Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety)

Issued on December 20, 1989.

T.D. Larson,

Administrator.

In consideration of the foregoing, the FHWA is amending title 49, Code of Federal Regulations, subtitle B, chapter III, part 391 as set forth below:

PART 391—QUALIFICATIONS OF DRIVERS [AMENDED]

1. Authority citation for part 391 continues to read as follows:

Authority: 49 U.S.C. App. section 2505; 49 U.S.C. 504 and 3102; 49 CFR 1.48.

Subpart H—Controlled Substances Testing [Amended]

2. In § 391.83, paragraph (c) is revised to read as follows:

§ 391.83 Applicability.

* * * * *

(c) This subpart is not applicable until January 2, 1992, with respect to any foreign-based employee of a foreign-domiciled carrier. On or before July 1, 1991, the Administrator shall issue any necessary amendment resolving the applicability of this subpart to such employee on and after January 2, 1992.

* * * * *

[FR Doc. 89-30013 Filed 12-26-89; 8:45 am]

BILLING CODE 4910-22-M

federal register

Wednesday
December 27, 1989

Part VII

Department of Labor

Mine Safety and Health Administration

30 CFR Part 5

Fee Adjustments for Testing, Evaluation and Approval of Mining Products; Final Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 5

Fee Adjustments for Testing, Evaluation and Approval of Mining Products

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Final rule.

SUMMARY: This notice revises the Mine Safety and Health Administration's (MSHA) user fees for testing, evaluation and approval of certain products manufactured for use in underground mines. These fees are based on fiscal year 1989 data and reflect changes in approval processing operations as well as costs incurred to process approval actions.

DATES: These fee schedules are effective from January 1, 1990, through December 31, 1990. Approval applications postmarked before January 1, 1990, will be chargeable under the fee schedules as published on January 3, 1989.

FOR FURTHER INFORMATION CONTACT: Robert W. Dalzell, Chief, Approval and Certification Center, R.R. 1, Box 251, Triadelphia, West Virginia 26059.

SUPPLEMENTARY INFORMATION: In general, MSHA has computed the revised fees based on the cost to the government to provide testing, evaluation, and approval of products manufactured for use in underground mines. On May 8, 1987 (52 FR 17506), MSHA published a final rule, 30 CFR part 5—Fees for Testing, Evaluation, and Approval of Mining Products, which established the specific procedures for fee calculation, administration, and revisions. This revised fee schedule is established in accordance with the procedures of that rule.

There were two new approval programs introduced during fiscal year 1989—Acceptances for Fiber Optic Cables and Cables Smaller than #14 AWG and Longwall Shearer Approvals. These approvals are subject to hourly rates prescribed under Part 18, Actions 15 and 41, respectively. Also, a new schedule is included reflecting a new approval action—Stamped Notification of Acceptance (SNAP) Statement of Test and Evaluation (ST&E) for Lighting Systems at a flat rate fee. All flat rate approvals require payment at the time of application submittal.

Increased costs associated with processing other SNAP actions and Stamped Revision Acceptance (SRA) actions are reflected in the new schedules. In March 1988, a modified cancellation policy was effected to provide applicants with a mechanism to correct discrepancies within a specified time period. This mechanism reduced the number of cancellations and overall cost to applicants but increased the average time and cost expended for processing.

Statement of Test and Evaluation (ST&E) Extensions and Longwall Area Lighting Extensions (Part 75, Action 17 and Other A&CC Services, Action 42, respectively) have been separated into two fee schedules to reflect the difference in expended time and cost.

Dated: December 19, 1989.

William J. Tattersall,

Assistant Secretary for Mine Safety and Health.

FEE SCHEDULE EFFECTIVE JANUARY 1, 1990 (BASED ON FY 1989 DATA)

30 CFR Part and Agency Tracking Code	Hourly Rate	Flat Rate	Application Fee
Part 7—Product Testing by Third Party			
12 Approval Evaluation—Battery Assemblies	$34		$100
12 Approval Evaluation—Brattice and Ventilation Tubing	40		100
12 Approval Evaluation—Multiple-Shot Blasting Units(d)	37		100
14 Approval Extension—Battery Assemblies	34		100
14 Approval Extension—Brattice and Ventilation Tubing	39		100
14 Approval Extension—Multiple-Shot Blasting Units(d)	37		100
40 Stamped Notification Acceptance Program (SNAP)		208	
Part 15—Explosives			
12 Approval Evaluation(a)	39		100
Permissibility Tests for Explosives:			
Weigh-in		420	
Physical Exam: First Size		295	
Chemical Analysis		1,797	
Air gap—Minimum Product Firing Temperature		418	
Air gap—Room Temperature		320	
Pendulum Friction Test		148	
Detonation Rate		320	
Gallery Test 7		4,917	
Gallery Test 8		3,537	
Toxic Gases (large chamber)		732	
Permissibility Tests for Sheathed Explosives:			
Physical Examination		128	
Chemical Analysis		1,044	
Gallery Test 9		1,944	
Gallery Test 10		1,944	
Gallery Test 11		1,944	
Gallery Test 12		1,944	
Drop Test		648	
Temperature Effects/Detonation		672	
Toxic Gases		580	
14 Approval Extension	39		100
Part 18—Electric Motor Driven Equipment and Accessories			
12 Approval—Machine Evaluation(a)	40		100
Approval—Machine Testing:			
Explosion Test			
Surface/Temperature Test	30		
Impact Test	33		
Thermal Shock Test	29		

FEE SCHEDULE EFFECTIVE JANUARY 1, 1990 (BASED ON FY 1989 DATA)—Continued

30 CFR Part and Agency Tracking Code	Hourly Rate	Flat Rate	Application Fee
Product Flame Test	30		
12 Approval—Instruments (testing included)	36		
14 Approval Extension—Machine Evaluation(a)	35		100
Approval Extension—Machine Testing	40		100
Explosion Test	30		
Surface/Temperature Test	33		
Impact Test	29		
Thermal Shock Test	30		
Product Flame Test	36		
14 Approval Extension—Instruments (testing included)	35		100
15 Acceptance Evaluation(a)	36		100
Acceptance Testing:			
Explosion Test	30		
Surface/Temperature Test	33		
Impact Test	29		
Thermal Shock Test	30		
Product Flame Test	36		
Cable/Splice Test	37		
Cable Flame Test	37		
Compressibility Test (asbestos substitutes)	38		
16 Certification Evaluation(a)	36		100
Certification Testing:			
Explosion Test	30		
Surface/Temperature Test	33		
Impact Test	29		
Thermal Shock Test	30		
Product Flame Test	36		
17 Acceptance Extension	36		100
18 Certification Extension(a)	34		100
Certification Extension Testing:			
Explosion Test	30		
Surface/Temperature Test	33		
Impact Test	29		
Thermal Shock Test	30		
Product Flame Test	36		
21 Field Modification	40		100
23 Field Approval		74	
26 Permit—Machines(a)	38		100
Permit Testing:			
Explosion Test	30		
Surface/Temperature Test	33		
Impact Test	29		
Thermal Shock Test	30		
Product Flame Test	36		
26 Permit—Instruments (testing included)	25		100
30 Intrinsic Safety Determination (testing included)	41		100
31 Intrinsic Safety Determination Extension (testing included)	39		100
32 Simplified Certification(a)	33		100
Simplified Certification Testing:			
Explosion Test	30		
Surface/Temperature Test	33		
Impact Test	29		
Thermal Shock Test	30		
Product Flame Test	36		
34 Simplified Certification Extension(a)	33		100
Simplified Certification Ext. Testing:			
Explosion Test	30		
Surface/Temperature Test	33		
Impact Test	29		
Thermal Shock Test	30		
Product Flame Test	36		
40 Stamped Notification Acceptance Program (SNAP)		208	
41 Longwall Approval	38		100
42 Longwall Approval Extension	38		100
Part 19—Electric Cap Lamps			
12 Approval (testing included)	36		100
14 Approval Extension (testing included)	36		100
40 Stamped Notification Acceptance Program (SNAP)		208	
Part 20—Electric Mine Lamps			
12 Approval (testing included)	36		100
14 Approval Extension (testing included)	36		100
40 Stamped Notification Acceptance Program (SNAP)		208	
Part 21—Flame Safety Lamps			
12 Aprpoval (testing included)	36		100
14 Approval Extension (testing included)	36		100
40 Stamped Notification Acceptance Program (SNAP)		208	

FEE SCHEDULE EFFECTIVE JANUARY 1, 1990 (BASED ON FY 1989 DATA)—Continued

30 CFR Part and Agency Tracking Code	Hourly Rate	Flat Rate	Application Fee
Part 22—Portable Methane Detectors			
12 Approval (testing included)	36		100
14 Approval Extension (testing included)	35		100
40 Stamped Notification Acceptance Program (SNAP)		208	
Part 23—Telephones and Signaling Devices			
2 Approval (testing included)	38		100
14 Approval Extension (testing included)	34		100
40 Stamped Notification Acceptance Program (SNAP)		208	
Part 24—Single-Shot Blasting Units			
12 Approval (testing included)	41		100
14 Approval Extension (testing included)	41		100
40 Stamped Notification Acceptance Program (SNAP)		208	
Part 25—Multiple-Shot Blasting Units			
12 Approval (testing included)(d)	41		100
14 Approval Extension (testing included)(d)	41		100
40 Stamped Notification Acceptance Program (SNAP)(d)		208	
Part 26—Lighting Equipment for Illumination			
12 Approval (testing included)	41		100
14 Approval Extension (testing included)	41		100
40 Stamped Notification Acceptance Program (SNAP)		208	
Part 27—Methane Monitoring Systems			
16 Certification (testing included)	41		100
18 Certification Extension (testing included)	34		100
40 Stamped Notification Acceptance Program (SNAP)		208	
Part 28—D.C. Current Fuses			
12 Approval (testing included)	41		100
14 Approval Extension (testing included)	41		100
40 Stamped Notification Acceptance Program (SNAP)		208	
Part 29—Portable Dust Analyzers and Methane Monitors			
12 Approval (testing included)	36		100
14 Approval Extension (testing included)	36		100
40 Stamped Notification Acceptance Program (SNAP)		208	
Part 31—Diesel Mine Locomotives			
12 Approval	36		100
14 Approval Extension	36		100
Part 32—Mobile Diesel-Powered Equipment for Noncoal Mines			
12 Approval	36		100
14 Approval Extension	36		100
16 Certification Evaluation(a)	38		100
Certification Testing:			
Emissions Test	39		
Pre/Post Test Preparation	36		
18 Certification Extension Evaluation(a)	38		100
Emissions Test	39		
Pre/Post Test Preparation	36		
Part 33—Dust Collectors			
12 Approval Evaluation without Cert. of Performance(a)	40		100
Approval Testing:			
Dust Collector Test	43		
14 Approval Extension Evaluation(a)	40		100
Approval Extension Testing:			
Dust Collector Test	43		
16 Certification Evaluation(a)	39		100
Certification Testing:			
Dust Collector Test	43		
18 Certification Extension(a)	39		100
Certification Extension Testing:			
Dust Collector Test	43		
21 Field Modification	40		100
29 Dust Collector Approval with Cert. of Performance	39		100
40 Stamped Notification Acceptance Program (SNAP)		208	
Part 35—Fire-Resistant Hydraulic Fluids			
12 Approval (testing included)	37		100
14 Approval Extension (testing included)	35		100
Part 36—Mobile Diesel-Powered Equipment			
12 Approval	40		100
14 Approval Extension	40		100
16 Certification—Engine Evaluation(a)	38		100
Certification—Engine Testing:			
Emissions Test	37		

FEE SCHEDULE EFFECTIVE JANUARY 1, 1990 (BASED ON FY 1989 DATA)—Continued

30 CFR Part and Agency Tracking Code	Hourly Rate	Flat Rate	Application Fee
Explosion Test	38		
Surface Temperature/Safety Controls Test	36		
Pre/Post Test Preparation	36		
18 Certification Extension—Engine Evaluation(a)	37		100
Certification Extension—Engine Testing:			
Emissions Test	37		
Explosion Test	38		
Surface Temperature/Safety Controls Test	36		
Pre/Post Test Preparation	36		
21 Field Modification	38		100
27 Certification—Diesel Components Evaluation(a)	38		100
Certification—Diesel Components Testing:			
Emissions Test	37		
Explosion Test	38		
Water Consumption/Cooling Efficiency Test	38		
Surface Temperature/Safety Controls Test	36		
Pre/Post Test Preparation	36		
28 Certification Extension—Diesel Components Evaluation(a)	38		100
Certification Extension—Diesel Components Testing:			
Emissions Test	37		
Explosion Test	38		
Water Consumption/Cooling Efficiency Test	38		
Surface Temperature/Safety Controls Test	36		
Pre/Post Test Preparation	36		
40 Stamped Notification Acceptance Program (SNAP)		208	
Part 74—Coal Mine Dust Personal Sampler Units			
12 Approval	36		100
Other A&CC Services			
15 Acceptance—Overcurrent Relays (testing included)	37		100
15 Statement of Test and Evaluation (ST&E)		30	
15 Acceptance—Ground Check Monitor/Ground Wire Devices (testing included)	38		100
17 Acceptance Extension—Overcurrent Relays	37		100
17 Acceptance Extension—Interim Criteria	37		100
17 Statement of Test and Evaluation (ST&E) Extension		18	
17 Acceptance Extension—Ground Check Monitor/Gr. Wire Devices	36		100
20 Stamped Revision Acceptance (SRA)(b)		137	
24 Acceptance—Panic Bar	37		100
33 Generic Statement of Test and Evaluation (ST&E)	38		100
37 Acceptance—Interim Criteria(a)	36		100
Interim Criteria Testing:			
Product Flame Test	36		
40 Stamped Notification Acceptance (SNAP)/Gr. Check Monitor and Ground Wire Device		208	
40 Stamped Notification Acceptance (SNAP) ST&E		53	
41 Approval—Longwall Area Lighting	39		100
42 Approval Extension—Longwall Area Lighting	38		100
50 Mine Wide Monitoring System (MWMS) Evaluation		215	
52 Mine Wide Monitoring System (MWMS) Barrier Classification		72	
54 Mine Wide Monitoring System (MWMS) Sensor Classification		115	
00 Retesting for Approval as a Result of Post-Approval Product Audit(c)			

NOTES:

(a) Full approval fee consists of evaluation cost plus applicable test costs.
(b) Fee covers SRA application accompanied by up to 5 documents.
(c) Fee based upon the approval schedule in effect at the time of retest.
(d) Applications for multiple-shot blasting units postmarked after January 22, 1991, must be submitted under 30 CFR Part 7 Third Party Testing. Applicable fees are listed under 30 CFR Part 7 Fees Schedule.

When testing and evaluation are required at locations other than MSHA's premises, the applicant shall reimburse MSHA for traveling, subsistence, and incidental expenses of MSHA's representation in accordance with standardized government travel regulations. This reimbursement is in addition to the fees charged for evaluation and testing.

[FR Doc. 89-29994 Filed 12-26-89; 8:45 am]

BILLING CODE 4510-43-M

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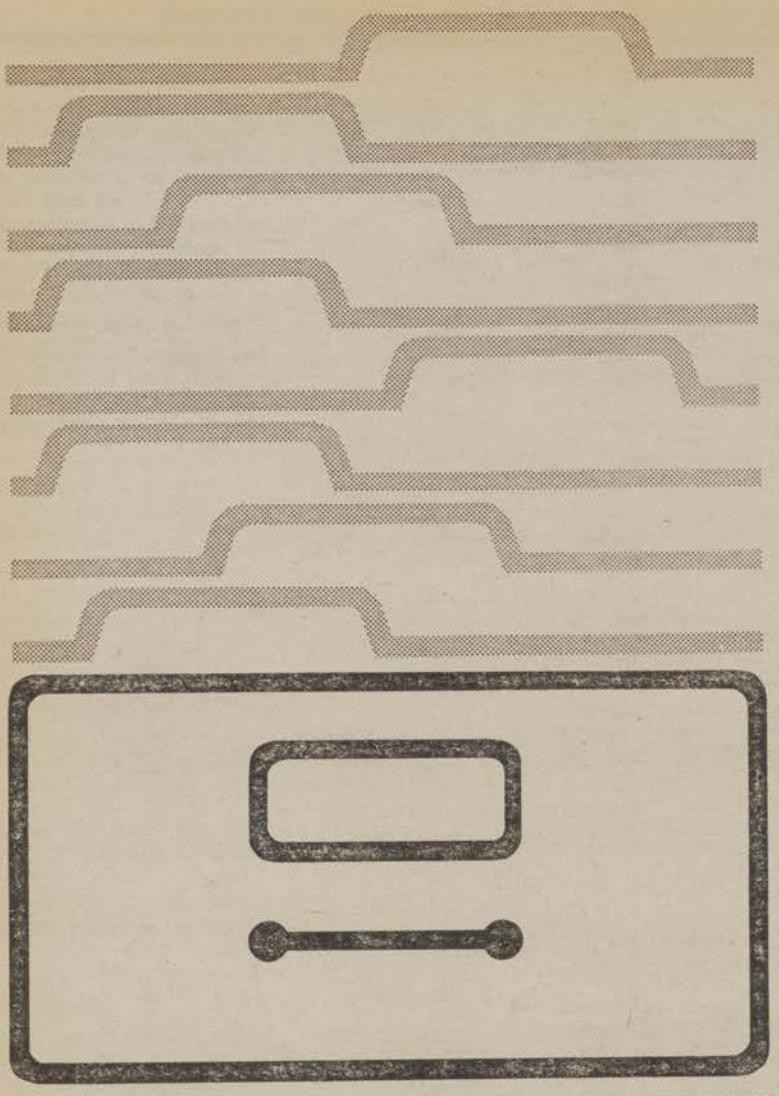
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The list will be resumed when bills are enacted into public law during the second session of the 101st Congress, which convenes on January 23, 1990. It may be used in conjunction with "P L U S" (Public Laws Update Service)

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H.R. 2494/Pub. L. 101-240

International Development and Finance Act of 1989. (Dec. 19, 1989; 103 Stat. 2492; 33 pages) Price: $1.25



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